

ODISHA HUMAN RIGHTS COMMISSION
2nd Floor, Toshali Bhawan, Satyanagar
Bhubaneswar-751007

OHRC Case No. 3899 of 2016

Shri Biswapriya Kanungo

... petitioner

ORDER

The petitioner Shri Biswapriya Kanungo, Advocate & HR activist, Bhubaneswar enclosing a photocopy of the news item under the caption **“Mahanga Thanare Police Atyachar-Table Godare 4 Dina Bandha Hele Bhirnkhyama”** to his petition dated 17.9.2016 alleged that a physically challenged person namely Jagannath Das , was detained illegally for four days in Mahanga Police Station in Cuttack by tieing his leg to the leg of a table with the help of a hand-cuff though he was not involved in any cognizable offence. The petitioner also alleged that such treatment meted out to Jagannath Das in the Police Station caused both physical and mental torture to him.

Apart from the enquiry conducted by the S.P., Cuttack through the SDPO, Salipur into the alleged incident, the Commission also conducted a parallel enquiry through a D.S.P. of its own Investigation Wing.

Perused the enquiry report of the SDPO, Salipur which was sent by the S.P., Cuttack in its letter dated 18.10.16. The enquiry report speaks that the IIC, Mahanga Police Station on getting proper

information about the involvement of one Jagannath Das of village Jaleswarpur in Mahanga PS Case No.164 dated 4.9.2016 which was registered under Section 392 IPC, he was picked up by the police from his house in the early morning of 16.9.16 to the Police Station and was kept there, and while the accused attempted to run away from the Police Station, the IIC felt it imperative to instruct the Sentry Constable to put a handcuff to his leg to scuttle his attempt to escape from police custody. During police custody, the accused Jagannath Das complained of chest pain, and accordingly, he was sent to the Medical Officer, Mahanga CHC, who upon examining him decided to refer him to the SCB Medical College & Hospital, Cuttack for necessary treatment. While the matter stood thus, Biswanath Das, the elder brother of the accused Jagannath Das requested the IIC, Mahanga PS to release him on bail as he has past history of chest problem and the IIC considering such request released the accused Jagannath Das upon execution of a bail bond, who being accompanied by his elder brother left for his house at 4.00 PM.

The report further speaks that the accused Jagannath Das was not having any sign of physical disability and no abnormal behaviour was noticed by the IIC during the period of his detention in the Police Station. The report refuted the allegation of detention of the accused for four days in Mahanga Police Station. Further, neither the accused nor his brother had made any allegation about any custodial violence and detention of the accused in the Police Station for four days as published in the newspaper.

Also perused the enquiry report of Shri B.Satapathy, D.S.P., Investigation Wing of the Commission which has been submitted through the Director, Investigation-cum-Addl. DGP in its letter dated 24.10.16.

The enquiring officer has in fact taken pains to go into the details of the allegation of the petitioner and for the purpose of a full-fledged enquiry he had visited Mahanga P.S., the villages Jaleswarpur and Kuanpala and other places as well four times, examined the victim, his family members, villagers, journalist, who collected the news and the police personnel of Mahanga PS and also collected relevant documents to find out the veracity of the allegation.

The enquiring officer has focussed his enquiry mainly on the issues such as (i) whether, the accused was detained at Mahanga PS for four days contravening the law prescribed under Section 57 of the Cr.PC, (ii) whether, the accused is a physically challenged person and (iii) whether during his detention at the Police Station, the accused was handcuffed on his leg contravening the hazat rules amounting to physical torture and humiliation.

As regards allegation No.(i) mentioned above, the enquiring officer has mentioned that the IIC, Mahanga PS in Mahanga PS Case No.164 dated 4.9.16 apprehended one Balaram Samal from his house in the village Jaleswarpur on the night of 15.9.16 and during interrogation, he disclosed the name of Jagannath Das, son of Bairagi Charan Das and Smt. Minalata Das of his village who was also one of his associates in the crime committed by him on 30.8.16. The police party while lifting the accused Jagannath Das from his house duly informed his mother Smt.

Minalata Das about the purpose of taking him to the Police Station. The allegation that the accused Jagannath Das was brought to Mahanga PS on 12.9.16 could not be substantiated as the victim, himself, his family members as well as the villagers have unequivocally denied the same. It is a fact that, the accused was brought to the Police Station on 16.9.16 at 5.00 AM and was kept there till he was released on bail on medical grounds at 4.00 PM on the same day.

As regards the allegation No.(ii), the enquiring officer has mentioned that it is a fact that Station Watch Constable No.368 Basanti Goipai has put handcuff on the right leg of the accused Jagannath Das and tied it with a table inside the Police Station. The lady Constable Basanti Goipai in her statement has admitted to have put the handcuff on the leg of the accused Jagannath Das and tied it with a leg of the table as the handcuff could not be fixed on his hand. She further admitted that as none other than her was present in the Police Station at a particular point of time, she thought it prudent to keep the accused under fetters as he attempted to escape. However, when the IIC returned to the Police Station after some time, he instructed her to remove the handcuff. Being confronted, the concerned lady Constable admitted that handcuffing on the leg of the accused is contrary to the Hazat rules. The enquiring officer has also mentioned that when the lady Constable kept the accused Jagannath Das in such a condition inside the Police Station, the Diary Charge Officer ASI Badal Kumar Mallick was very much present at the Police Station. Hence the lady Constable's statement that there was no other police personnel in the Police Station except herself at the relevant point of time was nothing but a blatant lie.

Further she gave two contradictory statements with regard to removal of handcuff from the leg of the accused Jagannath Das. She at one time stated that after the IIC returned to the P.S, he instructed her to remove the handcuff from the leg of the accused and she in her written statement said that having seen the ASI Badal Kumar Mallick returning to the Police Station, she herself removed the handcuff from the leg of the accused.

Shri Bijay Kumar Bisi, IIC, Mahanga PS in his statement said that when he at about 12.30 PM returned to the Police Station found that the right leg of the accused Jagannath Das has been handcuffed and accordingly instructed the ASI of Police Shri B.K. Mallick to remove it.

Shri Badal Kumar Mohanty, ASI of Police in his statement has said that on 16.9.16 at about 11.45 AM, he went out of the Police Station on some work and on return found that the lady Constable Basanti Goipai had put handcuff on the accused's leg. However, the IIC, who just returned to the PS asked the lady Constable to remove the handcuff from the leg of the accused Jagannath Das.

From their statements, there is no scintilla of doubt that it was the lady Constable Basanti Goipai, who actually kept the accused under fetters inside the Police Station. However, the enquiring officer was of the view that the Diary Charge Officer ASI Shriu Badal Kumar Mohanty was also present at the Police Station when the accused Jagannath Das was kept under fetters. The enquiring officer held both Shri Badal Kumar Mohant, ASI of Police and the lady Constable Basanti Goipai responsible for such illegal fettering in contravention of Hazat rules.

As for the allegation No.(iii), the enquiring officer had discussed the matter with the accused Jagannath Das, his mother Smt. Minalata Das, Shri Biswanath Das, a villager of Jaleswarpur and Shri Mrutyunjay Baral, a distant relative of the accused and all of them said that Jagannath Das is not at all a disabled person and he has neither any disability certificate nor is in receipt of any disability pension, but he is a stammer since his childhood.

On a careful study of both the reports, the Commission feels that except the allegation of handcuffing the accused Jagannath Das, the other two allegations are not proved. It is proved beyond doubt that the accused Jagannath Das was kept under fetters by the lady Constable Basanti Goipai in Mahanga Police Station even during the presence of the Diary Charge Officer, ASI of Police Shri Badal Kumar Mohanty.

It needs no emphasis that the guarantee of human dignity forms part of our Constitutional culture as embodied in Articles of 14, 19 and 21 of the Constitution of India.

Even a prisoner is a person and not an animal. Handcuffing is prima facie inhuman and, therefore, unreasonable. To bind a man in hand and foot, fetter his limbs with hoops of steel, shuffle him along in the street and stand him for hours in the courts is to torture him, and defile his dignity.

Insurance against escape does not compulsorily require handcuffing. There are other measures whereby an escort can keep a detainee in safe custody. When there was no compulsive need to fetter a person's limbs, it is sadistic, caparicious, despotic and demoralizing to humble a man by manacling him.

In the instant case, no case has been made out by the State that no other practical way was available to prevent escape of the victim Jagannath Das. Admittedly, Jagannath Das while being detained in Mahanga Police Station had complained of chest pain, for which he was taken to the Medical Officer, Mahanga CHC and when the doctor found it to be a case of chest pain, then he was let off from the Police Station at 4 PM.

It is a lame excuse that Jagannath Das was kept on fetter or menacle to prevent his escape. There was no valid justification for infringement of his valuable Constitutional rights as a free citizen of the country. Vague surmises or general averments is taken as ruse to give legality to an overtly illegal act,

That the liberty of Jagannath Das was curtailed by putting him under fetters smacks of highhandedness of the Police Officers despite the direction of the Apex Court of the country in Prem Shankar vs Delhi Administration (AIR 1980 SC) 1535. There are numerous instances where in a routine manner without any specific orders of the Magistrate, the Police is handcuffing persons who are picked up even on suspicion of commission of an offence, and the present case is one of such examples.

Thus for the faults and failings of those two police personnel namely Shri Badal Kumar Mohanty, ASI of Police and Basanti Goipai, lady Constable, the Commission recommends to the DG & IG of Police to take appropriate departmental action against those two errant police personnel.

The Commission further desires that Police Officers manning different Police Stations across the State be sensitized about the mandate of the Apex Court of the country in Prem Shankar vs Delhi Administration and also the guidelines of the NHRC relating to restraining the liberty of any person suspected of committing an offence by handcuffing or putting him under fetters in a routine manner. It is to be borne in mind that to prevent escape of an under-trial is in public interest, reasonable, just and cannot, by itself be castigated. But to bind a man hand and foot, fetter his limbs with hoops of steel, shuffle him along in the street and stand him for hours in the courts is to torture him, and defile his dignity, vulgarise society and foul the soul of our Constitutional culture.

With the aforesaid observation and direction, the case stands disposed of. A copy of this order be sent to the Principal Secretary to Govt., Home Department, Odisha, Bhubaneswar and D.G. & I.G. of Police, State Police Headquarters, Cuttack for necessary compliance of the order.

**JUSTICE B. K. MISRA
ACTING CHAIRPERSON**