

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.401 of 2017

Arising Out of PS. Case No.- Year-1111 Thana- District-

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Bhaglu Mandal, S/o Late Thakko Mandal, Resident of Village- Sonko, P.S.-
Sadar, District- Darbhanga.

... .. Petitioner

Versus

1. The State Of Bihar, through the Chief Secretary, Govt. Of Bihar, Patna
2. S.P., Darbhanga.
3. Office in Charge, Darbhanga Sadar Police Station, Darbhanga.
4. Officer in Charge, Sonki O.P., Darbhanga.
5. Superintendent, Divisional Jail, Darbhanga.
6. Assistant Superintendent, Divisional Jail, Darbhanga.

... .. Respondents

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Appearance :

For the Petitioner/s : Mr.Ram Hriday Prasad, Advocate
For the Respondent/s : Mr.Sheo Shankar Prasad, SC-8
Mr. Sanjay Kumar, AC to SC-8

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

5 01-11-2022 Heard learned counsel for the petitioner and Mr. Sheo
Shankar Prasad, learned SC-8 for the State.

2. Petitioner, in the present case, is seeking
compensation for his illegal detention in prison from 24.07.2016
to 01.08.2016.

Case of the Petitioner

3. It is stated that the petitioner was made an accused
in Sadar P.S., Darbhanga Case No.27 of 1993 dated 14.02.1993
for the offences under Sections 148, 149, 109, 331, 332, 353,
341, 504, 307, 431 IPC, Sections 26/27 of the Arms Act and
Sections 3/4 of the Explosive Substance Act.



4. In the said case, the petitioner faced trial in the court of learned Additional Sessions Judge, Fast Track Court, First, Darbhanga and vide judgment dated 13.09.2010 passed by the learned trial court, he was acquitted after finding him innocent on the ground of lack of evidence. A copy of the judgment of the learned trial court has been placed on record as Annexure-2 to the writ application.

5. It is alleged that on 24.07.2016, the officer in-charge, Sonaki O.P. (Darbhanga P.S.) came at the house of the petitioner with some constables and took him in custody. The specific case of the petitioner is that despite his request saying that he had already been acquitted in the said case, he was taken into custody and was sent to Mandal Kara on the same day. In paragraph '7' of the writ application, it is stated that he had submitted before the learned Magistrate also that he had been acquitted in Sadar P. S. Case No.27 of 1993.

6. On 27.07.2016, the petitioner filed a petition before the learned Judicial Magistrate-1st Class, Darbhanga with a prayer to call for the records of Sessions Trial No.268 of 2004 from the record room of the Civil Court, Darbhanga. Thereafter, on 01.08.2016, he filed application for his release which was allowed by the learned Magistrate.



7. Learned counsel for the petitioner has drawn the attention of this Court towards Annexure-‘A’ to the counter affidavit which is a copy of the order dated 01.08.2016 passed by the learned Judicial Magistrate-1st Class, Darbhanga. The learned Magistrate has recorded that the accused Bhaglu Mandal had already been acquitted in Case No.268/04, G.R.No.269/93. In the later part of the order, it is recorded that due to clerical mistake a non-bailable warrant of arrest was issued against the petitioner. A show cause was issued to the office clerk. He submitted his show cause which was accepted by the learned Magistrate.

8. Learned counsel submits that the manner in which the petitioner was arrested and was confined in prison for eight days approximately, it cannot be ignored on a spacious plea that his arrest was due to clerical mistake. It is his submission that infringement of the fundamental right of the petitioner guaranteed to the petitioner under Article 21 of the Constitution of India writs large on the admitted facts of the case. It is, thus, submitted that the State is obliged to pay an adequate amount of compensation to the petitioner and the same be recovered from the erring officials. He has relied upon a learned coordinate Bench judgment of this Court in the case of **Raj Kumar**



Chaudhary Vs. The State of Bihar & Anr. reported in **2002 (3) PLJR 637.**

9. Learned counsel further submits that in the case of **K.K. Pathak @ Keshav Kumar Pathak Vs. Ravi Shankar Prasad & others** reported in **2019(1) PLJR 1051**, this Court has held that whenever due to inaction on the part of an executive of the State, the State is saddled with cost, the same is liable to be recovered from the said erring officials. It is his submission that the said proposition will apply here also. This judgment was though challenged in SLP (CrI) No. 003566/2019 but the Hon'ble Supreme Court refused to interfere with the same.

Stand of the State

10. Mr. Sheo Shankar Prasad, learned SC-8 submits that so far as the illegal detention of the petitioner is concerned, the same cannot be disputed. He has, however, tried to defend the action of the police officials saying that they had arrested the petitioner only on the strength of a non-bailable warrant of arrest. Learned counsel, however, submits that from the order dated 01.08.2016 itself it appears that the non-bailable warrant of arrest was issued because of negligence of the clerk.



Consideration

11. Having heard learned counsel for the petitioner and learned counsel for the State, in the admitted facts of this case, this Court is of the considered opinion that the petitioner has made out a case for allowing compensation for his illegal detention. As regards the fundamental right of the petitioner under Article 21 of the Constitution of India, it would be apt to quote the following extract from the judgment of the Hon'ble Supreme Court in the case of **Nilabati Behera Vs. State of Orissa** reported in **AIR 1993 SC 1960**:-

“.... award of compensation in a proceeding under Article 32 by this court or by the High Court under Article 226 of the Constitution is a remedy available in public law, based on strict liability for contravention of fundamental rights to which the principle of sovereign immunity does not apply, even though it may be available as a defence in private law in an action based on tort.”

12. In the case of **Raj Kumar Chaudhary** (supra), the learned coordinate Bench of this Court has inter alia held as under:-

“..... but in a case where a person is arrested for no cause without any rhyme and reason and despite his protest that he is not the person on whom the warrant is to be executed then after arrest such person suffers a great deal of tormentation and undergoes such a process of psychic fear which may cause deep apprehensions and anxiety in his mind. It cannot be doubted that family of such a person is disturbed, when the bread earner goes to jail then virtually the bread is removed from the mouth. When a person remains in jail his family is affected, the



reputation of the family is affected, and his wife and children are the sufferers of the first grade.”

13. In the case of K.K. Pathak @ Keshav Kumar Pathak (supra), against which Special Leave to Appeal (Criminal) Nos. 003566/2019 has been dismissed by Hon’ble Supreme Court, while considering the responsibility of the erring officials who acts for and on behalf of the State, this Court has observed in paragraph 11, 12 and 13 as under:-

“11. This Court would reiterate the observations of the Hon’ble Apex Court in one of its judicial pronouncements in the case of **Lucknow Development Authority vs. M.K. Gupta** reported in **1994 (1) SCC 243** observed in Paragraph 11 as under:-

“11.....Public administration, no doubt involves a vast amount of administrative discretion which shields the action of administrative authority. But where it is found that the exercise of discretion was malafide and the complainant is entitled to compensation for mental and physical harassment then the officer can no more claim to be under protective cover.....”

12. In the case of Delhi Airtech Services Private Limited and Anr. Vs. State of Uttar Pradesh & Anr. reported in 2011(9) SCC 354 observed in Paragraph 215 as under:-

“215.....The principles of public accountability and transparency in State action are applicable to cases of executive or statutory exercise of power, besides requiring that such actions also not lack bona fides. All these principles enunciated by the Court over a passage of time clearly mandate that public officers are answerable for both their inaction and irresponsible actions. If what ought to have been done is not done, responsibility should be fixed on the erring officers; then alone, the real public purpose of an answerable administration would be satisfied.”

13. Further Paragraph 218 of the Judgment in Delhi Airtech Services Private Limited (Supra) reads as under:-



“218. Principles of public accountability are applicable to such officers/officials with all their rigour. Greater the power to decide, higher is the responsibility to be just and fair. The dimensions of administrative law permit judicial intervention in decisions, though of administrative nature, which are ex facie discriminatory. The adverse impact of lack of probity in discharge of public duties can result in varied defects, not only in the decision making process but in the final decision as well. Every officer in the hierarchy of the State, by virtue of his being “public officer” or “public servant” is accountable for his decisions to the public as well as to the State. This concept of dual responsibility should be applied with its rigours in the larger public interest and for proper governance.”

14. In the entirety of the facts and circumstances of the case, this Court deems it just and proper to award a compensation of Rs.2,00,000/- (rupees two lacs) to the petitioner for his illegal detention in prison. Let the State pay the amount within a period of one month from today.

15. It will be open for the State to realize this amount from the erring officials in accordance with law.

16. This writ application stands disposed off accordingly.

(Rajeev Ranjan Prasad, J)

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Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.

