

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

File No **BHRC/COMP.** 106/12

Case of **RAJBALI MAHTO**

Complaint of the applicant Rajbali Mahto, son of late Khobari Mahto, resident of village Pokharia Maldahia within Shikarpur P.S. of West Champaran district is about his illegal detention in connection with Shikarpur P.S. Case No.477/11 under sections 323, 341, 504 & 379/34 IPC even though he had been granted bail by the court.

The case of the applicant is that he was falsely implicated in the case due to village politics. When he learnt about issuance of warrant of arrest from the court of Sri D.K. Bhaskar, Judicial Magistrate, Bettiah he appeared in court on 9.12.2011 and was released on bail. He submitted photocopy of the order at the police station. Notwithstanding the same, on 28.12.2011 he was apprehended by constable Pramod Singh and Sunil Yadav son of the former chowkidar Prabhu Yadav – who acts as tout for the local officials. They were aggrieved by the fact that the applicant had got bail from court without paying any amount to the local police. They assaulted him and took him to the police station where he was kept in the hazat. His remonstrations to the SHO went in vain and he was sent to court. From the court's order sheet dated 28.12.2011 it appears that on production he was kept in judicial custody (court hazat) but later released. While releasing, the magistrate noted that he had already been granted bail on 9.12.2011.

As per the applicant he was deprived of his cellphone (no.8084130259) and sum of Rs.1200 which he was carrying for purchasing sugarcane before being put in the hazat. They also took away his blanket. The applicant filed complaint with respect to the incident. He also submitted representation in the Janta Darbar of the DIG Bettiah which infuriated the police officials and he was again assaulted and kept in confinement.

S.P. West Champaran submitted report dated 30.8.2012 on the basis of enquiry made by SDPO Narkatiaganj. The Commission by order dated 13.2.2012 directed the S.P. to make a personal enquiry and submit a fresh report, and he submitted another report on 5.3.2013. The report denies the applicant's complaint about taking away of his cellphone, blanket and cash of Rs.1200 – as not proved, but admits that the applicant was taken into custody by the police "in execution of warrant of arrest" and brought to police station on 28.12.2011. It is said that he did not produce 'recall' order (of warrant of arrest); after making

sanha entry in the station diary, he was sent to court along with two chowkidars for production.

It is the specific case of the applicant that he had submitted photocopy of the bail order with the 'munshi' of the police station. Even if this part of his case is not accepted, the Commission is inclined to think that he must have informed the police personnel who apprehended him, and the SHO/other officials of the police station when he was brought there – as any person of average prudence would do – that he had been granted bail. The Commission is of the view that in such a situation the police should verify the facts before taking further action, and accordingly, the applicant should not have been detained in hazat at the police station or the court. After all, he was not a criminal and had no criminal background. The possibility of the applicant being abused at the police station also cannot be ruled out – even if the other part of the case about taking away of the valuables is not accepted. As a matter of fact, the Commission is not inclined to go into that aspect for the reason that a court complaint was filed by the applicant and the matter perhaps is pending in court.

Coming to the main part of the complaint about the applicant's arrest and detention at the police station and later in the court hazat even though he had been granted bail in the case, the Commission is satisfied that the applicant suffered violation of his human rights by reason of the highhanded and arbitrary acts of the police personnel for which he deserves to be compensated. In the facts and circumstances, the amount of compensation is quantified at rupees twenty thousand.

The Commission directs that the amount be paid to the applicant by S.P. West Champaran within six weeks, with liberty to recover the same from the salary of the personnel/officials who caused the applicant's arrest including the SHO of Shikarpur P.S. – after show-cause notice. It will be open to S.P. West Champaran to also take disciplinary action against the guilty as may be considered appropriate.

Put up in the last week of April awaiting compliance report.

Copy of this order may be sent to applicant and S.P. West Champaran for information and compliance, as the case may be.

Date: 11.03.2013

Justice S.N. Jha
Chairperson