

Mrs. Veena Sethi vs State Of Bihar And Ors. on 11 May, 1982

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Bench: D.A. Desai, P.N. Bhagwati

ORDER

1. There are some people who are critical of the practice adopted by this Court of taking judicial action on letters addressed by public spirited individuals and organisations for enforcement of the basic human rights of the weaker sections of the community. This criticism is based on a highly elitist approach and proceeds from a blind obsession with the rites and rituals sanctified by an outmoded Anglo-Saxon jurisprudence. The most complete refutation of this criticism is provided by the action taken by the Court in this case. It was a letter dated 15th January 1982 addressed by the Free Legal Aid Committee Hazaribagh to one of us (Bhagwati, J.) which set the judicial process in motion and but for this letter which drew (he attention of the Court to the atrociously illegal detention of certain prisoners in the Hazaribagh Central Jail for almost two or three decades without any justification whatsoever, these forgotten specimens of humanity languishing in jail for years behind stone walls and iron bars, deprived of freedom and liberty which are the inalienable rights of a human being, would have continued to remain in jail without any hope of ever Walking out of its forbidding environment and breathing the fresh air of freedom. These prisoners were lost in the oblivion of time and had become merely ticket numbers in the Hazaribagh Central Jail. All that they could do was to cry in despair. "How long," with their cry unheeded arid unanswered. The letter of the Free Legal Aid Committee : Hazaribagh brought the plight of these prisoners to the notice of the Court and treating this letter as a writ petition, the Court issued notice to the State of Bihar for the purpose of ascertaining the facts in regard to these prisoners. We are happy to note that the State of Bihar has responded to the notice of the Court and filed a counter-affidavit frankly and unreservedly giving detailed particulars in regard to 16 prisoners in Bazaribagh Central Jail who were insane or of unsound mind at the date when they were received in the jail and who, barring two out of them, are still rotting in jail. The learned Counsel appearing on behalf of the Free Legal Aid Committee, Hazaribagh has prepared a list summarising the particulars in regard to these prisoners as furnished by the State of Bihar and we shall take up the cases of these prisoners in the order in which they are set out in this list.

2. We may point out straightaway that so far as Sadal Chamar, Khedu Bhattacharya, Mohamadin, Kali Singh, Ambika Lai and Jagannath Mahto being prisoners at SI. Nos. 1, 7, 10, 11, 13 and 15 in the list are concerned, the records show that they were last examined by Dr. A.K. Prasad, Psychiatric Specialist of Mansik Arogayashala, Kanke on 24th January 1982 in the Jail Hospital and were found still to be of unsound mind. We cannot in the circumstances order their release, because having regard to the mental condition of these Prisoners, it would not be in the interest of the society as

also in their own interest to set them free. It does not appear from the record as to whether there is any one prepared to take care of them and hence it would not be desirable to release them, because if released in the present condition they would not be able to look after themselves. It is indeed unfortunate that most of these prisoners have been in jail for over 25 years and it is a matter of shame for the society that these prisoners have had to be detained in jail because there are not adequate institutions for treatment of the mentally sick. We are told that there is only one institution in the State of Bihar for treatment of lunatics and persons of unsound mind and that is the Mansik Arogayashala Kanke and it is already over-crowded and there is no room for admitting these prisoners. We have had occasions to see lunatic asylums in one or two States and we find that the conditions in these lunatic asylums are wholly revolting and one begins to wonder whether they are places for making insane persons sane or sane persons insane. We do not know what are the conditions in which the inmates of the Mansik Arogayashala Kanke live and what are the medical facilities provided to them, but we hope and trust that the conditions there are satisfactory. We would like to take this opportunity of impressing upon the State Government that in a large State like the State of Bihar, there must be an adequate number of institutions for looking after the mentally sick and the practice of sending lunatics or persons of unsound mind to the jail for safe custody is not at all a healthy or desirable practice, because jail is hardly a place for treating those who are mentally sick. We cannot therefore order release of the above mentioned prisoners' but we would direct the Superintendent of the Hazaribagh Central Jail to have these Prisoners examined by the Psychiatric Specialist attached to the Mansik Arogayashala Kanke or any other Psychiatric Specialist once every six months and submit a report of such examination to the District Judge, Hazaribagh and if as a result of such examination it is found at any stage that the prisoner concerned has become sane or has regained his soundness of mind, the District Judge will immediately order his release from the jail and the State Government will provide him the necessary funds for meeting the expenses of his journey to his native place as also for his maintenance for a period of one week. Since these prisoners have already been in jail for a period of over 25 years and it is now provided by Section 428 of the CrPC 1973 that the period during which an accused has been in jail as an under-trial prisoner should be taken into account for the purpose of computing the period of the sentence and the maximum imprisonment which an accused is ordinarily required to undergo even in case of sentence of life imprisonment is not more than 14 years, we would direct the State Government to drop the cases which are pending against these prisoners as it would be purely academic to pursue these cases.

3. We need not deal with the cases of Sagar Mandal and Ram Chander whose names are mentioned at serial numbers 4 and 12 in the list, since they have already been released after detention for a period of over 35 years in the case of Sagar Mandal and 29 years in the case of Ram Chander. There remain for consideration only the cases of Gomia Ho, Bhondua Kurmi, Hira Lal, Raghunandan, Francis, Gulam Jileni, Kamla Singh and Hira Lai whose names are mentioned at serial numbers 2, 3, 5, 6, 8, 9, 14 and 16 respectively in the list. The cases of these prisoners disclose a shocking state of affairs involving total disregard of basic human rights. They constitute an affront to the dignity of man and it is surprising, indeed shocking to the conscience of mankind, that such a situation should prevail in any civilized society. What meaning has the rule of law if the poor are allowed to languish in jails without the slightest justification as if they are the castaways of the society? The rule of law does not exist merely for those who have means to fight for their rights and very often for

perpetuation of the status quo which protects and preserves their dominance and permits them to exploit large sections of the community but it exists also for the poor and the down-trodden, the ignorant and the illiterate who constitute the large bulk of humanity in this country. It is the solemn duty of this Court to protect and uphold the basic human rights of the weaker sections of the society, and it is this duty we are trying to discharge in entertaining this public interest litigation.

4. We will first take up case of Gomia Ho at serial number 2 in the list submitted by the learned Counsel on behalf of the petitioners. This unfortunate person was convicted on 26th March 1945 for the offence under Section 304 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs. 100/- and in default to undergo rigorous imprisonment for a further period of six months. He was first admitted in Chaibasa Jail and then transferred to Hazaribagh Central Jail on 2nd September 1945. He was kept under observation in the Hazaribagh Central Jail since he appeared to be of unsound mind and by an order dated 3rd July 1948, it was directed that he should be kept in safe custody in the Hazaribagh Central Jail and given proper medical treatment until a bed was available in Ranchi Mansik Arogyashala, Kanke. Meanwhile, it appears he attempted suicide on 21st September, 1946 and this was reported to the Deputy Commissioner, Hazaribagh, with the result that an offence under Section 309 of the IPC was registered against him and the case was transferred to the file of the court of the Judicial Magistrate First Class, Hazaribagh. Obviously, the case could not be proceeded with, since Gomia Ho was of unsound mind and incapable of making his defence as found from medical examination conducted by the Civil Surgeon, Hazaribagh on different occasions in May 1947, January 1948 and April 1948. The court of the 1st Class Judicial Magistrate, Hazaribagh therefore postponed further proceedings against him and ordered him to be detained in safe custody in Hazaribagh Central Jail under Section 466 of the old CrPC. It does not appear from the record as to whether half yearly reports with regard to the mental condition of Gomia Ho were submitted by the Superintendent of the Hazaribagh Central Jail to the Deputy Commissioner, Hazaribagh. But, it is clear that Gomia Ho was examined by the first Asstt. Superintendent Ranchi Mansik Arogyashala, Kanke and was declared sane on 25th December, 1966. Though the medical examination revealed that Gomia Ho had regained his sanity since 25th December, 1966 no steps were taken by the Superintendent Hazaribagh Central Jail to inform the Deputy Commissioner Hazaribagh about this fact or to address any communication to the Judicial Magistrate 1st Class Hazaribagh intimating this fact so that the learned Judicial Magistrate could proceed with the case against him. It was only on 18th December 1969, almost three years since Gomia Ho was declared to have become sane that the Superintendent Hazaribagh Central Jail reported to the Deputy Commissioner, Hazaribagh with a copy to the State Government that Gomia Ho had been declared sane since 25th December, 1966. The result was that though Gomia Ho had regained soundness of mind from 25th December 1966, he remained in jail for three more years without any justification whatsoever. It is difficult to understand the callous disregard of human values on the part of the Superintendent of the Hazaribagh Central Jail in improperly and illegally detaining Gomia Ho for a period of three years even though he had become sane. The Magistrate in-charge of the legal section Hazaribagh immediately responded to the communication dated 18th December, 1969 sent by the Superintendent, Hazaribagh Central Jail and addressed a letter dated 3rd January, 1970 requesting the S.D.O. Sadar Hazaribagh to call for the connected record from the record room in order to take necessary steps for disposal of the case. But there was again thereafter unexplained delay of almost 2

1/2 years before any further action was taken in the case of Gomia Ho. It was only on 26th May 1972 that the Superintendent, Hazaribagh Central Jail forwarded Form D duly filled in by the Civil Surgeon and Medical Officer to the Inspector General of Prisons and this was transmitted to the Law (Judicial) Department, Government of Bihar by the Inspector General of Prisons on 1st June, 1972. The mental condition of Gomia Ho as recorded in form D forwarded by the Superintendent, Hazaribagh Central Jail was "he is quite well behaved and is able to give fair account, good insight, well oriented, sane for disposal." The Law (Judicial) Department directed the Superintendent of Hazaribagh Central Jail by their letter dated 18th September, 1972 to find out the relatives of Gomia Ho who would be prepared to take delivery of him and to take care and custody on proper security. Then again there was official amnesia for a period of about one year and it was only on 24th August, 1973 that the Superintendent Hazaribagh Central Jail wrote to the officer in-charge, Mancharpur Police Station, District Singhbhum to inform the relatives of Gomia Ho that if they desired to take delivery of him on proper security, they should submit a written petition to that effect and forward the same to the Superintendent for necessary action. It seems that no reply was received from the Officer in-charge Mancharpur Police Station and several reminders had to be sent to him, the last of such reminder being sent on 5th April, 1974. Then again there was silence of the graveyard so far as Gomia Ho was concerned. Everyone seemed to have forgotten about him. He went on rotting in jail, neglected and uncared for. Till 1966 at least he was insane and perhaps therefore not in a position to realise that he was in jail and we might sadistically say that insanity was perhaps a blessing for him but, since 1966 he was completely sane and fully conscious that he was detained in jail and he must have been wondering in helpless despair as to why he was kept in jail, deprived of his freedom and liberty, for well nigh 16 years. We have a feeling that but for the news report in the issue of Indian Express dated 17th December 1981 resulting in the letter by the Free Legal Aid Committee Hazaribagh and the moving of an application by Shri Mukul Mudgal advocate appearing on behalf of (he petitioner in Writ Petition No. 5943 of 1980, Gomia Ho and other prisoners like him would perhaps have been consigned to a life time in jail and even their dead bodies would have been cremated or buried in the precincts of the jail. It appears that after the publication of the news item, Gomia Ho and other prisoners similarly situated were got examined by Dr. A.K. Parshad, Mental Specialist, Ranchi Mansik Arogyashala on 24th January, 1982 and Gomia Ho was once again confirmed as sane and fit to be removed from the jail hospital. We do not therefore see any reason why Gomia Ho should be detained in the jail even for a day more. He has already been in jail since 2nd September 1945; he has spent about 37 years, more than half of the life span of an ordinary individual in prison and when he will go out of jail, he will find that the world has changed. He will be a stranger in his own land. He will perhaps hear for the first time after 35 years that his country became free from foreign bondage, though his own bondage in jail continued indefinitely and interminably, even after the period of three years for which he was sentenced, expired long long ago. It is true that a case is pending against him for an offence under Section 309 of the Indian Penal Code but what use is it now to prosecute him for that offence. In the first place, the offence was committed by him when he was insane and secondly, he has been in jail for about 37 years and even if we take into account the sentence of three years passed against him as also any sentence which may be passed against him for the offence under Section 309, he will still have a long term of imprisonment to his credit. We would therefore quash the charge against him under Section 309 and direct that he shall be set at liberty forthwith and he shall be paid by the State Government at the time when he is discharged from the jail sufficient funds to provide for the expenses of his

journey to his native place as also maintenance for a period of one week.

5. The story of Bhondua Kurmi is equally sad and distressing. He was charged for an offence under Section 302 of the Indian Penal Code but on account of his being of unsound mind at the time of commission of the offence, he was acquitted by the Addl. District & Sessions Judge, Hazaribagh on 20th April, 1956 and was directed to be kept in safe custody and under proper treatment in the Hazaribagh Central Jail pending the orders of the State Government. The result was that he was admitted in the Hazaribagh Central Jail on 20th April, 1956. The State Government thereafter by their letter dated 26th July, 1956 ordered that Bhondua Kurmi be detained in the Hazaribagh Central Jail. Now in the case of Bhondua Kurmi also, it does not appear from the record as to whether any half yearly reports about his mental condition were forwarded by the Superintendent, Hazaribagh Central Jail to the State Government. But it is clear from the history sheet given by the State Government that Bhondua Kurmi had ceased showing any sign of insanity since 1961 as reported by the first Assistant Superintendent, Ranchi Mansik Arogyashala Kanke. It is strange however that though Bhondua Kurmi was found to have regained sanity since June, 1961, no steps were taken by the Superintendent, Hazaribagh Central Jail for bringing this fact to the notice of the State Government or to the notice of the Addl. District & Sessions Judge, Hazaribagh and Bhondua Kurmi continued to rot in jail until the end of 1969 even though he was acquitted and there was no case pending against him. It was only on 18th December 1969 that the Superintendent, Hazaribagh Central Jail addressed a communication to the Inspector General of Prisons intimating to him that Bhondua Kurmi had not shown any sign of insanity since June, 1961 and requesting the Inspector General of Prisons to take the case for disposal and order release of Bhondua Kurmi from the jail. We fail to understand why Bhondua Kurmi should have been allowed to languish in jail for a period of eight years even though he was declared sane by the first Asstt. Superintendent, Ranchi Mansik Arogyashala Kanke as far back as June 1961. Have we lost all regard for human values? Have we become so dehumanised that we are now oblivious to all human misery and suffering? Does a human being who is the highest creation of God and whom the Upanishads call *spjç "r'srr* : "children of immortality" mean nothing but chattel to us, simply because he is poor and ignorant and there is no one to fight for him. Must he be subjected to incarceration and privation without any reason or justification? One day the cry and despair of large numbers of people like Bhondua Kurmi will shake the very foundation of the society and imperil the entire democratic structure of our polity and if that happens, we shall only have ourselves to blame. But the story of Bhondua Kurmi does not stop here. The bureaucratic indifference and apathy continue unabated and reach gargantuan proportions. Though intimation of sanity of Bhondua Kurmi was given by the Superintendent, Hazaribagh Central Jail to the Inspector General of Prisons on 18th December 1969, there was no response either from the Inspector General of Prisons or from the State Government and the Superintendent, Hazaribagh Central Jail therefore by his letter dated 10th May, 1972 again apprised the State Government of the mental condition of Bhondua Kurmi and requested for necessary orders for his release. We should have thought that atleast within a month after receipt of this letter dated 10th May 1972, Bhondua Kurmi would have been able to breathe the fresh air of freedom, but that was not to be. What happened thereafter is, to say the least, fantastic. Some controversy arose as regards the name of this unfortunate prisoner, namely, whether it was "Bhondua Kurmi" or "Bandhu Mahter" and this controversy went on for a period of almost 9 years. It is a sad commentary on our entire administrative system-indeed it is disgraceful- that when a prisoner is

rotting in jail without the slightest justification, a controversy should be carried on between different departments of the government as to what is the name of the prisoner and on that account, he should have to continue in jail for a period of nine years. It is something of which any administration should be ashamed and we hope and trust that such an incident will never recur in the State of Bihar or in any other State. Personal liberty is one of the most precious rights of a human being and it cannot be allowed to be smothered by bureaucratic or judicial inadequacy or inefficiency. Bhondua 50 Kurmi like Gomia Ho, was examined by Dr. A.K. Parshad on 24th January 1982 and he was confirmed as sane. We must therefore direct that Bhondua Kurmi be immediately set free and at the time of his discharge from the jail, he should be provided with necessary funds for meeting the expenses of his journey to his native place and maintenance for a period of one week.

6 That takes us to the case of Hiralal Gope. He was first remanded to jail custody on 29th August 1963 for the offence under Section 302 of the Indian Penal Code by the Sub-Divisional, Magistrate, Samastipur and was confined in Samastipur Sub-Jail. He was thereafter produced before the Munsif Magistrate on various dates and ultimately committed to the Court of Sessions on 8th October, 1964 and then transferred from Samastipur Sub-Jail to Darbhanga Central Jail on 10th November, 1964. Whilst in Darbhanga Jail, he was kept under medical observation and since he was found to be of unsound mind and incapable of making his defence, his trial before the Court of Sessions was stayed until further orders and he was directed to be detained in Darbhanga Jail and the Superintendent Darbhanga Jail was required to submit half yearly reports of his mental condition to the State Government. Thereafter he was transferred from Darbhanga Jail to Hazaribagh Central Jail on 24th September, 1966. It does not appear from the record as to whether any half yearly reports on the mental condition of Hira Lal Gope were submitted to the State Government. But from the absence of any record, one can reasonably infer that no half yearly reports were submitted, with the result that it is not possible to state as to when Hiralal Gope regained soundness of mind and became sane. Hiralal Gope like other prisoners was examined by Dr. A.K. Prasad on 24th January 1982 and was found to be sane and capable of taking care of himself. The possibility cannot therefore be ruled out that he might have been restored to sanity much earlier, even a few years ago, like Gomia Ho and Bhondua Kurmi and despite his having become sane, he might, have continued to languish in jail like those two prisoners. Be that as it may, we do not see why Hiralal Gope should still have to continue to remain in jail after 24th January 1982 when he was declared sane by Dr. A.K. Prasad. It is true that a case for an offence under Section 302, I.P.C. is pending against him in the Court of the Additional Sessions Judge, Darbhanga, but it is no use prosecuting him for that offence, because he has already been in jail for a period of 19 years and if that period is taken into account, as it must be, under Section 428 of the CrPC 1973, he would not have to suffer any further imprisonment even if convicted. We would therefore quash the charge against Hiralal Gope and direct that he shall be set at liberty forthwith and the State Government will provide him necessary funds for the purpose of meeting the expenses of his journey to his native place as also maintenance for a period of one week.

7. The case of Raghunandan Gope also stands on the same footing. He was charged for an offence under Section 302 of the Indian Penal Code for committing the murder of one Banshi Malla in a fit of insipidity on 14th September 1950 and he was first lodged in Muzaffarpur Central Jail and since he was found to be of unsound mind and incapable of making his defence, the State Government by an order dated 20th April 1951 sanctioned his detention in Muzaffarpur Central Jail and directed

that as soon as he became sane and was capable of making his defence, the trial shall resume in accordance with Chapter XXIV of the old CrPC. He was thereafter transferred from Muzaffarpur Central Jail to Hazaribagh Central Jail on 10th May 1951. Now, in the case of this prisoner also, there is no record to show whether any half yearly reports of his mental condition were submitted by the Superintendent of Hazaribagh Central Jail to the State Government and in the absence of such record, it may reasonably be inferred that no such half yearly reports were sent, with the result that we do not know as to how long his insanity continued. It is quite possible that he might have regained soundness of mind much earlier like his unfortunate colleagues, Gomia Ho and Bhondua Kurmi, and though sane, he might have been languishing in jail for years. It is difficult to understand this callousness on the part of the authorities in not caring to enquire about the mental condition of Raghunandan Gope for a period of about 30 years. We do not know what medical treatment was given to him and whether any periodical check up of his mental condition was made by any Psychiatrist, whether attached to the Mansik Arogyashala, Kanke or otherwise. The difficulty is that when a prisoner is lodged in jail on the ground that he is of unsound mind, and therefore, required to be kept in safe custody, the custody becomes so 'safe' that the prisoner has no opportunity of ever getting out of it even though he has become sane and the *raison d'etre* of his custody has disappeared, Raghunandan Gope was also, like the other prisoners examined by Dr. A.K. Prasad on 24th January 1982 and was declared to be of sound mind and capable of taking care of himself. The Superintendent, Hazaribagh Central Jail thereupon requested the Law (Judicial) Department to send the necessary orders regarding release of Raghunandan Gope, but so far no action seems to have been taken by the Law (Judicial) Department though more than three months have passed. We do not see any reason why Raghunandan Gope should be allowed to be detained in jail even for a day more. It is true that a case under Section 302, IPC is pending against him, but there is no point in prosecuting that case, firstly, because the offence was committed by him in a fit of insanity and secondly, because he has already undergone imprisonment for a period of more than years and even if he is convicted of the offence of murder, he would not be required to undergo any further imprisonment. We would, therefore quash the charge against Raghunandan Gope and direct that he shall be set at liberty forthwith and the State Government will provide him the necessary funds for meeting the expenses of his journey to his native place as also maintenance for a period of one week.

8. We then turn to consider the case of Francis Purti at serial No. 8 in the list. He was first remanded to jail custody on 4th December 1966 for an offence under Section 302 of Indian Penal Code and lodged in the Kunthi Sub Jail. He was committed to the Court of Sessions on 21st February 1968 and thereafter transferred from Kunthi Sub Jail to Central Jail Ranchi on 2nd June 1968. Since it was found that he was of unsound mind at the time of commission of the offence, he was acquitted by the Sessions Court and ordered to be detained in Ranchi Central Jail in safe custody and under proper treatment under Section 471 of the old Criminal Procedure Code. He was thereafter transferred from Ranchi Central Jail to the Hazaribagh Central Jail on 16th November 1968 under the orders of the State Government and it was directed by the State Government that half yearly reports on the mental condition of the prisoner should be submitted to the State Government. We do not know whether any half yearly reports were sent by the Superintendent Hazaribagh Jail to the State Government but it does appear from the record that some time prior to 29th May 1972, Francis Purti was found sane and fit for release and a report to that effect in form B was sent by the

Superintendent Hazaribagh to the Inspector General of Prisons on 29th May 1972 and that was forwarded by him to the Law (Judicial) Department. Strangely enough, though Francis Purti was declared sane and fit for release as far back as 29th May 1972, no steps were taken by the authorities for the purpose of releasing him from the jail and he continued to rot in jail for about ten years without any one caring for him and without any justification whatsoever for his detention. We cannot help expressing our anger and resentment at this cruel disregard of the basic human rights of Francis Purti on the part of the authorities. It is revolting *Miss Veena Sethi v. State of Bihar* to find that a sane person who has been acquitted of the offence charged against him and against whom no case is pending, should be kept behind bars, deprived of freedom and liberty, for a period of ten years. How is the State going to compensate Francis Purti for his illegal detention? Is there no remedy under law for such an atrocious act? We propose to investigate this question at a later date but we do not wish to delay any longer the freeing of Francis Purti. He was examined by Dr. A.K. Prasad on 24th January 1982 and this medical examination also revealed that he was normal and fit to be discharged. We would therefore direct that Francis Purti should be set at liberty forthwith and the State Government will provide him necessary funds for the purpose of meeting the expenses of his journey to his native place as also maintenance for a period of one week.

9. We now come to the case of Gulam Jileni which stands on a slightly different footing, because he was not charged for any offence but was lodged in the Hazaribagh Central Jail under a reception order issued by the Sub-Divisional Officer Hazaribagh on 25th March 1968. He was kept under medical observation from 26th March 1968 to 26th April 1968 and it was found that he was of unsound mind and needed treatment in a mental hospital. We do not know what medical treatment was given to him after April 1968 but the record shows that when he was examined by the first Assistant Superintendent, Mansik Arogayashala, Kanke on 10th January 1972 he was found to have become sane. Though he was declared sane according to the medical report given on 10th January 1972, no steps for releasing him from the jail were taken until 29th May 1972 when the Superintendent Hazaribagh Central Jail forwarded the medical report to the Sub-Divisional Officer Hazaribagh for necessary order for his release. The Sub-Divisional Officer, Hazaribagh however consigned this report to oblivion and slept over the matter forgetting that an innocent person was undergoing incarceration in the Hazaribagh Central Jail since 29th May 1972. It seems several reminders were sent to the Sub-Divisional Officer, Hazaribagh and the last reminder sent to him was on 10th December 1979. But human callousness knows no bounds and there was no response from the Sub-Divisional Officer, Hazaribagh with the result that Gulam Jileni continued to rot in the Hazaribagh Central Jail. He, like his other colleagues, was examined by Dr. A.K. Prasad on 24th January 1982 and was confirmed as sane. We must therefore cancel the reception order made against Gulam Jileni and direct that he be set at liberty forthwith, The State Government will provide him necessary funds for the purpose of meeting the expenses of his journey to his native place as also maintenance for a period of one week.

10. The next case we must consider is that of Kamla Singh. He was charged for an offence under Section 302 of the Indian Penal Code and though convicted by the Sessions Court, Gaya, he was on appeal acquitted by the High Court on 23rd December 1954, but since he was found to be of unsound mind, he was directed to be detained in safe custody and was sent to Gaya Jail on 27th January 1955 from where he was transferred to the Hazaribagh Central Jail on 5th June, 1956. He

was thereafter sent to Mansik Arogayashala Kanke for treatment and after treatment he was received back in Hazaribagh Central Jail with the report that his mental condition was normal. Since Kamla Singh was declared to have become sane, the Superintendent, Hazaribagh Central Jail requested the Sessions Judge, Gaya, by his letter dated 23rd January 1979 to pass an order for release of Kamla Singh and similar intimation was also sent to the Law (Judl.) Department. The Sessions Judge, Gaya, requested the High Court of Patna on 21st February 1979 to pass the necessary order for release of Kamla Singh but we do not know that action was taken by the High Court of Patna. In the mean time, as desired by the Law (Judl.) the Superintendent, Hazaribagh Central Jail forwarded to the Law (Judl.) Department on 7th April, 1979 copies of the detention order of Kamla Singh, the Report of the Superintendent, Mansik Arogayashala Kanke and the petition of the relative of Kamla Singh for taking care of him. The Law (Judicial) Department however asked the Superintendent of Hazaribagh Central Jail to send copies of the original as well as appellate judgments, Descriptive Roll in Form-C, the deposition of the medical fitness and a copy of the petition of the near relative of Kamla Singh for taking care of him. All these documents were forwarded to the Law (Judicial) Department on 1st December, 1980. But the Law (Judl.) Department was perhaps not very much concerned about the illegal detention of one solitary individual who did not have the means or the capacity to move the court for his release or even to bring his piteous tale to the notice of the authorities, with the result that no action was taken by the Law (Judicial) Department for release of Kamla Singh. Kamla Singh continued to languish in jail for a period of almost four years even after he was declared to be sane and this happened, even though he was acquitted of the offence charged against him and no case was pending against him. On 24th January 1982 he was examined by Dr. A.K. Prasad and again confirmed as sane. In the circumstances, we do not see any reason why he should have to continue in jail even for a day more and we accordingly direct that he shall be set at liberty forthwith and the State Government will provide him the necessary funds for meeting the expenses of his journey to his native place as also maintenance for a period of one week.

11. The last case is that of Hiralal who has been in Jail since 31st August 1948. He was committed to the Court of Sessions for an offence under Section 302 of the Indian Penal Code and he was admitted in Purnia Jail on 10th September 1948. The Additional Sessions Judge Purnia before whom the case came up for hearing found that Hira Lai was of unsound mind and incapable of making his defence and he therefore stayed the hearing of the case and by an order dated 25th January 1949 directed under Section 466 Sub-section (2) of the old Criminal Procedure Code that Hira Lai may be kept in safe custody and under proper treatment in jail. The Additional Sessions Judge Purnia also informed the State Government about this order and the State Government directed that Hira Lai may be detained in the District Jail, Purnia for the time being and if he becomes sane and capable of making his defence, the trial may be resumed in accordance with the provisions of chapter XXIV of the old CrPC and that, in the meanwhile, half yearly reports of the mental condition of Hira Lal should be submitted to the State Government. It appears that some time after this order of the State Government, Hira Lai was transferred to Hazaribagh Central Jail. It seems that half yearly reports in regard to the mental condition of Hira Lai were sent by the Superintendent Hazaribagh Central Jail to the State Government upto 10th September 1953 but thereafter no half yearly reports seem to have been sent. It is therefore not possible to say as to when Hira Lai regained his soundness of mind and once again became sane. It is not at all unlikely that

like Gomia Ho and Bhondua Kurmi he might have become sane long ago and might have continued to remain in jail for years, but we have no means of knowing it. However, it does appear that at least on some date prior to 5th December 1981 Hira Lai was declared to have become sane and the Superintendent Hazaribagh Central Jail therefore addressed a letter dated 5th December 1981 requesting the State Government to pass the necessary orders for release of Hira Lai. Hira Lai was examined by Dr. A.K. Prasad on 24th January 1982 and was declared to be sane. There is therefore no reason at all for continuing the detention of Hira Lai. It is true that there is a charge against him for an offence under Section 302 but we do not think that any useful purpose would be served by prosecuting that charge, firstly, because Hira Lai was admittedly insane at the time of commission of the offence and secondly, because, in any event, he has suffered imprisonment for a period of 32 years and as we have said before, even after conviction for the offence under Section 302, he would have some term of imprisonment to his credit. We therefore quash the charge against Hira Lai and direct that he may be set at liberty forthwith. The State Government will provide him necessary funds for the purpose of meeting the expenses of his journey to his native place as also maintenance for a period of one week.

12. The State Government has also given the history sheets of several other prisoners who are of unsound mind. We have not examined these cases because they are all convicted and sentenced for different offences and their sentence is yet to expire. We cannot therefore judicially interfere in their cases, but we hope and trust that the State Government will provide the necessary medical treatment to these prisoners and if necessary or desirable, have them treated at the Mansik Arogyashala, Kanke. We would direct the State Government in the cases of these prisoners to have half-yearly reports about their mental condition submitted by the Superintendent, Hazaribagh Central Jail to the State Government. We would also like to make it clear that we are not finally disposing of this writ petition in regard to Gomia Ho, Bhondua Kurmi, Hiralal Gope, Raghunandan Gope, Francis Purti, Gulam Jileni, Kamla Singh and Hiralal whose cases we have examined in some detail, because the question would still remain to be considered whether these prisoners are entitled to compensation from the State Government for their illegal detention in contravention of Article 21 of the Constitution. That is a question which we shall proceed to consider at the next hearing of the writ petition. The writ petition will stand adjourned to 26th July, 1982 for directions when We shall fix the next date of hearing.