

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.707 of 2017

Arising Out of PS. Case No.-108 Year-2017 Thana- KATIHAR NAGAR District- Katihar

1. Arunabha Chowdhury, S/o Sri Bhola Nath Chowdhary, Resident of Rishi Bhawan Road, Bara Bazar, P.S. Katihar, Dist. Katihar, Centre Owner of Anjani Institute of Technology, situated at Bata Chowk, Katihar, Town P.S. Katihar, Dist. - Katihar, Bihar.
2. Sourav Paul Son of Late Narayan Paul, Resident of Durgasthan Colony No.1, Town P.S. and Dist - Katihar, Working as Centre Co-ordinator, Anjani Institute of Technology, Bata Chowk, Katihar.
3. Meghu Das Son of Umesh Das, Resident of Village - Manipur, P.S. - Harischandrapur, Dist - Malda, West Bengal, presently working as Assistant Learner Facilitator in Anjani Institute of Technology, Bata Chowk, Katihar.
4. Mukesh Kumar @ Mukesh Kumar Mandal Son of Late Kapildeo Mandal, Resident of Village - Mahuar, P.S. - Manihari, Dist - Katihar, presently working as Mobiliser in Anjani Institute of Technology, Bata Chwok, Katihar.

... .. Petitioner/s

Versus

1. The State Of Bihar Through Principal Secretary, Home Department, Govt. Of Bihar, Patna
2. Director General of Police, Bihar, Patna. null null
3. Sri Sidharth Mohan Jain Son of not known presently posted as Superintendent of Police, Katihar.
4. Sri Babu Lal Yadav Son of not known presently posted as S.D.P.O. Katihar Sadar, Katihar.
5. Sri Nirmal Kumar Yadbendu S.H.O. Station House Officer, Town Police Station - Katihar, Dist - Katihar.
6. Sunil Kumar Singh, Sub-Inspector of Police, Town Police Station Katihar, Dist - Katihar.
7. Sri Ranjan Upadhayay, Circle Inspector, Katihar Circle, Circle Office, Katihar, P.S. and Dist - Katihar

... .. Respondent/s

with

Miscellaneous Jurisdiction Case No. 1362 of 2017

1. Meghu Das, Son of Umesh Das, resident of Village- Manipur, P.S.- Harischandrapur, Dist.- Malda, Presently Working as Assistant Learner Facilitator in Anjani Institute of Technology, Bata Chowk, Katihar, Bihar.



2. Sourav Paul, Son of Late Narayan Paul, Resident of Durgasthan Colony No.1, Town P.S. and Dist.- Katihar, working as Centre Co-ordinator, Anajani Institute of Technology, Bata Chowk, Katihar.
3. Mukesh Kumar Mandal, Son of Late Kapildeo Mandal, resident of Village- Mahuar, P.S. Manihari, resident of Village- Mahuar, P.S.- Manihari, Dist.- Katihar, presently working as Mobiliser in Anjani Institute of Technology, Bata Chowk, Katihar.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Sri Sidhharth Mohan Jain, son of not known, presently posted as Superintendent of Police, Katihar.
3. Sri Babu Lal Yadav, Son of not known, presently posted as S.D.P.O. Katihar Sadar, Katihar.
4. Sri Nirmal Kumar Yadbendu, S.H.O. Station House Officer, Town Police Station- Katihar, Dist.- Kati
5. Sunil Kumar Singh, Sub- Inspector of Police, Town Police Station, Katihar, Dist.- Katihar.

... .. Opposite Party/s

Appearance :

(In Criminal Writ Jurisdiction Case No. 707 of 2017)

For the Petitioner/s : Mr. Prasoon Kumar, Sr. Advocate
Mr. Prabhat Kumar, Advocate
Mr. Amarnath Kumar, Advocate

For the Respondent/s : Md. Nadim Seraj, GP 5
Mr. Iqbal Asif Niazi, AC to GP 5

(In Miscellaneous Jurisdiction Case No. 1362 of 2017)

For the Petitioner/s : Mr. Prasoon Sinha, Sr. Advocate
Mr. Prabhat Kumar, Advocate
Mr. Amarnath Kumar, Advocate

For the Opposite Party/s : Mr. Suman Kumar Jha, AC to AAG 3

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI

ORAL ORDER

16 12-02-2025 The instant writ petition and the connected contempt application are heard together. By filing the above-numbered writ petition, the petitioners have prayed for the following reliefs:

“i. Mandamus, directing the



respondent nos. 3 to 5 to unlock the premises of the Anjani Institute of Technology, situated at Mangal Bazar, Bata Chowk, Katihar, operated by the petitioner no. 1, having valid approval by the Ministry of Minority Affairs, Govt. of India, for implementing a scheme namely, "SEEKHO AUR KAMAO" (Learn and Earn), 100% sponsored by the Government of India, which was illegally locked by the respondent nos. 5 and 7, in the evening on 15.02.2017, as a result thereof the Anjani Institute of Technology, Katihar has been closed since 15.02.2017 till date.

ii. Mandamus, commanding the respondents for awarding monetary compensation to the petitioners, as this Hon'ble court may deem fit in the facts and circumstances of the case, for wrongful/illegal detention of the petitioners in police lockup since 15.02.2017 upto 17.02.2017 after this their arrest in Katihar Town P.S. No. Case 108/2017 in violation of the fundamental rights of the petitioners guaranteed under Articles 21 and 22 of the Constitution of India.



iii. Mandamus, commanding the respondents no. 1 and 2 to initiate criminal case as well as departmental proceeding against the respondent nos. 3 to 7 for wrongfully detaining the petitioners in the police lockup at Katihar Town Police station, without following the procedure of law as well as in complete defiance of the mandate issued by the Hon'ble Supreme Court in the case of D.K Basu Vs. State of West Bengal, reported in (1997)1 SCC 416 as well as directions issued by the Apex Court in several other cases relying on D.K Basu's case (supra)

iv. Mandamus, commanding the respondent nos. 1 and 2 to prosecute the respondent nos. 3 to 7 for subjecting the petitioners to mental and physiological torture committed under the shield of uniform and authority in the four walls of the Katihar Town Police Station Haazat (lockup), in violation of the fundamental rights of the petitioners guaranteed under Articles 21 and 22 of the Constitution of India.

v. Mandamus, commanding the respondents to produce the action



taken records by which the Anjani Technology, Mangal Bazar, Institute of Bata Chowk, Katihar was locked and the petitioners were illegally detained for two days in the police lockup (haazat) at Katihar Town Police Station and then shown to have been arrested on 17.02.2017 by manipulating record and the Hon'ble court be pleased to order/direction pass appropriate after perusal of the records and the action taken report submitted by the respondent authorities.

vi. An appropriate Writ, direction or order which may be applicable in the facts and circumstances of the case.”

2. At the outset, it is pertinent to mention that relief no. 1 has become redundant now because of the fact that vide order no. 3 dated 31st July 2017, a Co-ordinate Bench of this Court directed the petitioners to break open the lock of the institution, if there is any lock existing, and to run the institution as before.

3. It is submitted by the learned Advocate for the petitioners that the said lock was open and the institute is being run regularly. The rest of the prayers relate to the issuance of a



writ in the nature of mandamus, commanding the respondents for awarding monetary compensation to the petitioners as they were illegally confined and arrested on 15th February 2017 and in violation of the specific provision in the Code of Criminal Procedure. They were not produced before the learned Chief Judicial Magistrate of the jurisdictional court within 24 hours of their arrest. They suffered inhumanely in police lock-up, and since 15th February 2017 to 17th February 2017, their life and personal liberty were violated without any order of any judicial authority for detention, and thereby, the respondents blatantly violated the guidelines contained in paragraph 35 of ***D.K. Basu v. State of W.B.***, reported in ***(1997) 1 SCC 416***. The other reliefs are incidental and consequential to the above relief.

4. Let me now state the factual aspect of the matter as delineated in the writ petition:

(i) Anjani Institute of Technology at Mangal Bazar, Bata Chowk, in the District of Katihar, Bihar, was authorized by the NIC Institute of Technology. However, on the allegation that the said institution was running without any authorization illegally.

(ii) The police conducted a raid on 15th February 2017, and according to the police authority, some documents



were seized from the said institute, and a *suo moto* FIR was lodged by the SHO, Katihar Sadar P.S.

(iii) The petitioners, on the other hand, contended that on 15th February 2017 itself, they were arrested, brought to the P.S., and illegally confined to police lock-up without assigning any reason as to why they were arrested, without sending the information of arrest to their friends and relatives, and following other requirements under the law as well as the guideline by the Hon'ble Supreme Court in ***D.K. Basu's*** case (supra). It is also submitted by the learned Advocate for the petitioners that they were produced before the court of the learned Chief Judicial Magistrate on 18th February 2017 after a lapse of about 72 hours, in violation of the statutory provision of the mandatory requirement of production of the accused within 24 hours from the date of their arrest.

5. In order to substantiate his argument, the learned counsel for the petitioners first refers to the arrest memo. It is rightly pointed out by the learned Advocate for the petitioners that in all the arrest memos, the date of arrest, the date of signature of the witness, and the arrestees were interpolated, and by way of interpolation, the date "16" was interpolated to "17." It is found on bare eye that such interpolations were made in all



the arrest memos prepared by the police authority. Secondly, it is submitted by the learned Advocate appearing on behalf of the petitioners that the case of the respondents is that the petitioners were brought to the P.S. on 15th February 2017, and after interrogation, they were released. However, the said fact was not recorded in the P.S. G.D. Book. The P.S. G.D. Book is absolutely silent over the presence of the accused persons/petitioners in the P.S. on 15th February 2017. Though, admittedly, a raid was conducted by police in the said institute on 15th February 2017. In order to substantiate his argument, learned counsel for the petitioners draws my attention to the photocopy of the relevant entry of G.D. annexed with the supplementary counter-affidavit filed by respondent no. 3, Superintendent of Police, Katihar. In the G.D. Book, there is no reference with regard to the institution of a case against Anjani Institute of Technology, though it was registered on 15th February 2017 under Sections 419/420/469/470/471/120B/34 of the IPC. The place of occurrence is situated about half a kilometer away from the police station. The court of the learned Chief Judicial Magistrate is at a distance of approximately 3 km away from the P.S. The *suo moto* FIR filed by the SHO, Nirmal Kumar Yadavendu of Nagar P.S. Katihar, contains the following



allegations:

"कार्यालय में काम कर रहे लड़के से नाम-पता बारी-बारी से पूछने पर (1) अरुनाप चौधरी, पिता श्री भोलानाथ चौधरी, सा० ऋषि भवन रोड बड़ा बाजार था-नगर, 2. सौरभ पाल, पिता स्व० नारायण पाल सा० दुर्गास्थान कॉलोनी नं०-1, था-नगर, 3. मेघु दास सा० भालूका बाजार था-हरिश्चन्द्रपुर जिला मालदा, 4. मुकेश कुमार मंडल उर्फ मुन्ना सा० महुआर था- मनिहारी जिला-कटिहार बताया"

6. Thus, it was ascertained on 15th February 2017 that the above-named persons were running the said institution. It is also stated in the FIR that the concerned persons did not obtain any permission or license from the State of Bihar to run an institute of technology. The FIR also states that police seized a series of documents in the presence of two witnesses, namely, Shrimati Renu Chowdhury, wife of Arunap Choudhary, and Surendra Prasad Yadav. It is further stated that at the time of the raid, Arunap Chowdhury, Saurav Pal, Mukesh Kumar Mandal, and Meghu Das, along with Lalan Kumar Mandal and Wasim Akram, were present. The statement of the SHO lastly contains that the above-named persons in serial no. 1 to 4 would be arrested for interrogation and the FIR would be formally lodged in the P.S.

7. Surprisingly, FIR was lodged on 15th February 2017



vide Katihar Town P.S. Case No.108 of 2017 under Sections 419/420/406/467/468/469/470/471/120B/34 of the IPC. It is found in P.S. G.D. entry no. 544 dated 15.02.2017 recorded at 18:35 hours that the registration of the case was recorded.

8. It is the mandatory provision in the CrPC that as soon as a cognizable case is registered in a P.S., it would be produced before the learned jurisdictional magistrate without delay. This Court fails to understand as to why the formal FIR and other documents were produced before the learned Chief Judicial Magistrate on 17th February 2017. It is not the case of the respondents that the following date, i.e., on 16th February 2017, was a holiday; even if the said date was a holiday, it would have been produced before the learned remand magistrate. Police did not intimate the learned magistrate about the institution of the case; had it been informed on 16th February 2017, it might have been unearthed as to whether the petitioners were actually detained in custody or not. In the first counter-affidavit, the Superintendent of Police, Katihar, tried to explain the interpolation in the arrest memo as a human error. Human error may be contained in one or two places, but in all the arrest memos and other relevant places, similar human error had occurred, which explanation appears to this Court to be hard



to digest. It is absolutely clear that in the arrest memo, the word “16” was interpolated, and in that place “17” was written to show that the accused were arrested on 17th February. Had they been arrested on the 16th, it was the duty of the police authority to forward them along with a copy of the FIR, which was forwarded on 17th February 2017. However, only to forward them on 18th February 2017, there was an interpolation, and the said interpolation cannot be said to be innocuous human error. This Court is not unmindful to note that the arrest memo was prepared by a senior police officer, who, it is presumed, prepared arrest memos previously in a number of cases. Therefore, a series of manipulations with regard to the date of arrest cannot be accepted as only human error. From careful perusal of the documents on record, it is clear to the Court that in regard to Katihar Town P.S. Case No. 108 of 2017, which was registered on 15th February 2017, relevant papers were prepared for production before the learned Chief Judicial Magistrate on 16th February 2017. The accused persons were also arrested on 16th February 2017, but they were produced on 18th February 2017. It is unfortunate to note that the endorsement made by the learned Chief Judicial Magistrate on the arrest memo was dated 18th February 2017. There was no answer to the question when



the accused persons were arrested as per the prosecution case on 17th February why they were not produced before the learned Magistrate along with the papers and documents of Katihar Town P.S. Case No. 108 of 2017 on 17.02.2017. Thus, I find that at least there was one day's wrongful detention of the accused persons in the police station.

9. Paragraphs no. 36 and 37 of D.K. Basu (supra) state as follows:

“36. Failure to comply with the requirements hereinabove mentioned shall, apart from rendering the official concerned liable for departmental action, also render him liable to be punished for contempt of court, and the proceedings for contempt of court may be instituted in any High Court of the country having territorial jurisdiction over the matter.

37. The requirements referred to above flow from Articles 21 and 22(1) of the Constitution and need to be strictly followed. These would apply with equal force to the other governmental agencies also to which a reference has been made earlier.”

10. In view of the above discussion, when this Court



has found that the accused persons were at least detained illegally for one day without being produced before the learned Magistrate and without any order of remand, the arresting officer is bound to face departmental proceedings for the above interpolation and illegal detention.

11. The Director General of Police, State of Bihar, is directed to initiate departmental proceedings against the concerned arresting officer within 15 days from the date of communication of this order.

12. With regard to the contempt application being MJC No. 1362 of 2017, in view of the decision passed in the writ petition, this Court has taken cognizance of the contempt petition and notice to be issued upon the arresting officer as well as the then Superintendent of Police, Katihar, by name for initiation of contempt proceedings and determination of the issue with regard to compensation, if any, to be paid by the erring police officer.

13. The instant writ petition is disposed of; however, MJC No. 1362 of 2017 is kept pending.

14. Further, the original G.D. Book of Katihar Town P.S. Case No. 108 of 2017, produced by the learned counsel for the State respondents, be returned to the concerned police



station.

(Bibek Chaudhuri, J)

Suraj Dubey/-

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