

BIHAR HUMAN RIGHTS COMMISSION

9, Bailey Road, Patna

File No. BHRC/Comp.2348/12

Subject: Illegal detention of a Juvenile

Case of : Sh. Premnath Singh , vill. Dubauli, PS. Beheri, Darbhanga.

This is regarding BHRC case no. 2348/12 concerning complaint of Sh. Premnath Singh, S/o Sh. Parmeshwar Singh, vill- Dubauli, PS. Beheri, dist. Darbhanga pertaining to arrest and handcuffing of his nephew Dushyant Kumar Singh @ Raghav Singh, aged 15^{1/2} years, on 29th May, 2012 in Beheri(Darbhanga) PS Case No. 89/12 dt. 01.05.2012 u/s 341/ 323/ 147/ 447/ 307/ 506/ 504/IPC. The petitioner alleged that his nephew was arrested, handcuffed and forwarded in the above case despite the investigating officer and SHO, Beheri being told about the juvenility of his nephew.

2. We have gone through the reports of SSP, Darbhanga(letter no. 4692/C dt. 21.05.2013, 9323/C dt. 17.09.2013 & 7494/C dt. 29.06.2014) and the response submitted by the petitioner. Sh.Kumar Ekley, SSP, Darbhanga assisted by his learned advocate Sh. B.K.Singh, DPO, Darbhanga and the petitioner Sh. Premnath Singh were present during hearing on 30.06.2014.

3. The various questions which came for consideration in this matter were (i) whether the police has powers to handcuff accused persons while bringing them and taking back from courts or anywhere else (ii) whether the police can also handcuff the juvenile accused and (iii) whether it is the duty of the police or the investigating officer to investigate about the age of accused or it is necessary that the accused should prove that he is juvenile ?

4. Hon'ble Supreme Court directives regarding handcuffing of prisoners are contained in Prem Shanker Shukla Vs. Delhi Administration AIR 1980 SC 1535. Handcuffs are to be used only if a person is:-

(a) Involved in serious non- bailable offences, has been previously convicted of a crime; and / or

(b) is of desperate character-violent, disorderly or obstructive; and/or

(c) is likely to commit suicide; and /or

(d) is likely to attempt escape.

The reasons why handcuffs have been used must be clearly mentioned in the Station Diary. They must also be shown to the court. Once an arrested person is produced before the court, the escorting officer must take the court's permission before handcuffing her/him to and fro from the court to the place of custody. The magistrate before whom an arrested person is produced must inquire whether handcuffs or fetters have been used. If the answer is yes, the officer concerned must give an explanation.

Hon'ble Supreme Court guidelines on handcuffing of prisoners contained in [Citizens for Democracy vs. State of Assam and Ors. (1995) 3 SCC743], [Sunil Batra vs. Delhi Administration AIR 1978 SC 1675] & [Sunil Gupta vs. State of M.P 1990 SCC (Cr.)-440] can also be referred to in this regard.

5. It has been contended that it is primarily the duty of the juvenile, in conflict with law, to prove his juvenility before the concerned authorities. Petitioner says they mentioned these facts before the arresting officer and the SHO but it was not taken cognizance of. They ultimately placed it before the court which held that Dushyant Kumar was of 15Yrs., 04 months & 05 days on the date of occurrence i.e. 01.05.2012.

According to the report of SDPO, Benipur(memo no. 543/13 dt. 06.05.2013), the then SHO subsequently also came across the fact that the boy got admitted in Thathopur Girls Primary School on 03.01.1997 and that his mother Smt. Sachichta Devi got tubectomy operation done on 08th Feb,1993 controverting the juvenility of the boy yet the SDPO, during his inquiry on 09th Nov, 2012, directed the Investigating officer that since Hon'ble court has held the boy to be a minor, the court should accordingly be requested for holding trial by the Juvenile court. SSP, Darbhanga could not inform whether this direction of the SDPO, Benipur was complied by the investigating officer after filing **Charge-Sheet** no. 233/12 on 30.09.2012 in the case.

6. Section 54 of amended Cr.P.C requires that the medical examination of every arrested person is to be done by a doctor and a copy of the inspection memo is to be given to the arrested person by the

doctor. It appears this was not followed in the instant case otherwise the age of the arrested boy would have come to the notice of the investigating officer at the very first instant. The boy had to remain in jail custody for a long time before he could be released by the Juvenile Justice Board on 07th Aug,2012.

7. Following violations/inconsistencies are quite apparent in the instant case:-

(a) Mandate of Section 54 Cr. P.C was not at all followed in this case while forwarding the juvenile.

(b) The directions of Hon'ble Supreme Court regarding handcuffing of prisoners was also not followed.

(c) Section 76 of the Juvenile Justice (Care & Protection of Children) Rules, 2007 has been violated. Rule 76 prohibit handcuffing of Juveniles.

(d) Directions of SDPO, Benipur to the investigating officer on 09th Nov, 2012 to send required rectification to the court regarding age of the boy and request for trial by the Juvenile court were not carried out by the I.O.

8. We, therefore, direct following actions in the matter:-

(a) A compensation of Rs. 50,000/-(Fifty Thousand) to be paid to the victim for putting him in jail. The victim was arrested/ forwarded to jail on 29th May, 2012 and granted bail by Juvenile Justice Board on 07th August, 2012. The compensation is to be paid by department of Home, Govt. of Bihar within two months.

(b) SSP, Darbhanga should initiate action against the delinquent police officers for violations narrated in para 7(a), (b), (c) & (d) above.

(c) It appears the wrong could have been averted if the mandate of Section 54 of Cr.P.C were observed. We are told that this is not being followed in letter & spirit in the entire State. Medical check up of every arrested person is not being done. Only selective cases are put to medical examination after arrest. DGP, Bihar and Principal Secretaries of Home and Health depts., Govt. of Bihar should issue detailed guidelines for effective implementation of the mandate of Section 54 of Cr.P.C.

(d) DGP, Bihar need to issue guidelines to the field formation for strict compliance of Hon'ble Supreme Court directions on handcuffing of prisoners/ arrested persons during production before the court.

9. Copy of this order be sent to the (1) **Principal Secretary, Home Deptt.**, Govt. of Bihar (2) **Principal Secretary, Health Deptt.**, Govt. of Bihar (3) **Director General of Police**, Bihar & (4) **SSP, Darbhanga** for **necessary action** and to the (5) **Petitioner** for information.

(Neelmani)
Member

(Justice Bilal Nazki)
Chairperson

Date: 01.07.2014