

BIHAR HUMAN RIGHTS COMMISSION
9, Bailey Road, Patna – 15

File No **BHRC/COMP. 3921/12**

Case of Mukesh Kumar

Applicant Mukesh Kumar son of Sahjanand Yadav – resident of village Alipur P.S. Naubatpur, district Patna has approached this Commission for compensation and disciplinary action against Naubatpur police.

The case of the applicant is that a ‘missing’ report vide (sanha) station diary entry no. 105 was lodged by one Manoj Kumar of village Maharajganj P.S. Naubatpur about his allegedly missing son Rajneesh Kumar @ Mukul aged about 16-17 years. He stated that Rajneesh Kumar @ Mukul had left home on the preceding day i.e. 3.7.2012 at about 5:30 PM for Naubatpur bazaar but had not returned. The applicant was arrested by SHO Naubatpur P.S. in the same night at about 11 PM and kept in the hazat at the police station for about 20 hours. It so happened that on 5.7.2012 Rajneesh Kumar @ Mukul Kumar came to Naubatpur P.S. and submitted application to the effect that on 3.7.2012 he went to Naubatpur Bazaar in the evening and from there went to Patna on his own, and returned home. The contents of the application was recorded in the Station Diary as Sanha no.133 at 5:30 PM. The applicant was released from hazat thereafter.

The applicant thus alleged that he was unauthorisedly kept in police custody/detained in a concocted case for which he should be compensated and action may be taken against the officials.

On notice Sr.S.P. Patna brought on record the enquiry report of SDPO Phulwarisharif dated 24.2.2013. The report referred to the two station diary entries and the fact that Rajneesh Kumar @

Mukul Kumar had left home for Patna on 3.7.2012 on his own and returned on 5.7.2012. The report however denied the allegation about applicant's arrest or being brought to the police station for interrogation. Not satisfied with the report, notice under section 16 of the Protection of Human Rights Act was issued to Inspector Dinanath Kumar, SHO Naubatpur P.S. pursuant to which he filed his written defence and the matter was finally heard on 6.8.2013 in his presence. The applicant and Sri Imteyaz Ahmad SDPO Phulwarisharif – appearing on behalf of Sr.S.P. Patna – were present at the hearing.

Inspector Dinanath Kumar denied to have arrested the applicant or brought him to the police station. The applicant on the other hand reiterated his complaint version.

The Commission looked into the relevant station diary entries brought on record by SDPO Phulwarisharif. The station diary, not doubt, does not contain any entry about the applicant's arrest or being brought to the police station. However while considering a private citizen's case in a complaint against the police, it is to be kept in mind that station diary is a document written and maintained by the local police and therefore cannot be regarded as conclusive of any matter which may be adverse to the police or the officials concerned. There is difference between arrest and confinement or detention in police custody. The applicant may not have been 'arrested' – in the legal sense of the term. As a matter of fact, there was no registered case and therefore there was no question of his being arrested. What the applicant, in effect and substance, alleges is that he was detained at the police station on the basis of sanha entries with respect to a concocted incident. The Commission is not inclined to close the matter simply because the

Station Diary does not contain any entry with respect to the applicant.

It may be mentioned that the applicant had sought information with respect to his detention under the RTI Act and pursued the matter by filing appeals before the first Appellate Authority and the State Information Commission. He has enclosed 'certificates' of the Sarpanches and Mukhiya of local Chakchichowl Panchayat and Karanja Panchayat dated 8.7.2012, 9.7.2012 and 29.9.2012. All of them have supported the applicant's case of being detained at the police station for 20 hours even though no incident of kidnapping had taken place and Mukul Kumar had left home on his own.

The Commission would observe that even in a case of kidnapping, arrest of any person within hours of the incident on the basis of suspicion may not be justified and warranted but where a simple missing report is lodged – without naming any person as suspect, it would be a whimsical and arbitrary exercise of power if any person is picked up, brought to the police station and detained.

The applicant is a boy in his teens. He is a student of B.Sc. Part-I in Nadaul College, Masaurhi. He lived in village Maharajganj which is his nanihal village where Mukul Kumar lives for some time in the neighborhood and as per the report of SDPO Phulwarisharif (supra), he and the applicant were friends. While there could be an iota of justification to interrogate the applicant so as to elicit information about the whereabouts of Mukul Kumar, there was no justification at all to detain him at the police station, until Mukul Kumar appeared on his own and filed application denying any role of the applicant or any other person – in the next evening. The Commission is of the view that for the

acts of indiscretion and highhandedness amounting to violation of human rights of the applicant, SHO Naubatpur P.S. Inspector Dinanath Kumar should pay monetary compensation to the applicant. In the facts and circumstances, compensation is quantified at rupees twenty thousand.

The Commission accordingly directs Sr.S.P. Patna to pay sum of rupees twenty thousand to the applicant after deducting the amount from the salary of Dinanath Kumar SHO of Naubatpur P.S. within six weeks and submit compliance report to this Commission.

Copy of this order may be sent to (i) applicant (ii) Sr.S.P. Patna and (iii) Inspector Dinanath Kumar SHO Naubatpur P.S. district Patna.

Date: 08.08.2013

Justice S.N. Jha
Chairperson