

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.989 of 2025

Arising Out of PS. Case No.- Year-0 Thana- District- Jehanabad

Arvind Kumar Gupta, Son of Amardeep Prasad, Permanent Resident of Village- Naya Gaon, Laddu Akhara, Police Station- Alamganj, District- Patna. At present resident of- House No. 24, KH No. 19/21, 1st Floor, Gali No. 1A, Near Bus Stand, Amrit Vihar, VTC Burari, P.O- Burari, Sub District- Civil Lines, District- North Delhi

... .. Petitioner

Versus

1. The State of Bihar through the Principle Secretary, Home, Bihar, Additional Chief Secretary, Govt. of Bihar, Patna.
2. The Principle Secretary, Home, State of Bihar, Patna Additional Chief Secretary, Govt. of Bihar, Patna.
3. The Director General of Police, Bihar Patna
4. The DIG, Magadh Range, Gaya
5. The Superintendent of Police, Jehanabad
6. The Senior Superintendent of Police, Patna
7. The SHO, Makhdumpur P.S. Jehanabad
8. The SHO, Town P.S. Jehanabad
9. Manju Devi Wife of Krishna Gupta R/o Village Dakara, P.S- Makhdumpur, District- Jehanabad
10. Aditya Raj Son of Krishna Gupta Resident of Village- Dakara, P.S- Makhdumpur, District- Jehanabad,
11. Gautam Kumar Son of Ranjeet Kumar Gupta Resident of Village- Govindpur, Police Station- Fatuah, District-Patna.
12. Pranav Kumar, The Investigating Officer of Jehanabad Town P.S. Case No. 337 of 2025.

... .. Respondents

Appearance :

For the Petitioner	:	Mr. Nagendra Kumar Singh, Advocate Mr. Raj Kumar Rai, Advocate Mr. Raj Kumar, Advocate
For the State	:	Mr. Prabhu Narayan Sharma, AC to AG



**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE SOURENDRA PANDEY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)**

Date : 01-09-2025

Heard Mr. Nagendra Kumar Singh, learned counsel for the petitioner and Mr. Prabhu Narayan Sharma, learned AC to AG for the State of Bihar.

2. The S.H.O., Makhdumpur Police Station, Jehanabad (Respondent No. 7), the S.H.O., Town Police Station, Jehanabad (Respondent No. 8) and Mr. Pranav Kumar who is the I.O. of this case have appeared in person as advised by learned AC to AG.

3. Since the I.O. is not a party respondent in this case, to let the records complete, Mr. Pranav Kumar, the I.O. of the case be made party Respondent No. 12.

4. In the morning at 10:30 AM when the writ application was taken up for purpose of judgment, on the request of learned AC to AG for the State of Bihar, we have further heard him. We also heard Respondent Nos. 7, 8 and 12 at length.

Brief Facts of the Case

5. This writ application has been filed seeking a writ in the nature of Writ of Habeas Corpus for a direction to the respondents to release private Respondent Nos. 9 to 11 from the illegal detention of police.



6. The petitioner who is the son-in-law of Respondent No. 9, brother-in-law of Respondent No. 10 and cousin brother-in-law of Respondent No. 11 approached this Court invoking its extraordinary writ jurisdiction for various reasons. According to him, on 29.04.2025 at 11:00 AM, the police officials of Makhdumpur Police Station, Jehanabad along with the Town Police Station, Jehanabad reached at the house of Respondent No. 9 and took her in police custody. She was taken away from the village without giving any information regarding her arrest to the nearest family members/friends/relatives. It is stated that the husband of Respondent No. 9 is handicapped and is of unsound mind and the son of Respondent No. 9, namely, Aditya Raj (Respondent No. 10) was in examination hall where the Bihar Public Service Commission (hereinafter referred to as the 'BPSC') Mains Examination was going on. The villagers informed the petitioner about the said arrest.

7. It is further stated that on 01.05.2025 at about 06:30-07:00 AM, all of a sudden, a police team reached at the house of Respondent No. 11 where Respondent No. 10 was staying for appearing in BPSC Mains Examination. Respondent Nos. 10 and 11 both were arrested without giving any proper information to the family members of Respondent No. 11 regarding such arrest. They



were also taken away. The petitioner came to this Court with a statement that the petitioner had no knowledge as to where the arrested persons were held/kept. He had filed a petition before the Director General of Police, Bihar, Patna, the DIG, Magadh Range, Gaya through the speed post as well as through e-mail about such arrest and requested them to release private Respondent Nos. 9, 10 and 11 from illegal detention of police. A copy of the petition dated 02.05.2025 with proof of dispatch by speed post and acknowledgment of e-mail have been annexed with the writ petition as Annexure 'P1 series'.

8. The petitioner pleaded before this Court that the Respondent Nos. 9 to 11 were picked up and taken into police custody without following the established procedure of law. The police officials did not inform the family members of Respondent Nos. 9, 10 and 11 which is in violation of Section 48 of the Bhartiya Nagrik Suraksha Sanhita, 2023 (hereinafter referred to as the 'BNSS'). It is further submitted that the police officials are under obligation and duty bound to comply with the mandate of Section 187(1) of the BNSS, however, in utter violation of the said provision, they illegally detained Respondent Nos. 9 to 11 under police custody. They were not even produced before the learned Jurisdictional Magistrate within twenty-four hours.



Submissions on behalf of the State

9. A counter affidavit has been filed on behalf of the State respondents, namely, Respondent Nos. 5, 7 and 8. The affidavit has been sworn by the S.H.O. of Jehanabad Police Station (wrongly mentioned as I.O. of Jehanabad Police Station in paragraph '1' of the counter affidavit). A plea has been taken in the counter affidavit that so far as Respondent No. 10, namely, Aditya Raj is concerned, he is in judicial custody by order of remand passed by the court of competent jurisdiction. So far as Respondent Nos. 9 and 11 are concerned, it is submitted that they were no longer in police custody as both of them are living in their respected houses after 04.05.2025. Initially, a submission was also made that since on the date of hearing of the writ petition, the private respondents have already been released, therefore, the petition itself would become infructuous, however, this Court has dealt with that aspect of the matter in its order dated 08.08.2025.

10. In paragraph '7' of the counter affidavit, there is an admission that Respondent No. 9 was brought to Nagar Police Station on 29.04.2025 at 20:00 Hours from her village house in course of investigation, but the respondent claimed that she was brought for her safety and to keep surveillance because the accused Ranjan Kumar Gupta who is son of Manju Devi



(Respondent No. 9) was regularly in her touch and was trying to disappear evidences and there was every possibility to conceal her from the reach of the police. In paragraph '8', it is stated that Manju Devi was sent to Alpwas Grih in protection of S.I. Maya Kumari on Police Vehicle on 20:20 Hours and she was safely handed over to the authority of Alpwas Grih at 21:00 Hours for which a sanha entry was done in the station diary. It is then stated that she was brought to police station premises by S.I. Maya Kumari on 04.05.2025 at 22:35 Hours and thereafter she was left on P.R. bonds and she went back to her house with her relatives.

11. As regards Gautam Kumar (Respondent No. 11), it is stated that he was brought to Nagar Police Station for interrogation as suspect on 01.05.2025 at 10:45 Hours and after interrogation, he has been freed by police and on 04.05.2025 at about 23:40 Hours, he was again brought to the police station and after interrogation, he has been freed on P.R. bond vide Sanha Entry No. 0172 dated 04.05.2025.

12. As regards Aditya Raj (Respondent No. 10), it is stated that he was detained on 03.05.2025 for interrogation and verification and later on, after verification, he was arrested on 03.05.2025 at 03:00 AM in connection with Jehanabad P.S. Case No. 337 of 2025 dated 29.04.2025 for the offences punishable



under Section 140(3), later on converted to Section 140(1), 103(1), 238, 61(2) of the Bhartiya Nyaya Sanhita (in short 'BNS'). He was produced in the court below on 03.05.2025 wherefrom he was remanded in judicial custody.

Consideration

13. A perusal of the counter affidavit would show that there is no denial of the fact that while taking away Respondent Nos. 9 and 11 in police custody, any information regarding the arrest of these respondents was given to their family members/relatives/friends. In fact, no arrest memo has been prepared. The specific statements made in this regard in paragraphs '4 (ii)' and 4(iv) have not been controverted.

14. In the above-mentioned circumstance, we having heard learned counsel for the petitioner and learned AC to AG for the State of Bihar on 08.08.2025 raised some queries to learned AC to AG.

15. Paragraphs '8' and '9' of the order dated 08.08.2025 passed by this Court read as under:-

“8. In course of hearing of the writ application, while answering the specific query of this Court, Mr. P.N. Sharma, learned AC to AG admits at the Bar that once Respondent No. 9 was sent to Alpwas Grih on 29.04.2025 at 20:20 Hours, she was never brought to the police station for purpose of interrogation. The counter affidavit in



this regard does not mention that she was required to be produced to the police station for purpose of any interrogation. The counter affidavit is also silent that either at the stage of her detention in Alpwas Grih or during the period of her detention in Alpwas Grih for about five days, the Jurisdictional Magistrate was informed about her detention.

9. As regards the detention of Respondent No. 11, it is stated that he was brought to the police station for interrogation as suspect on 01.05.2025 at 10:45 Hours and after interrogation, he has been freed by police and again on 04.01.2025, at about 23:40 Hours, he was brought to the police station and after interrogation, he was freed on P.R. bond vide Sanha Entry No. 0172 dated 04.05.2025. Again, with respect to the private Respondent No. 11, there is no statement that he was ever served with a notice under Section 41A Cr.PC. The counter affidavit itself discloses that Respondent No. 11 was picked up by police and was brought to the police station for interrogation. It nowhere mentions that there was any credible information or material in possession of the police to have a reasonable suspicion as required in law to detain Respondent No. 11. The specific case of the petitioner that Respondent No. 11 was picked up on 01.05.2025 at about 06:30-07:00 AM by a police team and he was kept in detention till the date of swearing of the affidavit in the writ application i.e. 03.05.2025 has not been specifically denied by the I.O.”



16. As regards the case of Aditya Raj (Respondent No. 10), this Court has already recorded in paragraph '10' of its order dated 08.08.2025 that since this Court has found that he had been remanded by a judicial order, the Court would not go into his case at this stage and the issues raised therein may be raised, if so advised, in the pending case against him. This Court is concerned with the unlawful detention of Respondent Nos. 9 and 11. Paragraphs '11', '12', '13' and '14' of the order dated 08.08.2025 recorded as under:-

“**11.** So far as the case of the petitioner with regard to the illegal detention of Respondent Nos. 9 and 11 is concerned, this Court is prima-facie of the opinion that apparently Respondent No. 9 was picked up by police on 29.04.2025. The stand of the I.O. that she was brought to the police station in course of investigation for her safety and to keep surveillance does not inspire confidence. There was no interrogation of Respondent No. 9 and she was ultimately released from Alpwas Grih after 5-6 days of her detention which is nothing but a detention in police custody.

12. In such circumstance, this Court is of the considered opinion that even if the corpus who has suffered illegal detention has been released by police at this stage, this Court being a Constitutional Court sitting under Article 226 of the Constitution of India may take an appropriate view of the matter regarding the illegal detention and pass such orders/directions as may be found



fit in the facts and circumstances of the case. This Court would be fully within its scope of Article 226 of the Constitution of India to examine as to whether the police officials have acted in complete contravention of the direction of the Hon'ble Supreme Court in case of **D.K. Basu** (supra) or that they have illegally detained Respondent No. 9 ignoring the mandate of Section 41A Cr.PC (now Section 35 of the Bhartiya Nagrik Suraksha Sanhita) and thereby is required to be proceeded against in view of the judgment of the Hon'ble Supreme Court in the case of **Arnesh Kumar Vs. State of Bihar** reported in **(2014) 8 SCC 273**.

13. So far as the issue of illegal detention of Respondent No. 11 is concerned, that would also be required to be considered because there is no specific denial of the fact that he was picked up by police on 01.05.2025 and was kept in illegal detention.

14. In fact, Respondent No. 11 has appeared in this case and filed an affidavit in which he has stated that he was confined in police custody till 09:30 PM on 03.05.2025.”

17. Pursuant to the order of this Court, the CCTV footage of the police stations has been preserved and learned AC to AG has produced in this Court a pendrive copy of CCTV footage of the police stations in a sealed cover. The sealed cover has been opened in presence of learned counsel for the parties in



Court and this Court has watched the same but nothing substantive could be found save and except some clips from here and there.

18. On 30.08.2025 when the writ application was taken up for consideration, Mr. P.N. Sharma, learned AC to AG made a categorical submission that so far as the compliance required to be made by the police personnel at the time of taking any person in police custody is concerned, it is evident that the Respondent Nos. 9 and 11 both were taken into police custody ignoring the requirements and it seems that on this issue, perhaps no significant and convincing plea is available to the respondent police officials.

19. By filing a supplementary counter affidavit on behalf of Respondent No.7, this Court has been informed that the Superintendent of Police, Jehanabad has sought an explanation against departmental action to the deponent. A copy of Memo No. 3586 dated 12.08.2025 has been annexed and marked Annexure 'R-7/A' to the supplementary counter affidavit. The Station House Officer of Makhdumpur Police Station has submitted his reply vide his Letter No. 2951 (Annexure 'R-7/B'). The supplementary counter affidavit, however, does not address any other issue. It has transpired that neither Respondent No. 9 nor Respondent No. 11 was interrogated by police. The I.O. has not recorded their statements in the case diary, however, they were kept in police



custody and were never produced before the learned Jurisdictional Magistrate.

20. As learned AC to AG could sense that the Court is not happy with the kind of violations made by the police officials in the matter of arrest and continued unlawful detention of Respondent Nos. 9 and 11, he made an appeal to this Court that though the violations at the end of the police officials could not be defended but considering that they did it only in course of investigation of a serious case, this Court may take a lenient view of the matter. Learned AC to AG proposed that he has instruction to say that a suitable amount of compensation may be awarded which the erring police officials are ready to pay.

21. This Court, however, restrained itself from passing any order on 30.08.2025 and requested learned AC to AG to discuss the matter once again at the appropriate level and only when a complete discussion takes place, statement be made before this Court.

22. In his wisdom, learned AC to AG thought it proper to come today with all the three police officials who are Respondent Nos. 6, 7 and 12, they were the officers involved in the picking up and detention of Respondent Nos. 9 and 11. All of



them have admitted that they have not complied with the requirements of law.

23. It is evident from the facts and circumstances of this case that there is a violation of the established procedure of law and the Constitutional rights of Respondent Nos. 9 and 11 as also the directions of the Hon'ble Supreme Court and this Court issued from time to time in the matters of arrest/detention in police custody of a person have been violated. In the case of **Nilabati Behera (Smt) Alias Lalita Behera Vs. State of Orissa and Others** reported in **AIR 1993 SC 1960**, the Hon'ble Supreme Court while dealing with the case of contravention of fundamental rights of a citizen made the following observations:-

“.... .. 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.
...”

24. Similar observations have been made by a learned co-ordinate Bench of this Court in the case of **Raj Kumar Chaudhary Vs. The State of Bihar and Another** reported in **2002 SCC OnLine Pat 786**.



25. In the case of D.K. Basu Vs. State of West Bengal reported in **(1997) 1 SCC 416**, the Hon'ble Supreme Court has issued the following directions in paragraph '35' of its judgment:-

“**35.** We, therefore, consider it appropriate to issue the following requirements to be followed in all cases of arrest or detention till legal provisions are made in that behalf as preventive measures:

(1) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.

(2) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may either be a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest.

(3) A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.



(4) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

(5) The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.

(6) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.

(7) The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.

(8) The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the State or Union Territory concerned. Director, Health Services should prepare such a panel for all tehsils and districts as well.

(9) Copies of all the documents including the memo of arrest, referred to above, should be sent to the Illaqa Magistrate for his record.



(10) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

(11) A police control room should be provided at all district and State headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board.”

26. Paragraph ‘37’ of the judgment in the case of **D.K. Basu** (supra) makes it very clear that the requirements referred to above flow from Articles 21 and 22(1) of the Constitution and need to be strictly followed.

27. In the case of **Rudal Sah Vs. State of Bihar and Another** reported in **AIR 1983 SC 1086** while dealing with a case of unlawful detention in jail, the Hon’ble Supreme Court has held as under:-

“...In these circumstances, the refusal of this court to pass an order of compensation in favour of the petitioner will be doing mere lip-service to his fundamental right to liberty which the State Government has so grossly violated.”

28. In the case of **Pankaj Kumar Sharma Vs. Government of NCT of Delhi and Others** reported in **2023 SCC**



OnLine Del 6215, a learned Single Judge of the Hon'ble Delhi High Court has reviewed the case laws on the subject and upon finding that the petitioner was made to suffer in the lockup for only half an hour, the learned Single Judge directed for payment of compensation of Rs.50,000/- to the petitioner recoverable from the salaries of Respondent Nos. 4 and 5 who were the erring officials.

29. Having regard to the well settled law on the subject, in the admitted facts of this case where these police officials have contravened the procedures and thereby caused injustice to Respondent Nos. 9 and 11 by keeping them in police custody without any sanction of law, we are of the considered opinion that Respondent Nos. 9 and 11 both are entitled for a compensation of Rs.1,00,000/- (Rupees One Lakh) each. The State shall be liable to pay Rs.1,00,000/- to each of Respondent Nos. 9 and 11 within a period of 30 days from today and recover the same from Respondent Nos. 7, 8 and 12 who have admitted the violation of the fundamental rights of Respondent Nos. 9 and 11 by not complying with the established procedure of law. It is well-settled that for any misuse of power by an officer of the State, if the State is being saddled with cost or compensation, the same be recovered from the erring officials. Reference in this regard may be made to the judgment of this Court in the case of **K.K. Pathak @ Keshav**



Kumar Pathak Vs. Ravi Shankar Prasad and Others reported in **2019 (1) PLJR 1051** which has attained finality as the same has not been interfered with by the Hon'ble Supreme Court in SLP (Crl) No. 003566/2019.

30. The Superintendent of Police, Jehanabad is directed to ensure that in future, such occurrences are not reported from his district. In case, any other and further such occurrence is brought to the notice of this Court, he may be held liable for not keeping control over its police personnel who are under his command.

31. We are of the considered opinion that while police personnel are free to take appropriate action in the matter of investigation of a case but at the same time, they are obliged to go by the rule of law in order to instill confidence and faith in a common citizen in the action of police personnel. Picking someone from his/her house in the name of interrogation without informing his/her family member/relatives/friend the reason and the place of detention and then keeping him/her in detention without obtaining an order from the Jurisdictional Magistrate is completely unlawful and cannot be approved by this Court. No justification by police personnel will prevail over the Constitutional mandate. This is a clear case where even the judgment of the Hon'ble Supreme Court in the case of D.K. Basu (supra) has not been followed.



32. Let this order be brought to the notice of the Director General of Police, Bihar for issuing appropriate guidelines keeping in view the mandate of law and the judicial pronouncements on the subject. Such guidelines shall be issued within a period of one month from the date of receipt/production of a copy of this judgment.

33. This writ application stands allowed.

(Rajeev Ranjan Prasad, J)

(Sourendra Pandey, J)

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Uploading Date	04.09.2025
Transmission Date	

