

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.3077 of 2025

Arising Out of PS. Case No.-128 Year-2025 Thana- PURAINI District- Madhepura

M Minor) under the uardianship of cousin brother M
H Son of Resident of Villa e

... .. Petitioner

Versus

1. The State of Bihar, through Director General of Police, Government of Bihar, Patna. Bihar
2. The Director, Prosecution, Government of Bihar, Patna. Bihar

... .. Respondents

Appearance :

For the Petitioner	:	Mr. Shashwat Kumar, Advocate Mr. Aman Alam, Advocate Mr. Amarnath Kumar, Advocate
For the State	:	Mr. P.N. Sharma, AC to A.G.

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and

HONOURABLE MR. JUSTICE RITESH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 09-01-2026

Heard learned counsel for the petitioner and learned
AC to AG for the State of Bihar.

2. Pursuant to the order dated 08.01.2026 passed in
this case, the Investigating Officer (in short 'I.O. '), namely, Mr.
R A is present with the records.

3. This Court has also interacted with him in order to
elicit certain material information. The I.O. has produced the
case diary of this case and this Court has gone through the same
with the assistance of learned AC to AG.



4. The present writ application has been filed in the nature of a Writ of Habeas Corpus seeking release of the petitioner from the illegal detention of the respondents. It is the case of the petitioner that the I.O. in this case has arrested the petitioner in complete disregard to the powers of arrest and without following the established procedure of law. The petitioner alleges gross violation of his fundamental right as embodied under Article 21 of the Constitution of India.

5. The brief facts of the case are as under:-

One _____ wife of _____, resident of _____ village _____ lodged a first information report giving rise to _____ Case No. 128 of 2025 dated 11.07.2025 registered under Sections 126(2), 115(2), 76, 308(2), 109, 303(2), 3(5) of the Bhartiya Nyaya Sanhita, 2023 (hereinafter referred to as the 'BNS, 2023'). She alleged that in connection with a land dispute, a Panchayati was held with the intervention of the co-villagers, the accused persons called the prosecution side to participate in the said Panchayati but while the Panchayati was going on, the 14 named accused including this petitioner who are all the co-villagers of the informant assaulted the prosecution side. It was



also alleged that the accused persons had taken away the silver chain and other ornaments.

6. In connection with the said occurrence, the petitioner's mother also lodged a counter case giving rise to

Case No. 131 of 2025 dated 16.07.2025. The said case was registered for the offences punishable under Sections 191(2), 191(3), 190, 115(2), 76, 126(2), 109, 303(2), 352, 351(2), 351(3) of the BNS, 2023.

7. During investigation of the Case No. 128 of 2025, the I.O. found that there was no sufficient material to proceed against ten named accused persons including this petitioner. One accused, namely, was arrested. The investigation was supervised by the Inspector and upon instructions, the I.O. filed a chargesheet bearing Chargesheet No. 235 of 2025 dated 01.09.2025 in which ten accused including this petitioner were shown in Column No. 12 as not chargesheeted accused. In another words, they were not sent up for trial. A reading of the chargesheet which is on the record would show that the same was filed on the direction of the Senior Police officer, while the arrested accused was chargesheeted, the investigation was kept open against three



absconding accused, namely, (1) , (2) and
(3) .

8. It appears that after about 25 days, the I.O. received a review note/supervision note from the office of the Deputy Inspector General of Police (in short 'DIG'), ,

. It is evident that the supervision note was recorded by the DIG on his own on the request of the informant who had visited the office of the DIG with an application complaining that the Inspector of Police had wrongly exonerated ten named accused persons. The DIG has simply recorded in his note the allegations and then taking note of the statements of the witnesses, he issued a direction to the I.O. to proceed with the investigation of the case assuming that the allegations are true against the accused persons. He directed the Superintendent of Police, to ensure further action and arrest all the remaining accused persons expeditiously.

9. A perusal of the case diary would show that the supervision note of the DIG was incorporated in the case diary on 25.09.2025 whereafter the I.O. straightway proceeded to conduct raid on the house of the accused persons. The case diary does not show that after the supervision note of the DIG, any instruction was obtained from the Superintendent of Police,



. It does not show that the I.O., being fully aware of the fact that the ten accused persons have already been shown not sent up for trial, made any application in the court of learned Magistrate for permitting a further investigation. The I.O. could not lay his hand to any other material against the petitioner but on 23.10.2025, he arrested the present petitioner, described his age as 19 years and produced him before the court from where he was sent to jail. It appears that even at the time of his production before the learned Magistrate, the attention of the learned Magistrate was not drawn towards the fact that the petitioner was shown in the column of not chargesheeted accused in the chargesheet, therefore, once the chargesheet had been filed in the court, it was incumbent upon the I.O. to file an application seeking further investigation of the case if at all any material had come against the petitioner. Even the learned Magistrate did not look into these aspects of the matter and straightway in a mechanical manner sent the petitioner behind the bars.

10. The petitioner approached this Court by filing this writ application and informed this Court on 24.11.2025 in course of hearing that the petitioner is a juvenile as per his date of birth certificate i.e. the registration card of the Bihar School



Examination Board showing his date of birth as 01.01.2010. The petitioner complained that despite the fact that he is a juvenile, the learned Magistrate did not assess his age at the time of sending him behind the bars and in complete breach of the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015, the petitioner was languishing in jail. On 24.11.2025, this Court noticed the submissions and asked the State to file a counter affidavit duly sworn by the I.O. who had effected the arrest of the petitioner. In the meantime, this Court observed that “it will be open to the Jurisdictional Magistrate to take corrective measures after considering the date of birth certificate of the petitioner. If it is found that the petitioner is aged below 18 years, it will be incumbent upon the Jurisdictional Magistrate to send him to the concerned Juvenile Justice Board for assessment of age and considering his date of birth certificate as per the Bihar School Examination Board, he would be kept in an observation home and not in jail with adults.”

11. This Court has been informed at this stage that, in fact, after coming to know the claim of the petitioner that he was a juvenile, the learned Jurisdictional Magistrate had vide his



order dated 21.11.2025 referred him for assessment of age to the Juvenile Justice Board, .

12. Be that as it may, the report subsequently received vide Letter No. 13 dated 07.01.2026 from the office of the Superintendent of Police, Madhepura shows that the petitioner has been declared juvenile aged about 15 years 06 months and 08 days on the date of occurrence.

13. In the aforementioned factual background, a question has arisen for consideration in the present case as to how the petitioner could have been arrested on 23.10.2025 when he was not chargesheeted in the case and, in fact, in the Chargesheet No. 235, he was shown one amongst the ten accused persons who were not chargesheeted/sent up for trial. We have already taken note of the fact that during investigation, sufficient materials were not found against the petitioner to send him to trial and after the supervision note of the DIG, the I.O. had not collected any other and further material against the petitioner. All that he did after receipt of the supervision note of the DIG was that he conducted a raid and ultimately arrested the petitioner from his house on 23.10.2025.

14. Mr. P.N. Sharma, learned AC to AG for the State has submitted before this Court that, in fact, during his own



interaction with the I.O. he could not satisfy himself with the kind of answers given to him and it appears on perusal of the records which have been placed before him by the I.O. that the sole reason for the arrest of the petitioner is the supervision note of the DIG, .

15. We ourselves obtained the case diary which has been brought by the I.O. and perused the same. We have found that after receipt of the supervision note from the DIG, , no instruction from the Superintendent of Police, has been received/recorded in the case diary. The I.O. himself decided to arrest the accused-petitioner.

16. Learned AC to AG has submitted that in this case, the DIG, , if at all was of the view that the case requires further investigation, he should have directed the I.O. to file an appropriate application in the court of the learned Magistrate seeking permission because in this case, a chargesheet had already been filed and the court had taken cognizance thereof.

17. Learned AC to AG could not place before this Court any material to show that the I.O. had collected any other material to justify the arrest of the petitioner and/or that he could have, in the facts of the present case, effected arrest of the



petitioner without obtaining permission from the court for further investigation.

18. In the entire facts and circumstances and the materials which have been brought before this Court, this Court is fully satisfied that the liberty of the petitioner in the present case has been curtailed and his Right to Life and Liberty has been violated by the act of the police officials. The direction of the DIG, to investigate the case assuming the allegations true is against the principles of presumption of innocence which is the Cardinal Principle of Criminal Law Jurisprudence. The I.O. proceeded to arrest the petitioner, a student aged below 16 years without there being any cogent material. He could not have done so in this case.

19. Even the learned Magistrate failed to protect the petitioner from his illegal arrest. Because of the misuse of power by the Investigating Agency and failure of the court to protect the right and liberty of the petitioner, he has been made to suffer by way of incarceration for over two and half months by now.

20. We have come to a conclusion that it is a case of unlawful arrest of the petitioner and in such a circumstance, this Court being a Constitutional Court cannot remain a mute spectator. There are catena of judgments of the Hon'ble



Supreme Court in which not only unlawful arrest of a citizen has been deprecated by the Hon'ble Supreme Court but has also awarded adequate compensation for illegal arrest and unlawful detention of the petitioner.

21. Reference in this regard may be made to the judgment of the Hon'ble Supreme Court in the case of **Nilabati Behera (Smt) Alias Lalita Behera Vs. State of Orissa and Others** reported in **AIR 1993 SC 1960**. In the said case, 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....”

22. In the case of **Arvind Kumar Gupta Vs. State of Bihar and Others** reported in **2025 (6) BLJ 52**, this Court has observed in paragraphs '27', '28' and '29' as under:-

“**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 lipservice 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."

23. In view of the admitted factual position and the law being clear on this issue, we direct that the petitioner shall be released forthwith by the Juvenile Justice Board from the observation home/children's home and in this regard appropriate release order shall be issued by the Juvenile Justice Board, Madhepura forthwith.

24. For his unlawful arrest and detention, we direct the State to pay a sum of Rs.5,00,000/- (Rupees Five Lakhs) as compensation. This amount, we are assessing, keeping in view that a young boy who is a juvenile at this stage has undergone physical and mental agony for two and half months by now. The State Government shall pay this amount to the petitioner within a period of one month from the date of receipt/production of a copy of this order.



25. We find that the petitioner has been compelled to approach this Court by filing a writ application of Habeas Corpus. He/his family has incurred expenses in contesting the litigation which were imposed upon them due to misuse of power by the police official.

26. We, therefore, award a cost of Rs.15,000/- (Rupees Fifteen Thousand) to the petitioner which shall also be paid by the State within the same period.

27. It is well settled in law that when the State is saddled with cost and compensation because of misuse of power by an executive, such cost and compensation must be realized 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 was subject matter of challenge before the Hon'ble Supreme Court in SLP (Crl) No. 003566/2019, however, the same has not been interfered with and the view is based on the earlier views of the Hon'ble Supreme Court which have been duly discussed.

28. We direct the competent authority/the Director General of Police, Bihar to institute an inquiry into the matter in administrative side, take a suitable view based on the materials



which would come in course of the inquiry proceeding and realize the cost and the compensation amount from the erring officials. The cost and compensation amount which will be paid to the petitioner shall be realized from the erring officials after completion of inquiry, within a period of six months from the date of receipt/communication of a copy of this order.

29. This writ application stands allowed to the extent indicated hereinabove.

30. Let a copy of this order be communicated to the learned Principal District Judge, , the Juvenile Justice Board, and the Director General of Police, Bihar for compliance.

(Rajeev Ranjan Prasad, J)

(Ritesh Kumar, J)

lekhi/-Vinita/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	09.01.2026
Transmission Date	09.01.2026

