

**Supreme Court, Division Bench**  
**Honorable Justice Ishwar Prasad Khatiwada**  
**Honorable Justice Hari Prasad Phyuul**

**Judgement**

**Date of Decision: 2080/3/25 (10 July, 2023)**

**Case: Kidnapping, Hostage-Taking and Organized Crime**

**075-CR-0224**

**Appellant/Defendant:** Sitaram Giri, grandson of Sadanand Giri, son of Mohan Giri, resident of Sindhupalchowk District Palchowk V.D.C. Ward No. 2 currently Helambu V.D.C. Ward No. 3 in detention at Nakhhu Prison, Lalitpur

**Vs.**

**Respondent/Plaintiff:** Nepal Government through the FIR of Ritesh Kumar

**075-CR-0528**

**Appellant/Defendant:** Jay Chandra Prasad Sah Kanu, son of Bhim Shankar Sah Kanu, resident of Parsa District, former Basdilawa V.D.C. Ward No. 5 **currently** in detention at Parsa Prison, Birgunj

**Vs.**

**Respondent/Plaintiff:** Nepal Government through the FIR of Ritesh Kumar

**075-CR-0529**

**Appellant/Defendant:** Surendra Thakur, son of Akkal Thakur Hazam, resident of Rautahat District former Santpur V.D.C. Ward No. 5 currently Bijaypur Municipality Ward No. 6 currently in detention at Birgunj Prison

**Vs.**

**Respondent/Plaintiff:** Nepal Government through the FIR of Ritesh Kumar

**075-CR-0831**

**Appellant/Plaintiff:** Nepal Government through the FIR of Ritesh Kumar

**Vs.**

**Respondent/Defendant:** Jay Chandra Prasad Kanu son of Bhim Shankar Sah Kanu, resident of Parsa District, former Basdilawa V.D.C. Ward No. 5

- In cases of organized crime that have reached the stage of prosecution and trial, the evaluation of evidence must be conducted differently. It becomes necessary to determine whether the offense constitutes a collective crime or an organized crime. The provisions of the prevailing law treat organized and collective crimes in a nearly similar manner; therefore, investigation, prosecution, and adjudication in such matters must be approached with particular sensitivity.

(Para No. 25)

- “**Organized crime**” is not a specific or standalone offense; rather, it refers to any form of crime that is, by its nature, grave and serious. The organizational structure of the individuals involved in such crime may not be uniform. There may or may not be a clearly visible hierarchy with defined rights and duties. Organized criminals may operate within a single country or through networks spread across multiple countries. What is essential to examine is whether the group is not merely a casual gathering or an ad hoc assembly formed for the commission of a particular offense, but rather a group of organized criminals. The mere involvement of three or more persons in the commission of an offense does not, by itself, conclusively establish the existence of an organized group.

(Para No. 25)

- In order to establish that an offense constitutes organized crime, it is necessary to examine whether there exists a planned design or scheme, either by an organized group or even by a loosely connected group (*loose nexus*). In crimes of this nature, factors such as whether the act was pre-planned, whether there is identifiable leadership within the group, whether any government official was involved or secrecy was maintained, whether protection or patronage of influential persons existed, and whether the group acted for collective benefit rather than individual gain, must be carefully assessed. Where a group formed for the purpose of committing crime operates for the interest of the group itself, the offense committed by such group ought to be treated as organized crime. Furthermore, for an offense to qualify as organized crime, the existence of a relatively permanent and institutionalized structure formed specifically for the commission of crimes must also be discernible.
- From the legal framework of the Organized Crime Control Act, 2070, it does not appear that the mere involvement of three or more persons in the commission of an offense automatically establishes the offense of organized crime. For an offense to qualify as organized crime, it must be proved by cogent and reliable evidence that a group of three or more persons, associated within a permanent structure established for criminal, economic, or other material gain has knowingly committed a serious offense under the direction of, on behalf of, in association with, or as a founding member or member of a criminal group.

(Para No. 26)

**On behalf of appellant/defendant Sitaram Giri:** Learned Advocate Mr. Dhananjaya Khanal, Mr. Radha Krishna Pathak, Mr. Prakash Basnet, Ms. Kamal Kumari Bharati and Mr. Jitendra Bahadur Pandey

**On behalf of appellant/defendant Surendra Thakur:** Learned advocate Mr. Dhananjaya Khanal

**On behalf of appellant/plaintiff Government of Nepal:** Learned Joint Government Attorney  
Mr. Chandrakant Khanal

**Precedents Cited:**

**Relevant Laws:**

Country Code (*Muluki Ain*)

Organized Crime Control Act, 2070

**Court of First Instance:**

Honorable Justice Ram Prasad Neupane

Parsa District Court

**Decision at the Appellate Level:**

Honorable Justice Shiva Narayan Yadav

Honorable Justice Narayan Prasad Shrestha

High Court, Janakpur, Temporary Bench, Birgunj

**Decision**

**Justice Hari Prasad Phyal:** The summary of facts and the decision of the case presented pursuant to Section 9 of the Judicial Administration Act, 2073 are as follows:

**Factual Content**

The petitioner's son, Ritesh Kumar, aged 23 years was pursuing his B.B.A. studies. During this period, approximately three to four months ago he received a phone call on his mobile number 7033855655 from mobile number 9334094374. The caller introduced himself as Ajay Kumar Rai, a resident of Budha Colony, Patna District, Bihar, India, and stated that he was operating an institution named "Career Tech Consultancy." He represented that his institution was engaged in providing employment opportunities to unemployed youths and young women, and also in facilitating an environment for students pursuing higher education to continue and advance their studies. The caller further stated that he had obtained my son's contact number from one of his acquaintances, mentioning that my son had completed B.B.A. studies and was presently unemployed, and inquired whether he was interested in pursuing employment. Upon being informed by my son that he was willing to work if suitable employment were available, my son proceeded to meet him. Thereafter, my son was called and met the said person at the office of "Career Tech Consultancy" located in Patna, where he came into contact with him and held discussions with the person. In the course of the above events, on 2071/05/04 (corresponding to 20 August, 214), the said Ajay Kumar Rai contacted my son on his mobile phone and informed him that he had secured employment at Hulas Steel, Simara, Nepal, with a monthly salary ranging from NPR 20,000 to 22,000, and asked whether he was willing to accept the job. Upon my son expressing his readiness, Ajay Kumar Rai instructed him to contact a person named Ramesh Ji, also known as Singh Saheb, stating that the said person would arrange the

employment, and provided his contact number as 9819624022. Accordingly, my son left home stating that he was going to Simara for employment. However, he did not return home thereafter and remained unreachable. Concerned about his whereabouts, I contacted Hulas Steel, Simara, as well as several other factories in the area, inquiring about my son, but no information regarding him could be obtained. Subsequently, on 2071/05/10 (corresponding to 26 August, 2014), I received a phone call on my mobile number 9471025655 from my son's mobile number 7033855655, wherein the caller spoke in the Hindi language and asked for my identity. When I inquired about his identity, the caller refused to disclose it and addressed me as "Rambabu Ji," I confirmed that I was the person. Upon confirming my identity, the caller stated that my son was in their custody and demanded NPR 5,000,000 (Five Million Rupees), threatening that my son would be released only upon payment of the said amount. From the said conversation, it became certain that my son had been abducted, and therefore, submitted an application requesting to conduct a search for my son.

Supplementary application had been submitted by Ram Babu Gupta which reads as follows: The applicant's son, Ritesh Kumar, having been subjected to abduction, on 2071/05/11 (corresponding to 27 August, 2017) at around 7/8 PM, a phone call was received on my mobile number 9471025655 from mobile number 9819624022, during which the caller asked, "Has the money been arranged?" When I inquired, "What money?" the caller replied that their person had demanded NPR 5,000,000 (Five Million Rupees). Upon my stating that I was unable to arrange such a large amount, the caller threatened that if the money was not arranged, I would not find my son alive. As I began pleading, the caller asked whether I wished to speak to my son. Upon my consent, the caller handed the phone to my son; however, immediately upon my son speaking, the call was disconnected. When I attempted to call back, the phone was switched off. After approximately two minutes, another call was received. The caller again asked whether I wished to speak to my son and handed the phone to him. When I asked my son where he was, he managed to say only "Save me", whereupon the call was again disconnected. After some time, the caller telephoned again and issued a threat stating that if I wished to keep my son alive, I should immediately arrange the money, and then disconnected the call, wherein the applicant requested for an investigation to be conducted into the user of the said mobile number and necessary in investigation be taken accordingly.

Identification document of defendant Arbind Mandal by Ritesh Kumar and identification of defendant Jay Chandra Sah Kanu reads as follows: From among those paraded before me, the person marked as number two was involved in taking me as a hostage from 2071/5/6 to 2071/5/19 (corresponding to 22 August to 4 September, 2014). I do not recognize the other people shown to me and I do not know the name, surname and the address of the person recognized by me. After being arrested, it was found that he was Arvind Mandal, son of Achhelal Mahato of 30 years of age and resident of Ward No. 6, Feta Fulbaria V.D.C., Bara District and have identified him upon seeing him.

Jay Chandra Sah Kanu resident of Parsa District Basdilwa V.D.C. Ward No. 5 and Arbinda Mandal resident of Bara District Pheta Fulbariya V.D.C. Ward No. 6, were located within the following four boundaries: in the east vacant land, house in the west and road in the north and south. Upon conducting a search cell phone having the following SIM number 9813561422 and 9841749396 was recovered from Arbinda Mandal and SIM number 9816280470 and a mobile phone were recovered from Jay Chandra Prasad Kanu.

The report submitted by D.S.P. Rurdaraj Kandel states the following: On 2071/5/6 (corresponding to 22 August, 2014), Indian national Ritesh Kumar was abducted. During the

investigation, it was learned that the abductors demanded ransom using mobile number 9819624022. Analysis of the call details of this number revealed the involvement of Jay Chandra Sah. Information further indicated that the victim was held hostage in a forest under Bagwana area, Parsa District. During the search, the abductors fled upon realizing police presence, releasing the victim. On 2071/5/19 (corresponding to 4 September, 2014), Ritesh Kumar was located near the forest and was rescued. Upon questioning, he stated that he did not know the names, surnames, or residences of the abductors but could identify them upon recognition. Following this, police traced the user of mobile number 9816250470, Jay Chandra Sah, and his associate, Arvind Mandal, based on the call records. A frisk search of both individuals led to the recovery of mobile phones and SIM cards used in the crime. The victim positively identified the apprehended individuals. Upon further interrogation, it was revealed that Ram Babu Mahato, Budhan Chamar, Bhoja Tharu, and Surendra Thakur were also involved. Accordingly, the apprehended individuals have been submitted along with this report for further investigation.

The contents of the FIR filed by Ritesh Kumar is as follows: Approximately three to four months prior, the accused from his mobile number 9334094374 contacted me on my mobile phone number 7033855655, which I was using at the time. He introduced himself as Ajay Kumar Rai, stating that he was operating an organization named Career Tech Consultancy. He stated that his organization assists unemployed youths in securing employment and also facilitates opportunities for students to pursue higher education. Stating that he had learned that I was unemployed despite having completed **B.B.A.**, he inquired whether I was interested in obtaining employment. I informed him that I would be willing to accept employment if such an opportunity was provided. Thereafter, when I went to meet him, he asked me to come to the office of Career Tech Consultancy located in Patna, India, where I met him in person and held discussions with him. On 2071/05/04 (corresponding to 20 August 2014), Ajay Kumar Rai telephoned me and informed me that employment had been arranged at Hulas Steel, Simara, Nepal, with a monthly salary ranging from NPR 20,000 to 22,000, and inquired whether I was willing to join. Upon my acceptance, he instructed me to contact Ramesh Ji, also known as Singh Saheb, and to proceed by 2071/05/06 (corresponding to 21 August 2014). He further provided me with Ramesh's contact number which was 9819624022. After having contacted Ramesh, and while I was attempting to proceed to the said place on 2071/05/06, I received a call on my mobile number from a Nepal landline. Upon receiving the call, the caller stated that he was an associate of Ramesh and instructed me to come and wait near the Raxaul railway crossing. Accordingly, I went to the said place and waited there. After some time, an unidentified male person arrived and took me to Birgunj Ghantaghar. Thereafter, another person made me board a tempo and took me to Parwanipur Bazaar. From there, another individual placed me between two persons on a motorcycle and the person who had brought me seated behind me and we rode for approximately 45 minutes ultimately taking me into a forest area, where I was handed over to three male persons who were holding sticks. Those three persons tied me up, assaulted me, and took me further into the forest. They forcibly seized the mobile phone and SIM card in my possession, my college identification card, voter identification card, other related documents, and the cash contained in my wallet. They kept me confined in the forest with my hands and legs tied, thereby holding me hostage. After keeping me there for five days, they made me speak with my father and demanded money from him. As my father was unable to arrange the, they continued to assault me and repeatedly forced me to demand money from him while conspiring to kill me if the money was not paid. On 2071/05/19 (corresponding to 4 September, 2014) at approximately 4:00 a.m., upon learning that the police had entered the forest and were conducting a search, the accused untied the ropes with which I had been bound and fled the scene. I then slowly made my way out in search of a village during which time the police arrived, located and rescued me. In the course

of the subsequent search, the police succeeded in arresting two accused persons, namely Jaya Chandra Sah Kanu and Arvind Mandal, in connection with the said offence. The persons arrested when interrogated by the police revealed that they themselves along with the other absconding accused named in the complaint were involved in the commission of the offence. Therefore, the complainant, respectfully request that the accused persons who abducted me and unlawfully detained me be arrested and actions be taken against them pursuant to the law.

The contents of the police report submitted by D.S.P. Rudraraj Kandel is as follows: From the preliminary investigation conducted into the incident in which Indian national Ritesh Kumar, who had been abducted and unlawfully detained from 2071/05/06, was rescued on 2071/05/19. During the preliminary investigation of the arrested persons involved in the offence and the mobile phone details used in the commission of the crime, it has been revealed that Jayachandra Sah Kanu, Arvind Mandal, Ajay Kumar Rai, Surendra Thakur, Rambabu Mahato, Budhan Chamar, Bhoja Tharu, Shivshankar Prasad Tharu, Dipendra Thakur, Mukesh Kumar Mahato, and Nandu Sah, also known as Pramod, were involved in the said offence. Further, as per the call detail records, it has been established that ransom demands were made and that the accused persons were in communication with one another using the mobile number 9819624022. The following Nepali mobile numbers were used in connection with the abduction: 9819624022 (used for demanding ransom), 9807261657 (Ram Babu Mahato), 9819234881 (Surendra Thakur), 9813561422 (Arvind Mandal), 9841679756 (user not yet identified), 9815250321 (Shiv Shankar Prasad Tharu), 9811247477 (Dipendra Thakur), 9845352511 (Mukesh Kumar Mahato), and 9816250470 (Jaya Chandra Sah Kanu). Additionally, the following Indian mobile numbers were found to have been used in the commission of the offence: 9334404374 (used by Ajay Kumar Rai), 9135480302, 7250731604, 9122683066, and 9631278901 (user not yet identified). The call detail records further show that ransom demands were made and that inter communications took place among the accused persons using the mobile number 9819624022, which was used by the kidnappers. Among the aforesaid mobile numbers, only the user details of the following numbers have been obtained: 9816250470 registered in the name of Jaya Chandra Sah Kanu, 9811247477 registered in the name of Dipendra Thakur, 9819624022 registered in the name of Zohra Khatun, 9819234881 registered in the name of Surendra Thakur, and 9815250321 registered in the name of Shiv Shankar Prasad Tharu. Accordingly, the details of the said user are being submitted herewith. It has further been understood that the absconding accused Rambabu Mahato took the victim up to the Raxaul railway crossing and from there brought the victim along to Parwanipur Bazaar, where Arvind Mandal, who has since been arrested arrived on a motorcycle. From that place, the victim was abducted and taken to the forest areas of Biruwaguthi and Bagwana in Parsa District, where he was unlawfully detained and a ransom of NPR 5,000,000 was demanded. Upon receiving information that the police had been mobilized to rescue the abducted person and apprehend the kidnappers, the accused released the victim and fled the scene, remaining absconding thereafter. As the present incident appears to fall within the ambit of organized crime, I have respectfully requested that further legal action be taken accordingly.

According to the inventory of the search and seizure report, the house of Mukesh Kumar Mahato, a resident of Ward No. 14, Birgunj Sub-Metropolitan City, Parsa District, is situated within an area bounded by the house of Premchand Thakur to the north, Ganga Thakur to the south, a road to the east, and the house of Bir Bahadur Mandal to the west. During the search of the premises, the police recovered a motorcycle bearing registration number Lu.13 P. 6535, which was parked in the courtyard, as well as a mobile SIM card bearing number 9845352511, which was in the possession and use of the accused.

Indian national Ritesh Kumar, who had been abducted and unlawfully detained from 2071/05/06, was rescued on 2071/05/19. A report regarding the incident was submitted on 2071/05/21, and further investigation and inquiry have since been conducted. As part of this investigation, user details of the mobile numbers 9807261657, 9813571422, and 9841679756, which were used in connection with the offence, were requested from the relevant authorities. According to information received through the e-mail at this office, the mobile number 9841679756 was found to have been issued in the name of Sitaram Giri, a resident of Pujarichowk-2, Palchowk VDC, of Sindhupalchowk District. Statements provided by the arrestee Surendra Thakur, employed in the Armed Police revealed that Sitaram Giri, who is posted as Assistant Sub-Inspector at the Regional Armed Police Force Headquarters, Rudra Battalion, Pathlaiya, Bara, was one of the users. It was further revealed that Sitaram Giri, along with Surendra Thakur, had been deployed in plain clothes for intelligence collection and that Surendra Thakur had prior knowledge of Jaya Chandra Sah Kanu, who is currently in custody being involved in criminal activities. The investigation further disclosed that Jaya Chandra Sah Kanu, along with Surendra Thakur, Arvind Mandal, and Sitaram Giri, had planned the abduction of Ritesh Kumar. Following the abduction, the accused detained the victim and conspired to demand a ransom of NPR 5,000,000, agreeing among themselves to claim and collect the ransom. Based on these findings, it is understood that Sitaram Giri was actively involved in the abduction and that he should be arrested for further investigation. Additionally, it was learned that the mobile number 9807261657 was issued in the name of Dipendra Mahato, who is reportedly the nephew of Rambabu Mahato, an absconding accused. The mobile SIM bearing number 9813571422, recovered from Arvind Mandal, currently in custody was issued in the name of Tul Bahadur Shahi. Upon verification at the Parsa District Jail, it was found that Nandu Sah, who is currently imprisoned had made telephone calls on various dates to Surendra Thakur and Jayachandra Sah, both presently in custody. The details, including the dates of these communications, have been duly submitted as part of the official record.

The Parsa District Jail has provided details regarding the telephone numbers contacted by Nandu Sah, who is currently in custody, as well as information about the persons who visited him. These details are recorded in the letter dated 2071/05/26 (corresponding to 11 September, 2014) issued by the Jail Office. Additionally, copies of the records of telephone calls made by Nandu Sah, along with a separate letter dated 2071/05/31 (corresponding to 16 September, 2014) from the Parsa District Jail, have also been included in the file as part of the case record.

**Statement of Defendant Mukesh Kumar Mahato before the Investigating Authority:** On 2071/05/22 (corresponding to 7 September 2014), the police recovered my mobile SIM and the motorcycle bearing registration number Lu.13 P 6535 from my possession and took me into custody. I had no involvement in the abduction or unlawful detention of the complainant, Ritesh Kumar. However, the motorcycle bearing registration number Lu.13 P 6535, which was later used in the abduction belongs to me. Arvind Kumar Mandal, who is currently in custody, is an acquaintance of mine, as we have previously engaged in joint investments in a fishery business. On the morning of 2071/05/06 (corresponding to 22 August 2014), he requested to borrow my motorcycle for a short period, stating that he needed to take a person to Pathlaiya. Believing that the motorcycle would be used solely for transporting a person to Pathlaiya, I allowed him to use it. I later learned that Arvind Kumar Mandal, without my knowledge had used the motorcycle in the abduction of the complainant. Additionally, Arvind Kumar Mandal informed me that the wife of one of his friends had fallen ill and required financial assistance, and he requested that I send NPR 2,000 via IME. Since he did not have a citizenship certificate, he asked me to send the amount in the name of his friend, Sitaram Giri. I transferred NPR 2,000 with the understanding that it was intended to solve his problems. I do not know and have no connection

with the complainant, and I have no acquaintance with Jay Chandra Prasad Kanu, Surendra Thakur, Sitaram Giri, or any of the other persons who are currently absconding and allegedly involved in this incident.

**Statement of defendant Arvind Kumar Mandal before the Investigating Authority:** In connection with the abduction of the complainant, Ritesh Kumar, from 2071/05/06 until the morning of 2071/05/19, during which he was held hostage and a ransom was demanded, I, along with Surendra Thakur and Sitaram Giri, who have been arrested and are currently in custody, Jayachandra Prasad Kanu, the Indian national Nandu Sah, also known as Pramod, who is currently incarcerated in Birgunj prison, and the absconding accused Rambabu Mahato, Budhan Ram Chamar, and Bhoja Tharu, were involved in this incident. The complainant Ritesh Kumar was abducted and held hostage in accordance with a plan devised by myself and my associates, including Nandu Sah (Pramod), Jayachandra Prasad Kanu, and Surendra Thakur, approximately eight to nine months prior to the incident. I, along with Arvind Kumar Mandal, Surendra Thakur, and Jayachandra Prasad Kanu, traveled to Nijgadh in Bara District, where we met with Assistant Sub-Inspector Sitaram Giri and discussed matters relating to the demand for ransom. Further, during discussions with the currently absconding accused Bhoja Tharu, Budhan Ram Chamar, and Rambabu Mahato regarding the abduction and detention of the complainant, they expressed their willingness to participate in holding the victim hostage. It was in the course of these discussions that I became acquainted with these individuals. By contacting the Indian mobile numbers provided by Nandu Sah (Pramod), a plan to abduct an Indian national had been devised seven to eight months earlier. In execution of that plan and in accordance with our prior arrangement, the complainant was abducted on 2071/05/06. For this purpose, Rambabu Mahato went to Raxaul, India, and brought the complainant with him. Thereafter, from Parwanipur Bazaar in Parsa District, I placed the complainant on a motorcycle, with Rambabu Mahato also seated on the same motorcycle, and drove them to the location where my associates Bhoja Tharu and Budhan Ram Chamar were present. The complainant was then taken to the forest and held hostage by my associates. On 2071/05/10, I, along with Rambabu Mahato, went to Raxaul, India, and using the complainant's mobile phone contacted his father to demand a ransom of NPR 5,000,000. Following instructions from Surendra Thakur that discussions should be held with the Assistant Sub-Inspector, I, along with Jayachandra Prasad Kanu and Surendra Thakur, traveled to Nijgadh in Bara District on 2071/05/12 (28 August, 214), where we met with Assistant Sub-Inspector Sitaram Giri. During this meeting, we discussed matters related to the ransom demand and addressed concerns raised by the associates holding the complainant regarding insufficient funds for their expenses, after which the ransom demand was formally made. As funds were required to meet the expenses of the associates holding the complainant hostage, and since we did not have sufficient money at that time, I on the pretext that my friend's wife was ill, requested Mukesh Kumar Mahato to IME NPR 2,000 and asked that the amount be sent in the name of Sitaram Giri. The complainant was held hostage from 2071/05/06 until the morning of 2071/05/19, during which time ransom demands were made. Upon learning that the police were approaching and realizing that we had no weapons to resist them and that the situation posed a serious security risk, we collectively decided to release the complainant. Accordingly, in the morning of 2071/05/19 (4 September, 2014), the complainant was released from captivity.

**Statement of Defendant Surendra Thakur before the Investigating Authority:** In connection with the abduction of the complainant, Ritesh Kumar from 2071/05/06 until the morning of 2071/05/19, during which he was unlawfully detained and a ransom was demanded, I, along with Jaya Chandra Prasad Kanu, Arvind Kumar Mandal, and Assistant Sub-Inspector Sitaram Giri, all of whom are currently in custody; Indian national Nandu Sah, also known as Pramod,

presently incarcerated at Birgunj Jail; and the absconding accused Rambabu Mahato, Budhan Ram Chamar, and Bhoja Tharu, were involved in the said offence. At that I was serving as an orderly in the Armed Police Force and, for the purpose of gathering intelligence, I used to move around in plain clothes. During this period, I became acquainted with Arvind Kumar Mandal and Jaya Chandra Prasad Kanu. Jaya Chandra Prasad Kanu suggested that we visit his associate Nandu Sah, also known as Pramod, who was then detained at Birgunj Prison. When I accompanied him to meet Nandu Sah, the latter proposed that he would provide Indian mobile numbers, and that by contacting those numbers, Indian nationals could be lured to Nepal on the pretext of employment, abducted, held hostage, released after collecting ransom, and the proceeds shared among us. Pursuant to this proposal, we contacted the numbers provided by him and, for approximately seven to eight months prior to the incident we had been planning to abduct an Indian national. When Assistant Sub-Inspector Sitaram Giri was informed of this plan, he agreed to cooperate and stated that he would provide support if any difficulty arose. Approximately three to four months prior to the incident, Assistant Sub-Inspector Sitaram Giri also visited Birgunj Prison together with us to meet Nandu Sah (Pramod). We continued planning the abduction for seven to eight months and maintained contact with Indian mobile numbers during that period. On 2071/05/06, after it was confirmed that the complainant would be coming to Nepal for employment, we finalized the plan. Accordingly, I, along with Arvind Kumar Mandal, Jaya Chandra Prasad Kanu, Rambabu Mahato, Budhan Ram Chamar, and Bhoja Tharu, held discussions and agreed that once the complainant was abducted and brought to Nepal, Rambabu Mahato, Budhan Ram Chamar, and Bhoja Tharu would take him to a forest area and keep him confined. It was further agreed that Jaya Chandra Prasad Kanu, Arvind Kumar Mandal, and I would be responsible for demanding and collecting the ransom; that Arvind Kumar Mandal would arrange the motorcycle and transport the complainant up to the forest area; and that Rambabu Mahato would go to Raxaul, India, and bring the complainant with him. In accordance with this plan, on 2071/05/06, we successfully abducted the complainant. On 2071/05/10, I sent Arvind Kumar Mandal and Rambabu Mahato to Raxaul, India, to demand a ransom of NPR 5,000,000. After the complainant was abducted and held hostage by my associates, we informed Assistant Sub-Inspector Sitaram Giri of the situation, whereupon he instructed us to bring the associates for further discussion regarding the ransom demand. Accordingly, on 2071/05/12, I, along with Arvind Kumar Mandal and Jaya Chandra Prasad Kanu, traveled to Nijgadh, of Bara District, and met with Assistant Sub-Inspector Sitaram Giri to discuss matters relating to the ransom demand. During this meeting, it was noted that the associates holding the complainant hostage required funds for their expenses. As a result, NPR 2,000 was requested from Mukesh Kumar Mahato, which was withdrawn via IME by Assistant Sub-Inspector Sitaram Giri and handed over to Jaya Chandra Prasad Kanu, who subsequently provided the amount to Bhoja Tharu and the other associates. While we were holding the complainant hostage and demanding ransom, we came to know that the police had become aware of the incident and were actively searching for us. In view of this, we released the complainant on the morning of 2071/05/19. Following the release, without any ransom having been received, Pramod, also known as Nandu Sah, who was detained in prison, refused to believe that the complainant had been released without payment. He alleged that we had collected the ransom and demanded that his share be handed over to him. On this pretext, he continued to make telephone contact from prison until 2071/05/21 (6 September 2014).

**Statement of Defendant Sitaram Giri before the Investigating Authority:** I had no involvement in the abduction or unlawful detention of the complainant Ritesh Kumar. While gathering intelligence, I became acquainted with Jaya Chandra Prasad Kanu, Arvind Kumar Mandal, and Surendra Thakur. On one occasion, I accompanied Surendra Thakur and Jaya Chandra Prasad Kanu to visit the prisoner Nandu Sah, also known as Pramod, at Birgunj Jail;

however, I did not meet the prisoner and returned upon reaching the gate of the prison. On 2071/05/12, while the complainant was being held hostage, Arvind Kumar Mandal, Jaya Chandra Prasad Kanu, and Surendra Thakur came to Nijgadh in Bara District to meet me. During their visit, Surendra Thakur requested a loan, which I did not have. As a result, Arvind Kumar Mandal arranged through IME to transfer money in my name from Birgunj. I withdrew the amount and handed it over to Jaya Chandra Prasad Kanu. I am unaware as to why Jaya Chandra Prasad Kanu, Surendra Thakur, and Arvind Kumar Mandal have included my name in connection with the abduction of Ritesh Kumar. However, I am aware that Jaya Chandra Prasad Kanu, Surendra Thakur, and Arvind Kumar Mandal were involved in the said incident.

**Statement of Defendant Jay Chandra Prasad Kanu before the Investigating Authority:** In connection with the abduction of the complainant Ritesh Kumar from 2071/05/06 until the morning of 2071/05/19, during which he was held hostage and a ransom was demanded, I, along with Arvind Kumar Mandal, Sitaram Giri, Surendra Thakur who are currently in custody, Nandu Sah, also known as Pramod, an Indian national currently imprisoned in Birgunj Jail, and the absconding accused Rambabu Mahato, Budhan Ram Chamar, and Bhoja Tharu, were involved in this incident. Before being imprisoned, I have known Nandu Sah, also known as Pramod, for approximately four to five years, since he used to reside in a rented room near my in-laws' house in Jitpur, Bara District. The principal planners of the abduction of the complainant Ritesh Kumar were Nandu Sah (Pramod), Surendra Thakur, and Arvind Kumar Mandal, who are currently in custody along with me. After the abduction, Assistant Sub-Inspector Sitaram Giri also agreed to participate in matters related to receiving and distribution of the ransom amount. Following the abduction, the acts of confining the complainant, collecting the ransom, and sharing the proceeds were carried out with the consent and involvement of the absconding accused Bhoja Tharu, Budhan Ram Chamar, and Rambabu Mahato. While Nandu Sah, also known as Pramod, was detained in prison, I visited him for meetings and discussions. During those visits, he proposed that he would provide contact numbers of Indian nationals and suggested that by contacting those numbers and under the pretext of arranging employment, Indian citizens could be lured to Nepal, abducted, held hostage, released after collecting ransom, and that the ransom amount would then be shared among those involved. He also provided me with such contact numbers and I conveyed this proposal to Surendra Thakur, who agreed to participate, and approximately seven to eight months prior to the incident, a plan to abduct an Indian national had been formulated. By contacting Indian mobile numbers, I falsely introduced myself as Ramesh Ji, also known as Singh Saheb, claiming to be the General Manager of Hulas Steel, and had been making such calls as part of the abduction plan for approximately seven to eight months. Once it was confirmed on 2071/05/06 that the complainant would be coming to Nepal for employment, the plan was finalized. Pursuant to this plan, Rambabu Mahato, Budhan Ram Chamar, and Bhoja Tharu assumed responsibility for taking the complainant to the forest area and keeping him in confinement. Surendra Thakur, Arvind Kumar Mandal, and I undertook the responsibility for demanding and collecting the ransom, while Arvind Kumar Mandal arranged the motorcycle and transported the complainant up to the forest area. In accordance with the plan, Rambabu Mahato went to Raxaul, India, and brought the complainant with him. As planned, on 2071/05/06, we successfully abducted the complainant. On 2071/05/10, I sent Arvind Kumar Mandal and Rambabu Mahato to Raxaul, India, to demand a ransom amount of NPR 5,000,000. Thereafter, on 2071/05/12, Arvind Kumar Mandal, Surendra Thakur, and I traveled to Nijgadh, Bara District, where we met with Assistant Sub-Inspector Sitaram Giri and discussed matters relating to the ransom demand. During this meeting, it was stated that the associates who were holding the complainant hostage required funds for their expenses. Accordingly, Arvind Kumar Mandal requested NPR 2,000 from Mukesh Kumar Mahato, which Assistant Sub-Inspector Sitaram Giri withdrew through IME and handed over to me. I, in turn, handed over the said amount to Bhoja

Tharu and the other associates involved in holding the complainant hostage. Upon learning that the police had become aware of the abduction and were actively searching for us, we released the complainant on the morning of 2071/05/19. I had no involvement in the use of the mobile SIM 9819624022, which was used in demanding the ransom. The SIM was provided to me by the brother of Pramod, also known as Nandu Sah, and it was through this SIM that the complainant was abducted, held hostage, and ransom demands were made.

The identification documents attached to the case file show that the complainant has identified Surendra Thakur, currently in custody, a resident of Ward No. 9, Santpur V.D.C., Rautahat District, and presently serving as an orderly in the Armed Police Force, as being involved in the abduction. Similarly, the complainant has also identified Sitaram Giri as a participant in the abduction. In addition, the complainant has positively identified the motorcycle bearing registration number Lu.13 P 6535, which was used in the commission of the abduction.

I, the complainant Ritesh Kumar, was abducted on 2071/05/06 and held hostage in the forest, during which a ransom was demanded. Due to the active involvement of the police, I was released from captivity on the morning of 2071/05/19. Following my release, I was rescued by the police and, while registering the FIR on the same day, I alleged that Jaya Chandra Prasad Kanu and Arvind Kumar Mandal, who were immediately apprehended, along with the absconding accused Rambabu Mahato, Budhan Ram Chamar, Bhoja Tharu, and Surendra Thakur, were involved in the incident. During the course of the investigation, additional individuals involved in the crime were taken into custody, and the motorcycle used in the abduction, bearing registration number Lu.13 P 6535, was recovered. Identification procedures were conducted, and among the arrested persons, Surendra Thakur and Sitaram Giri were identified. It was established that the abduction, hostage-taking, and ransom demand were carried out with the involvement of Jaya Chandra Prasad Kanu, Arvind Kumar Mandal, Surendra Thakur, Sitaram Giri, the absconding Budhan Ram Chamar, Bhoja Tharu, Rambabu Mahato, and Nandu Sah, also known as Pramod, who is currently in custody at Birgunj Jail. On 2071/05/06, the absconding accused Rambabu Mahato went to Raxaul, India, and brought me along, while Arvind Kumar Mandal transported me to the forest using the recovered motorcycle. During my captivity, Jaya Chandra Prasad Kanu regularly visited the location and threatened me, insisting that ransom be demanded from my parents. On the evening of 2071/05/11, Sitaram Giri and Surendra Thakur also arrived, threatening dire consequences if I did not demand the ransom amount from my parents and contacted my father via telephone. The investigation has confirmed that the abduction, hostage-taking, and ransom demand were carried out with the full involvement of Jaya Chandra Prasad Kanu, Sitaram Giri, Surendra Thakur, Arvind Kumar Mandal, and the absconding accused Budhan Ram Chamar, Bhoja Tharu, Rambabu Mahato, as well as the Indian national Nandu Sah, also known as Pramod, currently detained in Birgunj Jail.

**The statement made by defendant Deependra Thakur before the Investigation Authority is as follows:** I am a barber by profession and in order to contact my customers, I had been using an Ncell SIM card registered in my own name. My elder brother, Surendra Thakur, who is employed as an orderly in the Armed Police Force and who has been arrested in connection with this case had taken the SIM card from me and had been using it. Approximately two to three months prior to the arrest of my brother Surendra Thakur, Assistant Sub-Inspector Sitaram Giri together with Jaya Chandra Sah Kanu came to my house from time to time and I heard them discussing plans to abduct an Indian national and demand ransom. When I asked my brother Surendra Thakur about this matter, he told me that they were planning an abduction and instructed me to remain quiet and not disclose the matter to anyone. Consequently, I did not inform anyone about this matter. Along with my brother, those currently in custody namely Jaya

Chandra Prasad Kanu, Sitaram Giri, Arvind Kumar Mandal, and Mukesh Kumar Mahato and the absconding accused namely Budhan Ram Chamar, Rambabu Mahato, Bhoja Tharu, and Ajay Kumar Yadav had pursuant to a prior plan abducted and held the complainant hostage on 2071/05/06. I had no involvement in the abduction or hostage-taking of the complainant. My brother, Surendra Thakur, took my SIM card and used it in connection with the planning of the abduction.

Different identification document prepared by the defendant Nandu Sah, also known as Pramod is as follows: In connection with the abduction and hostage-taking of Indian national Ritesh Kumar on 2071/05/06, I have identified Jaya Chandra Prasad Kanu, Surendra Thakur, Sitaram Giri, and Arvind Mandal. Among those presented for identification, Mukesh Kumar Mahato, who was taken into custody, was also involved in the abduction and I have no prior acquaintance with him.

Different identification document prepared by the defendant Surendra Thakur, Arvind Kumar Mandal, Jay Chandra Prasad Kanu and Sitaram Giri Nandu Sah, have identified Pramod also known as Nanu Sah as the person who was mentioned in the statement made by the defendants.

**Statement of Nandu Sah before the Investigating Authority is as follows:** I, along with Sitaram Giri, Surendra Thakur, and Jaya Chandra Prasad Kanu, all of whom are currently in custody, was involved in the abduction and hostage-taking of the complainant, Ritesh Kumar from 2071/05/06 to 2071/05/19 (B.S.). I have also come to know that Arvind Kumar Mandal, Budhan Ram Chamar, Rambabu Mahato, Bhoja Tharu, and Ajay Kumar Rai Yadav, who are currently absconding, were also involved in this incident. I had been acquainted with Jaya Chandra Prasad Kanu prior to my arrest. I instructed him on the methods of carrying out abductions and also provided him with contact numbers of Indian nationals, informing him that it would not be possible to abduct a person alone wherein, he informed me that he would find an accomplice to carry out the act and approximately seven to eight months ago he along with Surendra Thakur came to meet me and introduced him as his associate, and I told Surendra Thakur to work together with him. Similarly, about three to four months ago, Sitaram Giri who has also been arrested came to meet me along with Jaya Chandra Prasad Kanu and Surendra Thakur. Upon being introduced to him, I also told him to cooperate and work together with them. While maintaining phone contact with Jaya Chandra Prasad Kanu, he informed me that the plan was progressing. After the abduction of the complainant on 2071/05/06, he stated that the task had been completed and that ransom money was being demanded. On 2071/05/19, when the complainant was released from captivity, I contacted Surendra Thakur and learned that no ransom had been taken wherein I did not believe them and told them that they have been lying to avoid payment to me and when I tried to contact Jaya Chandra Prasad Kanu, he was unreachable and I was in contact with Surendra Thakur via phone until 2071/05/21 inquiring about why ransom was not taken.

The content of the statement made by Ram Prasad Ghimire and joint statement made by Rajendra Kumar Patel and Manoj Sah Teli similar to the statement of Ram Prasad Ghimire is as follows: On 2071/05/06, at around 1:30 PM, while I was grazing my buffaloes, I noticed Jay Chandra Prasad Kanu, Sitaram Giri, Surendra Thakur who have been arrested and the absconders Budhanram Chamar, Bhoja Tharu proceeding towards the forest. After a short while, I noticed Jaya Chandra Prasad Kanu, Surendra Thakur, and Sitaram Giri returning from the forest. Approximately one hour later, I noticed from close by the complainant sitting in between Rambabu Mahato and Arvind Kumar Mandal while Arvind Kumar Mandal was driving the motorcycle bearing registration number Lu.13 P 6535 towards the forest. I had seen the arrested

individuals Sitaram Giri, Surendra Thakur, Jaya Chandra Prasad Kanu, and Arvind Kumar Mandal moving around our village and market area and then going into the forest carrying food and water. Upon making inquiries, Jay Chandra Prasad Kanu, informed me that the arrestees Sitaram Giri and Surendra Thakur were staff of the Armed Police Force and that Armed Police personnel had gone into the forest for official work which was why they had taken food and water and having heard that I did not raise any concern. During this period, the police were deployed and became active in our village and surrounding areas. On the morning of 2071/05/19, when the complainant was emerging from the forest the police intercepted and rescued him, at which point I became aware of the abduction. Accordingly, the arrestees Jayachandra Prasad Kanu, Surendra Thakur, Sitaram Giri, and Arvind Kumar Mandal, along with the abscondee Rambabu Mahato, Bhoja Tharu, and Budhan Ram Chamar, and Indian national Nandu Sah, also known as Pramod, who is currently detained at Birgunj Jail abducted the complainant, kept him as a hostage and demanded ransom.

Document of Ram Kumar Sah as recounted: I run a tea and snack hotel in Jitpur Bazaar, Gadhimai Municipality, Bara District. For the past 4/5 months, the arrestees Sitaram Giri, Surendra Thakur, Jaya Chandra Prasad Kanu, and Arvind Kumar Mandal have been frequenting my hotel to have tea and snacks and therefore, I am acquainted with them. While they were at my hotel having tea and snacks, I overheard them engaging in discussions. On 2071/05/13, the arrestee Sitaram Giri, Surendra Thakur, Jaya Chandra Prasad Kanu, and Arvind Kumar Mandal visited my hotel, where they had tea and spent some time. I overheard them saying that, although the work after many days had been successfully commissioned, they still had not received the money and that they were facing difficulties in holding the person. On 2071/05/19, I learned from various newspapers and magazines that an Indian national had been released from captivity and that the abductor Jaya Chandra Prasad Kanu had been apprehended. Upon visiting this office, I noticed that Sitaram Giri, Surendra Thakur, Jaya Chandra Prasad Kanu, and Arvind Kumar Mandal were also in custody and I have a strong belief that along with Pramod, also known as Nandu Sah, who is presently detained in Birgunj Jail, and the abscondee Rambabu Mahato were involved in the abduction, hostage taking and demanding ransom.

Joint document of Ram Sewak Mahato and Saheb Mahato as recounted: A few days before the abduction of the complainant on 2071/05/06, while I was grazing my buffaloes near the roadside close to my house, I saw the arrestees Sitaram Giri, Surendra Thakur, Jaya Chandra Prasad Kanu, and Arvind Kumar Mandal together with the abscondee Rambabu Mahato, Budhan Ram Chamar, and Bhoja Tharu sitting under a tree by the riverbank engaged in discussion. At that time, I did not pay attention to what they were discussing. However, I later came to understand that they had been sitting there formulating a plan to abduct the complainant Ritesh Kumar, and subsequently carried out the abduction. This account aligns with the statement of Thakur Prasad Sah, and corroborates the involvement of the arrested and absconding accused in the incident.

The charge-sheet submitted before the court is as follows: Pursuant to the attached written FIR, seizure and search records, identification documents, statements of the arrested defendants, obtained telephone call details, and the statements of the witnesses, it has been established that the abduction of the complainant, Ritesh Kumar, was carried out under the principal plan, advice, and active involvement of Nandu Sah, also known as Pramod, with the participation of the other defendants Jaya Chandra Prasad Kanu, Arvind Kumar Mandal, Surendra Thakur, Sitaram Giri, Mukesh Kumar Mahato, Budhan Ram Chamar, Rambabu Mahato, Bhoja Tharu, and Ajay Kumar Rai. Acting in collusion and according to their collective plan and advice, the defendants' abducted the complainant from 2071/05/06 to 2071/05/19 for a total period of 14 days, holding him hostage with the objective of demanding ransom in exchange for his release. Accordingly,

the defendants' Pramod also known as Nandu Sah, Jaya Chandra Prasad Kanu, Arvind Kumar Mandal, Surendra Thakur, Sitaram Giri, Mukesh Kumar Mahato, Budhan Ram Chamar, Rambabu Mahato, Bhoja Tharu, and Indian national Ajay Kumar Rai are found to have committed offenses under Sections 1 and 3 of the relevant provisions under the National Code relating to Abduction and Hostage Taking. In view of the above, all the aforementioned defendants' Pramod also known as Nandu Sah, Jaya Chandra Prasad Kanu, Arvind Kumar Mandal, Surendra Thakur, Sitaram Giri, Mukesh Kumar Mahato, Budhan Ram Chamar, Rambabu Mahato, Bhoja Tharu, and Ajay Kumar Rai are liable for punishment under Section 3 of the same Code. Since the defendants' committed the offence in an organized manner with two or more persons, additional punishment is hereby sought under Section 7 of the Act, and as per Section 12 of the same Act, it is requested that compensation also be awarded to the victim Ritesh Kumar. Based on the nature of the incident, the involvement of the accused as evidenced by the collected materials, their prior planning, and the organized manner in which the act was carried out to obtain criminal benefit, it has been determined that all the aforementioned accused committed an offense under Section 3 (3) (a) of the Organized Crime (Prevention) Act, 2070. Accordingly, in addition to the punishments mentioned above, it has been requested that the defendants' Pramod, also known as Nandu Sah, Jaya Chandra Prasad Kanu, Arvind Kumar Mandal, Surendra Thakur, Sitaram Giri, Mukesh Kumar Mahato, Budhan Ram Chamar, Rambabu Mahato, Bhoja Tharu, and Ajay Kumar Rai also be subjected to punishment under Section 9 (a) of the same Act. From among the defendant, Pramod, also known as Nandu Sah, pursuant to a decision of the court on 2070/10/27 (corresponding to 10 February, 2014) is serving his sentence at Parsa Prison in connection with the abduction and unlawful confinement case filed by Sanjay Kumar Rai, it is hereby requested that he be produced from the prison to prosecuted pursuant to the charge-sheet. With regards to the absconding defendants, Budhan Ram Chamar, Rambabu Mahato, and Bhoja Tharu, it is hereby requested that the court issue warrants and summons and arrested defendants Jaya Chandra Prasad Kanu, Arvind Kumar Mandal, Surendra Thakur, Sitaram Giri, and Mukesh Kumar Mahato are hereby produced along with the charge sheet for further legal proceedings. Since Ajay Kumar Rai who was involved in the criminal incident is an Indian national it is requested that punishment be imposed upon him upon his voluntary presence or upon his apprehension within the territory of Nepal. Regarding the mobile SIM card holders, Johra Khatun, Shiv Shankar Prasad Tharu, and Dipendra Thakur, the matter is under investigation and provided, their involvement in the present incident is established, a supplementary charge-sheet shall be filed accordingly. The recovered motorcycle and mobile SIMs used in the incident are hereby also submitted along with this charge sheet.

### **Charge-Sheet Submitted Before the Court**

Pursuant to the attached written FIR, seizure and search records, identification documents, statements of the arrested defendants, obtained telephone call details, and witness statements, it has been established that the abduction of the complainant Ritesh Kumar was executed under the principal plan, guidance, and active involvement of Nandu Sah, also known as Pramod, with the participation of the other defendants: Jaya Chandra Prasad Kanu, Arvind Kumar Mandal, Surendra Thakur, Sitaram Giri, Mukesh Kumar Mahato, Budhan Ram Chamar, Rambabu Mahato, Bhoja Tharu, and Ajay Kumar Rai. Acting in collusion and in accordance with their collective plan and advice, the defendants abducted the complainant from 2071/05/06 to 2071/05/19, a total of 14 days holding him hostage with the objective of demanding ransom in exchange for his release. Accordingly, the defendants Pramod, also known as Nandu Sah, Jaya Chandra Prasad Kanu, Arvind Kumar Mandal, Surendra Thakur, Sitaram Giri, Mukesh Kumar Mahato, Budhan Ram Chamar, Rambabu Mahato, Bhoja Tharu, and the Indian national Ajay Kumar Rai are found to have committed offenses under Sections 1 and 3 of the relevant

provisions of the National Code relating to Abduction and Hostage-Taking. In view of this, all the aforementioned defendants are liable for punishment under Section 3 of the same Code. Since the offense was committed in an organized manner by two or more persons, additional punishment is sought under Section 7 of the Act. Furthermore, pursuant to Section 12 of the same Act, it is requested that compensation be awarded to the victim, Ritesh Kumar. Based on the nature of the incident, the collected evidence, the defendants' prior planning, and the organized manner of execution aimed at obtaining criminal benefit, it has been determined that all aforementioned defendants committed an offense under Section 3 (3) (a) of the Organized Crime (Prevention) Act, 2070. Accordingly, in addition to the punishments mentioned above, it is requested that the defendants be subjected to punishment under Section 9 (a) of the same Act. Among the defendants, Pramod, also known as Nandu Sah, is currently serving a sentence at Parsa Prison pursuant to the court's decision dated 2070/10/27 (corresponding to 10 February 2014) in connection with the abduction and unlawful confinement, a case filed by Sanjay Kumar Rai. It is requested that he be produced from the prison for prosecution in accordance with this charge-sheet. Regarding the absconding defendants Budhan Ram Chamar, Rambabu Mahato, and Bhoja Tharu, it is requested that the court issue warrants and summons for their arrest. The arrested defendants Jaya Chandra Prasad Kanu, Arvind Kumar Mandal, Surendra Thakur, Sitaram Giri, and Mukesh Kumar Mahato are hereby presented along with this charge-sheet for further legal proceedings. Since Ajay Kumar Rai, who was involved in the incident, is an Indian national, it is requested that the court impose punishment upon him either upon his voluntary presence or upon his arrest within the territory of Nepal. With respect to the holders of the mobile SIM cards, Zora Khatun, Shiv Shankar Prasad Tharu, and Dipendra Thakur, further investigation is ongoing, and should their involvement in this incident be established, a supplementary charge-sheet shall be filed accordingly. The recovered motorcycle and mobile SIM cards used in the incident are also submitted as evidence along with this charge-sheet.

Deposition made by defendant Mukesh Kumar Mahato before the District Court is as follows: Regarding the contents of the FIR, I have no knowledge of its contents and I have not been involved in the abduction. As requested and on account of an emergency due to a person being ill, I merely transferred a sum of Rs. 2000/ through IME. I am innocent and have not committed any wrongdoing; therefore, I should not be subjected to any punishment.

**Deposition made by defendant Jay Chandra Prasad Kanu before the District Court is as follows:** The contents of the FIR are false. I only had a casual acquaintance with Nandu Sah and had occasionally visited him in prison, and discussions regarding this incident never occurred. I had contacted him on the phone for household matters. I have no knowledge as to who sent the IME and their involvement. I have not committed any offense as alleged in the charge-sheet and I am innocent and should not be subjected to any punishment.

**Deposition made by defendant Surendra Thakur before the District Court is as follows:** I do not know the complainant. Among the defendants, I am only acquainted with Sitaram Giri and Jaya Chandra Prasad Kanu and I do not know the other defendants. The entire account provided by the complainant is false. Since, my wife was ill and since I did not have a citizenship card, the amount of Rs. 2000 rupees sent via IME, was transferred in the name of Sitaram Giri which was used for my wife's medical treatment. I have not committed any offenses as alleged in the charge sheet. I am innocent and should not be subjected to any punishment.

**Deposition made by defendant Pramod also known as Nandu before the District Court is as follows:** From among the complainant and defendant Jay Chandra Prasad, I am acquainted with the defendant Jaya Chandra Prasad, and I do not know the other defendants. I have not had

any discussions with anyone regarding this abduction and I have no knowledge regarding this. I do not know as to why my name has been mentioned in the complainant's FIR. I myself am a victim and currently in custody. I have no involvement in this case, and I should not be subjected to any punishment.

**Deposition made by the defendant Sitaram Giri before the District Court is as follows:** I do not know the complainant or the other defendants; I only know Surendra Thakur as we worked together in the same service. I have not been involved in any act of abduction, hostage-taking, or organized crime and I have no involvement in this incident. I have no knowledge as to who were involved or how the abduction was carried out. The amount of NPR 2,000 sent in my name was withdrawn via IME and handed over to Surendra Thakur. I have never visited Nandu Sah in prison. Being a member of the Armed Police Force, I cannot even imagine being involved in such an act. I have no involvement in this matter, I am innocent, and I should not be subjected to any punishment.

**Deposition made by the defendant Arvind Kumar Mandal before the District Court is as follows:** I am acquainted with Mukesh Kumar Mahato and Jay Chandra Prasad Kanu. The contents of the FIR are false and I do not have any knowledge in this matter. Whenever, I needed to go for an errand, I used to borrow the motorcycle of my friend Mukesh and I have never requested and used the motorcycle for the purpose of abducting a person. I have never colluded, met and planned anything the abduction and neither have I maintained any phone contact. I had dropped my friend at his home and had returned the motorcycle to Mukesh. I have not been involved in the abduction, hostage-taking and organized crime, I am innocent and I should not be subjected to punishment.

An order had been set aside by the District Court on 2071/7/19 (corresponding to 5 November, 2014) which states that on the basis of the evidence attached with the case file, the defendants prima-facie cannot be deemed to be innocent and therefore, the defendants pursuant to 118 (2) of the Court Proceedings (*Adalati Bandobasta*) are hereby remanded to custody and a detention slip is hereby provided to the defendants Arvind Kumar Mandal, Jay Chandra Prasad Kanu, Sitaram Giri, Surendra Thakur, Mukesh Kumar Mahato and Pramod also known as Nandu Sah and are hereby ordered to be sent to Parsa prison.

A summon was executed in the name of the defendant Bhoja Tharu on 2071/8/23 (corresponding to 9 December, 2014) and likewise, a summon was executed in the names of the defendant Budhanram Chamar and Rambabu Mahato on 2071/8/23. The defendants failed to appear before the court and wherein the limitation of summon had expired.

Ganesh Mahato, witness of defendant Arvind Mandal while deposing before the District Court, stated that the defendant Arvind Mandal was a person with good conduct and since he was not involved in the abduction, he should not be punished.

Bikas Sah Kanu, witness of defendant Mukesh Kumar Mahato while deposing before the court stated that the defendant Mukesh Kumar Mahato was involved in fishery; he has not been involved in the abduction and hostage-taking and organized crime. He is innocent and should be acquitted from the charges levied against him.

Harilal Prasad Yadav, witness of defendant Jay Chandra Prasad Kanu while deposing before the court stated that he had known the defendant Jay Chandra Prasad Kanu from childhood and that

he possessed good conduct. Since he has not been involved in the abduction, he should not be punished.

Ram Bahadur Khadka, witness of Sitaram Giri while deposing before the court stated that he and Sitaram Giri were together from 2071/5/5 till 2071/5/14 (corresponding to 21-30 August, 2014). He has not been involved in abduction and hostage-taking and organized crime.

Deependra Thakur, witness of defendant Surendra Thakur while deposing before the court stated that the defendant Surendra Thakur was working as an Orderly with Armed Police Force and holds a very good conduct. Since he is innocent, he should not be punished.

The contents of the supplementary charge-sheet submitted on 0272/4/17 (corresponding to 2 August, 2015) is as follows: Where it is evident that the defendant Deependra Thakur has committed an offence pursuant to Section 1 and 3 on the Chapter on Kidnapping and Hostage-Taking under the *Muluki Ain*, it is hereby sought that the defendant be punished pursuant to No. 3 of the same Chapter. Furthermore, since the defendant has been involved organized crime, additional punishment pursuant to Section 7 of the same Chapter is hereby sought. Taking into consideration the physical and mental harm suffered by the victim, it is hereby sought that the defendant pursuant to No. 12 of the same Chapter provide compensation to the victim Ritesh Kumar. Moreover, since the defendant Deependra Thakur has committed an offence pursuant to Section 3 (1) and 3 (3) (a) under the Organized Crime Prevention Act, 2070, punishment pursuant to Section 9 (a) of the same Act is hereby sought against the defendant.

The deposition made by Deependra Thakur before Parsa District Court is as follows: On 2072/3/21 (corresponding to 6 July, 2015) I had gone to the district court to provide my statement in an abduction case involving my brother Surendra Thakur and while returning, I was arrested by the police in front of the District Development Committee Office; I am a barber by profession. The on-the-spot statement was not recorded as per my dictation; I have no involvement in the abduction and hostage-taking of the complainant. The contents of the incident report is false; I have not committed any offence; the police have initiated the case against me based on the mobile number and I am innocent and should not be punished pursuant to the charge-sheet.

The order of the District Court set aside on 2072/4/18 (corresponding to 3 August, 2015) is as follows: Since there is no basis to conclude that the defendant Deependra Thakur is not guilty in the abduction and hostage-taking case, the defendant pursuant to No. 118 clause 5/10 under the Chapter of Court Proceeding (*Adalati Bandobasta*) of the Country Code (*Muluki Ain*) is hereby directed to be released on bail upon furnishing a bail amount of Rs. 100,000 (one hundred thousand rupees) or by posting a surety or property equivalent of the value. Provided, such bail or property surety cannot be posted, the defendant shall be provided a detention slip pursuant No. 121 of the Court Proceeding (*Adalati Bandobasta*) of the Country Code and shall be provided with government ration as per the law and a letter to that effect shall be sent to the Birgunj Prison Office.

The deposition made by Ramswaroop Thakur, witness of defendant Deependra Thakur before the court states that Deependra Thakur is a barber by profession and has a saloon in Kolbi market; the defendant is ignorant about the abduction of the Indian national. The defendant is a person having good conduct; since the defendant has not committed any offence as alleged in the charge-sheet, he should not be punished.

The depositions of Ramsewak Mahato and Thakur Prasad Sah who had provided their statement in the incident report is annexed with the case file, which states that the contents of the incident report drawn on 2071/2/7 (corresponding to 31 May, 2017) was not recorded as per our dictation. The signatures affixed therein is not ours; the document had been drawn by the police and it has not been written as per our dictation.

The deposition made by D.S.P. Rudraraj Kandel before the court is as follows: In relation to the kidnapping of Indian national Ritesh Kumar, while searching for the kidnappers pursuant to the complaint lodged by his father at the District Police Office, and in the course of patrol operations, the kidnapped person was rescued from the jungle near Bagwana on 2071/05/19 (corresponding to 4 September, 2014). Jai Chandra Sah Kanu and Arvind Kumar Mandal were arrested upon recovering and examining the call detail records of the SIM that was used for demanding ransom,. On the basis of their statements and the call detail records, other accused persons revealed thereby were also arrested and produced for legal action. The accused Dipendra Thakur was made an accused on the basis of the SIM card. It was found that the mobile number 9819624022 used by the kidnappers had made 19 contacts through the SIM card bearing number 9811247477 that was issued in the name of the defendant Dipendra Thakur.

The decision of Parsa District Court on 2073/3/6 (corresponding to 20 June, 2016) is as follows: As the defendant Ajay Kumar Rai is an Indian national, the court refrains from making any determination against him at this stage. With regards to the other defendant, Jai Chandra Prasad Kanu, the defendant pursuant to Section of the same Chapter is hereby sentenced to eight (8) years' imprisonment and a fine of NPR 60,000 (Rupees Sixty Thousand only). Furthermore, pursuant to Section 7 of the same Chapter, the defendant is sentenced to an additional 2 (two) years. Accordingly, the claim for additional punishment pursuant to Section 9, clause (a) of the Organized Crime Prevention Act, 2070 is not sustainable. Where the defendant Sitaram Giri has committed an offence pursuant to No 1 and 3 under the Chapter of Abduction and Hostage-Taking of the *Muluki Ain*, the defendant pursuant to No. 7 of the same Chapter is hereby sentenced to 7 (seven) years imprisonment and a fine of Rs. 50,000 (fifty-thousand rupees). Accordingly claim for additional punishment pursuant to Section (9) (a) under the Organized Crime Prevention Act, 2070 is not sustainable. Similarly, where the defendant Mukesh Kumar Mahato has committed an offence pursuant to No. 1 and 3 under the Chapter of Abduction and Hostage-Taking of the *Muluki Ain*, the defendant pursuant to No. 7 is hereby sentenced to 7 (seven) years imprisonment and a fine of Rs. 50,000 (fifty-thousand rupees). Furthermore, the defendant pursuant to No. 7 of the same Chapter is hereby sentenced to an additional period of 2 (two) years. Accordingly claim for additional punishment pursuant to Section (9) (a) under the Organized Crime Prevention Act, 2070 is not sustainable. Likewise, since the defendant Pramod also known as Nandu Sah has committed an offence pursuant to No. 1 and 3 under the Chapter of Abduction and Hostage-Taking of the *Muluki Ain*, the defendant pursuant to No. 3 of the same Chapter is hereby sentenced to 8 (eight) years imprisonment and fine of Rs. 60,000 (sixty-thousand rupees). Furthermore, the defendant pursuant to No 7 of the same Chapter is hereby sentenced to an additional period of 2 (two). Claim for additional punishment pursuant to Section (9) (a) under the Organized Crime Prevention Act, 2070, is not sustainable. Where the defendant Arvinda Kumar Mandal has committed an offence pursuant to No. 1 and 3 under the Chapter of Abduction and Hostage-Taking of the *Muluki Ain*, the defendant pursuant to No. 3 of the same Chapter is hereby sentenced to 8 (eight) years imprisonment and fine of Rs. 60,000 (sixty-thousand rupees). Furthermore, the defendant pursuant to No 7 of the same Chapter is hereby sentenced to an additional period of 2 (two). Claim for additional punishment pursuant to Section (9) (a) under the Organized Crime Prevention Act, 2070, is not sustainable. Similarly, the defendant Surendra Thakur pursuant to No. 3 under the Chapter of Abduction and Hostage-

Taking hereby sentenced to 7 (seven) years imprisonment and fine of Rs. 50,000 (fifty-thousand rupees). Furthermore, the defendant pursuant to No 7 of the same Chapter is hereby sentenced to an additional period of 2 (two). Claim for additional punishment pursuant to Section (9) (a) under the Organized Crime Prevention Act, 2070, is not sustainable. Where the defendant Rambabu Mahato has committed an offence pursuant to No. 1 and 3 under the Chapter of Abduction and Hostage-Taking under the *Mukuki Ain*, the defendant pursuant to No.3 of the same Chapter is hereby sentenced to 8 (eight) years imprisonment and a fine of Rs. 60,000 (sixty-thousand rupees). Furthermore the defendant pursuant to No, 7 of the same Chapter is hereby sentenced to an additional period of 2 (two) year. Claim for additional punishment pursuant to Section (9) (a) under the Organized Crime Prevention Act, 2070, is not sustainable. Pursuant to the offence committed under No. 1 and 3 under the Chapter of Abduction and Hostage-Taking under *Muluki Ain*, the defendants Budhanram Chamar and Bhoja Tharu pursuant to No. 3 of the same Chapter are hereby sentenced to 7 (seven) years imprisonment and a fine of Rs. 50,000 (fifty-thousand). Furthermore, the defendant pursuant to No. 7 of the same Chapter is hereby sentenced to an additional period of 3 (two) years. Claim for additional punishment pursuant to Section (9) (a) under the Organized Crime Prevention Act, 2070, is not sustainable. The court hereby acquits Deependra Thakur from the charges. Where the victim Ritesh Kumar was abducted and taken hostage from 2071/05/06 to 2071/05/19 with the involvement of the defendants' Jai Chandra Prasad Kanu, Sitaram Giri, Surendra Thakur, Arvind Kumar Mandal, Mukesh Kumar Mahato, Budhan Ram Chamar, Ram Babu Mahato, Bhoja Tharu, and Pramod alias Nandu Sah, and as they have been found to be guilty of the offence, it is held that the victim Ritesh Kumar shall be entitled to recover compensation in the amount of NPR 9,100 (Rupees Nine Thousand One Hundred only) from the said accused persons on a proportionate basis.

The appeal petition filed by defendant Mukesh Kumar Mahato before the High Court, Temporary Bench, Birgunj is as follows: The complaint submitted by Ram Babu Gupta, father of the victim Ritesh Kumar on 2071/05/10 and 2071/05/12, as well as the FIR submitted by the victim Ritesh Kumar, on 2071/05/19 and the supplementary FIR submitted on 2071/06/21, does not mention that I have committed the offences relating to abduction, hostage-taking, and organized crime. There is no indication of my involvement. Similarly, my name is not mentioned in the police report submitted by D.S.P. Rudraraj Kandel, which further corroborates that I am not involved. Furthermore, during the identification conducted with the victim, Ritesh Kumar on 2071/06/21, the motorcycle brought by the defendant Arvind Kumar was identified, and I, Mukesh Kumar, was not identified by the victim. This identification testimony clearly establishes my innocence. Despite this, the verdict, which imposed imprisonment and fines on an innocent person without giving due and fair consideration to the evidence, is unjust and erroneous, and therefore should be set aside. Thakur Prasad Sah Kanu, Ramsevak Mahato, and Saheb Mahato, who attested the incident report have not mentioned my name. There is no indication of my involvement in the said incident. The motorcycle with registration number Lu.13Pa 6535, is registered in the name of Milan Multipurpose Cooperative Limited, Rupandehi, Butwal, and listed under the borrower Prashant Kumar Dube and was purchased by my father, Daroga Mahato Dhanuk on 2069/10/10. The said motorcycle is not registered in my name. The fact that the motorcycle was taken by my business partner defendant Arvind Kumar Mandal on the pretext of taking his friend had been stated by me on the spot and before the court and my statement has been verified and corroborated by the on-the-spot statement and deposition made by the defendant Arvind Kumar Mandal before the court. I do not know any other defendants which is further corroborated by the depositions made by other defendants before the court and therefore, I am innocent and therefore, the verdict of imprisonment and fine rendered against me

by the Parsa District Court is erroneous, and the appellant hereby requests the said decision to be set aside.

The appeal petition filed by defendant Sitaram Giri before the High Court, Temporary Bench, Birgunj is as follows: In a criminal case where the government is plaintiff, it is not sufficient for the prosecution to press and submit the charges against any citizen. The prosecution must beyond reasonable doubt be able to prove the charges independently and conclusively. In the present case, the plaintiff, the Government of Nepal, has alleged that I have committed a heinous offence; however, on the contrary, it has failed to present before the court any conclusive documentary evidence or witnesses to substantiate the charges. Despite this, the honorable court has solely relied on the statements contained in documents prepared by the police, and treating them as evidence has held me guilty. The judgment rendered by the court is contrary to Section 18 of the Evidence Act, 2031, and the universally accepted principles of criminal justice. I am an Assistant Sub-Inspector employed with the Armed Police Force. My Department has assigned me to monitor and report undesirable, criminal, and unlawful activities in civil dress. Surendra Thakur is also an employee of the Armed Police Force, serving in the rank of peon, and he has likewise been assigned to duties in plain clothes for reporting purposes. Having my phone number with him does not constitute any criminal activity. Similarly, during the course of information gathering, it is necessary to have phone contact with many individuals. However, I have not usee the phone to contact Ritesh Kumar for the purpose of kidnapping, hostage-taking, of Ritesh Kumar. I am not involved in any criminal activities. Therefore, I cannot be convicted on the basis of the call details and therefore, the District Court's decision to convict me is erroneous and should be set aside and the appellant should be acquitted of all charges.

The appeal petition filed by defendant Arvind Kumar Mandal before the High Court, Temporary Bench, Birgunj is as follows: The police have documented the seizure of two phones from me, 9813561422 and 9941749398. These phones have never been used by me to contact any individuals allegedly involved in the abduction. Similarly, there are no evidences proving that Pramod, alias Nandu Sah contacted me from the prison or that I met Nandu. The call details can never be used as evidence against me. Since, the prosecution has failed to produce the existence of the victim in an independent court, the verdict stating that the victim identified me, the defendant Arvind Kumar is entirely incorrect. As long as the victim or his father Ram Babu does not appear before the court, it is evident that the entire case file along with the documents and the charges in its entirety brought by the prosecution are false and fabricated. I have not committed any acts as alleged in the charge-sheet nor have I planned anything. My witness, Ganesh Mahato, through his deposition and Thakur Prasad Sah and Ramsevak Mahato who prepared the incident report have also stated in the court that abduction and hostage-taking has not occurred. In these circumstances, the District Court, without properly evaluating these evidences, convicted me and imposed imprisonment, fines, and compensation, which is erroneous. The appellant, therefore request that the verdict be set aside and the appellant be acquitted of all charges.

The appeal petition filed by defendant Jay Chandra Prasad Kanu before the High Court, Temporary Bench, Birgunj is as follows: Although the FIR submitted by Ritesh Kumar mentions my name including the names of the other defendants, it fails to mention role the defendant played in the incident. Despite this, the defendant Jai Chandra Sah Kanu has been convicted and sentenced based solely on the contents of the FIR. Conviction on the basis of the FIR and on-the-spot testimony is erroneous. Furthermore, the call detail record of the mobile number 9816250470, alleged to have been used by me, has been presented; however, in the absence of the corresponding voice recordings, the call detail record cannot be accepted as evidence against

me. The motorcycle with registration number Lu.13Pa 6535, alleged to have been used in the incident, was neither seized from me nor is it under my ownership. I have not used it, and neither have I allowed anyone to use it. The prosecution has shown that an Ncell mobile phone number 9816280470 has been seized from me. The seizure report does not constitute evidence against me. The alleged incident is said to have occurred from 2071/05/06 to 2071/05/19 at 4:00 AM. During this period, I have never called the mobile number 9819624022, which was allegedly used by the main kidnappers, and pursuant to the call records, there are no records of any call from that number to my mobile phone. As there is no conclusive evidence establishing my role in the kidnapping and hostage-taking of the victim, the appellant requests that the decision of the trial court convicting and imposing prison sentence and fine be overturned and that the appellant be acquitted of all charges.

The appeal petition filed by Plaintiff Nepal Government before the High Court, Temporary Bench, Birgunj is as follows: It is evident from the case file, that the plan to abduct the victim Ritesh Kumar and hold him hostage and demand ransom was carried out in coordination with Pramod alias Nandu Sah currently in detention at Parsa prison along with Jai Chandra Prasad Kanu, and Arvind Mandal. Assistant Sub-Inspector Sitaram Giri has also been involved in the act of abduction and demanding ransom, upon abduction of the complainant, Ram Babu Mahato, Budhan Ram Chamar, and Bhoja Tharu took the victim to the forest and held him captive; the defendant Jai Chandra Prasad Kanu and Arvind Kumar Mandal demanded the ransom, Arvind Kumar Mandal arranged a motorcycle to transport the victim to the forest, Ram Babu Mahato proceeded to Raxaul and brought the victim along with him, for the expenses for the defendants holding the victim in captivity Rs. 2000 was requested from defendant Mukesh Kumar Mahato wherein the said money was withdrawn through IME by Assistant Sub-Inspector Sitaram Giri and had been handed over to Jay Chandra Prasad Kanu wherein the said amount was given to Bhoja Tharu.

Following the kidnapping, ransom was demanded using the mobile number 9819624022, as well as other Nepali and Indian numbers were also used. According to the call detail records, there is evidence that communication between the defendants had been made through mobile number 9819624022 that was used by the kidnappers for demanding ransom. It is evident that the defendants on the basis of division of labor have acted in an organized manner and have abducted the complainant with the objective of obtaining financial benefits. Even though it has been established that the accused acted in an organized manner to derive financial gain through the criminal acts of kidnapping and hostage-taking, the decision of the court acquitting the defendants' of the charges under the Organized Crime Prevention Act, 2070, is erroneous and unjust. With regard to the defendant Dipendra Thakur, the user call detail records show that the mobile SIM 9811247477 issued in his name had a total of 9 phone contacts with the mobile SIM 9819624022, which was used in the abduction process. During their on-the-spot statements, the defendant revealed that his mobile had been used by his brother to demand ransom and that his brother defendant Surendra Thakur in coordination with other defendants had planned to abduct the victim and demand ransom and therefore, it is evident the defendant was involved in the incident. However, without proper evaluation of the documents attached with the case file, the Parsa District Court had acquitted the defendant and therefore, the appellant prays that the decision be overruled to that extent and the defendant be punished pursuant to the charge-sheet.

Appeal petition submitted by Pramod alia Nandu Sah before the High Court, Janakpur, Temporary Bench, Birgunj is as follows: The trial court has based its decision verdict, solely on the confession statement made by the defendant before the investigating authority, which is entirely illegal. The defendant had never confessed before the investigating authority. The police

did not record my statement as per dictation and tortured and coerced me into signing the document. When I testified in court, I completely rejected the statement recorded by the police, which have also been corroborated by my witness through his deposition before the court. The trial court without considering these evidences has rendered a guilty verdict which is unlawful and the appellant hereby requests that the verdict be set aside and the appellant be acquitted of all charges.

Appeal petition submitted by defendant Surendra Thakur before the High Court, Janakpur, Temporary Bench, Birgunj is as follows: The trial court convicted the appellant on the basis of the confessional statement made by the appellant before the competent authority, which is illegal because the appellant had not provided a confessional statement before the competent authority. The statement recorded by police was not according to what I had dictated and the appellant was tortured and coerced to sign the document without having the document read to the appellant. While deposing before the court, the statement made before the police has been refuted by the appellant and the statement of the appellant made before the court has been corroborated by the witness of the appellant. The trial court has based its decision on the call details of the mobile phone used by the appellant. The appellant had used the mobile phone to seek a loan of Rs. 2000 for the treatment of the appellant's wife. The appellant has never used the mobile phone to discuss on matters relating to the abduction or kidnapping. Asking for assistance from a known person does not constitute a crime. One cannot be merely convicted on the basis of the call details of a mobile phone and therefore, the trial courts' decision is erroneous and the appellant requests the court to overrule the said decision and acquit the appellant from all charges.

An order had been set aside by the High Court, Janakpur, Temporary Bench, Birgunj on 2074/3/23 (corresponding to 7 July, 2017) which reads as follows: Appeal petition has been filed by the plaintiff Government of Nepal and from among the defendants, Mukesh Kumar Mahato and others have filed appeal petitions. In this context, and for the purpose of No. 202 of the Court Proceedings (*Adalati Bandobasta*) of the *Muluki Ain*, the court hereby directs that the appellants be notified of the appeal petition submitted by the plaintiff Government of Nepal and likewise, notify the High Government Attorney's Office, Birgunj regarding the submission of the appeal petitions by the defendants and for the defendants who have not filed an appeal petition, the court pursuant to Rule 64 of the High Court Regulation, 2073, hereby directs to present the case upon the presence of the defendants or upon the expiry of the limitation period.

Rejoinder submitted by defendant Deependra Thakur before the High Court, Janakpur, Temporary Bench, Birgunj is as follows: While submitting the FIR, the victim has not mentioned my name. Provide, I was involved in the incident, the victim at the time of submitting the FIR, would have also mentioned my name and my involvement along with other individuals. Similarly, during the investigation of the crime, provided, my involvement was verified, the plaintiff, the Government of Nepal would have named as one of the defendants in the charge-sheet and would have subsequently charged me before the court. On the contrary, I have not been named as a defendant in the charge-sheet. Relying on the initial investigation, I was not made a defendant in the initial charge-sheet and where additional investigation was carried out wherein I was not made a defendant, the supplementary charge-sheet filed based on the initial investigation has no legal validity and the supplementary charge-sheet has been filed to harass me. My witness Ramswaroop Thakur while deposing before the court has stated that I have not been involved in the abduction and hostage-taking incident and pursuant to the evidences, it is evident that I have not been involved in the said incident and therefore, the trial courts decision to acquit me from the charges should be upheld.

The decision of the High Court, Janakpur, Temporary Bench, Birgunj on 2074/12/20 (corresponding to 3 April, 2018) is as follows: In comparison to defendants Sitaram Giri, Mukesh Kumar Mahato, Surendra Thakur, Budhan Ram Chamar and Bhoja Tharu, it noted that the trial court has handed down a greater term of imprisonment and fine to the defendants Jai Chandra Prasad Kanu, Pramod alias Nandu Sah, Arvind Kumar Mandal, and Ram Babu Mahato. It has also been noted that all the aforementioned defendants have been punished pursuant to Section 3 under the Chapter of Abduction and Hostage-Taking. Considering the evidence attached with the case file, the nature and circumstances of the incident, the involvement of the defendants and the degree of their respective offences, it appears that it would be appropriate and justifiable to impose a uniform and equal sentences to all the defendants. In this context, the trial court's verdict, sentencing the defendants Jai Chandra Prasad Kanu, Pramod alias Nandu Sah, Arvind Kumar Mandal, and Ram Babu Mahato to eight (8) years' imprisonment and a fine of NPR 60,000 (sixty-thousand rupees) under Section 3 under the Chapter of Abduction and Hostage-Taking does not appear to be consistent. Accordingly, the decision of the trial court to that extent is hereby overruled and the defendants pursuant to Section 3 under the Chapter of Abduction and Hostage-Taking are hereby sentenced to 7 (seven) years imprisonment and fine of Rs. 50,000 (fifty-thousand rupees). While considering as to whether or not the defendants are liable to punishment under Section 9, (a) of the Organized Crime Prevention Act, 2070, it is necessary to examine the relevant statutory provisions. Section 3(2) of the Organized Crime Prevention Act, 2070, provides that, for the purposes of sub-section (1), if a person knowingly commits a serious offence for the benefit of a criminal group, under the direction of a criminal group, on behalf of a criminal group, in association with a criminal group, or as a founder or member of a criminal group, such act shall be deemed to constitute organized crime. Likewise, Section 2(d) of the same Act defines a "criminal group" as a group of three or more persons, organized or unorganized, operating directly or indirectly within or outside Nepal, with the objective of committing organized crimes." In the present case, although more than two defendants are alleged to have been involved in the kidnapping and hostage-taking of the victim, the case file does not show that the defendants for the benefit of a criminal group, under the direction of a criminal group, on behalf of a criminal group, or in association with a criminal group had kidnapped the victim Ritesh Kumar hostage and demanded ransom. The prosecution has also failed to present any factual evidence to establish that the defendants kidnapped and held the victim hostage in association with a criminal group, for the benefit of a criminal group, or under the direction of a criminal group. Therefore, the prosecution's claim seeking punishment pursuant to Section 9, clause (a) of the Organized Crime Prevention Act, 2070, is not sustainable. For the reasons stated above, the appellant-defendant Surendra Thakur, Pramod alias Nandu Sah, Jai Chandra Prasad Kanu, Arvind Kumar Mandal, Sitaram Giri, and Mukesh Kumar Mahato are liable to be sentenced pursuant to Sections 3 and 7 of the Chapter on Abduction and Hostage-Taking and the accused Jai Chandra Prasad Kanu, Pramod alias Nandu Sah, Arvind Kumar Mandal, and Ram Babu Mahato are hereby sentenced in also liable to punishment in parity with the other defendants. Since, the charges made against the defendant seeking sentencing pursuant to Section 9 (a) of the Organized Crime Prevention Act, 2070, cannot be established, and therefore, the appellant defendants are hereby acquitted of those charges. Accordingly, this court cannot concur with the submissions advanced by the Learned Senior Advocates and Learned Advocates appearing on behalf of the appellant-defendant that they should be acquitted of all charges, and neither does this court concur with the submissions of the learned Joint Government Attorney that the defendants should be sentenced pursuant to the charge-sheet. Therefore, in light of the evidence attached with the case file, it is deemed appropriate that the defendants Jai Chandra Prasad Kanu, Pramod alias Nandu Sah, Arvind Kumar Mandal, and Ram Babu Mahato be punished in parity with the other convicted accused. Accordingly, the decision of the Parsa

District Court dated 2073/03/06, sentencing the defendants to eight (8) years' imprisonment and a fine of NPR 60,000 under Section 3 on the Chapter on Abduction and Hostage-Taking cannot be deemed to be appropriate and therefore, the said decision to that extent is hereby overruled. No. 205 of the Court Proceeding (*Adalati Bandobasta*) is hereby applied with respect to the defendant Rambabu Mahato whereas the other defendants Jai Chandra Prasad Kanu, Pramod alias Nandu Sah, Arvind Kumar Mandal, and Ram Babu Mahato are hereby pursuant to Section 3 on the Chapter of Abduction and Hostage-Taking sentenced seven (7) years' imprisonment and a fine of NPR 50,000 (fifty-thousand rupees) and pursuant to Section 7 of the same Chapter are hereby sentenced to an additional period of two (2) years. With other matters, since the decision of the trial court is proper, the decision is hereby upheld. The defendants appeal petition seeking acquittal from the charges and the plaintiff Government of Nepal's appeal petition seeking punishment pursuant to the charge-sheet is not sustainable.

The appeal petition filed by defendant Sitaram Giri before this court is as follows: In the initial complaint filed by the complainant Ram Babu Gupta, no suspicion whatsoever had been raised against the appellant-defendant. Likewise, the appellant defendant's name has not been mentioned in the supplementary complaint submitted by him. Likewise, my name is also not mentioned in the on-the-spot identification document. Furthermore, in the original FIR dated 2071/05/19 lodged by the victim, Ritesh Kumar my name has not been mentioned. When the complainant did not implicate me even in the FIR, the subsequent supplementary FIR dated 2071/06/21, in which the complainant used vague language such as "*having come to light*" without making any specific allegation against me, clearly indicates that the said supplementary FIR was lodged at the instigation of others, with the sole intention of falsely implicating me in the case. Moreover, despite repeated efforts by the court to summon the alleged victim-complainant for his testimony, his continued non-appearance further renders the said FIR devoid of probative value under Section 18 of the Evidence Act, 2031. Accordingly, it is impermissible to hold me guilty and impose punishment on the basis of such a complaint. I, the appellant, gave a statement at the scene reflecting the true factual circumstances. Merely stating the factual reality does not amount to a confession of guilt; admission of facts and admission of an offence are entirely distinct matters. It appears that my conviction has been based on the statement of other co-accused. However, for a co-accused's statement to be admissible as evidence against me, it must be corroborated by independent evidence. I, being a Assistant Sub-Inspector in the Armed Police Force, was acquainted with Surendra Thakur, one of the defendant who serves as a peon in the same force. Due to this acquaintance, when he requested that I disburse NPR 2,000, which he said had been sent from Birgunj to Bara on behalf of a certain individual, I complied. At that time, he did not have identity documents such as citizenship, and his wife was ill, necessitating urgent funds. Acting in good faith, I, as an office colleague, could not refuse his request and handed over the amount received in my name. Under these circumstances, such an act cannot form the basis for holding me guilty. During the investigation, the police attempted to implicate me in criminal activity by preparing statements from Ram Prasad Ghimire, Rajendra Kumar Patel, and Manoj Sah Teli, by including my name. Upon the court's order to have the prosecution's witnesses present for verification, the prosecution produced Thakur Prasad Sah Kanu as a witness, who testified that he did not write the incident report and did not affix his signature, and thus cross-examined and discredited the entire report. Under Section 25 of the Evidence Act, 2031, the burden of proving the prosecution's claim rests with the Government of Nepal. The trial court, however, failed to consider this and without any supporting evidence, held me guilty, rendering the verdict erroneous and liable to be set aside. Similarly, D.S.P. Rudraraj Kandel who had submitted a report against me while deposing before the court failed to mention my full name, and while analyzing the call details, he only stated that a certain APF personnel with the surname Giri, a peon, and other accused were apprehended. Therefore, on the

basis of the above facts and evidence, accepting the false and fabricated FIR submitted by the complainant, who had no prior acquaintance or communication with me, and without examining my statement before the competent authority, my testimony in court, the depositions submitted by prosecution witnesses, and other evidence, and sentencing me to seven (7) years' imprisonment and a fine of NPR 50,000, along with an additional two (2) years' imprisonment under Section 7 of the Chapter, is unjust. Accordingly, the verdict of the High Court, Janakpur, Temporary Bench Birgunj, which upheld the trial court's decision, should be set aside and the appellant should be acquitted of all charges pursuant to the contents of the appeal petition.

The appeal petition filed by defendant Jay Chandra Prasad Kanu before this court is as follows: Other than the defendants Surendra Thakur and Arvind Kumar Mandal, I do not know the complainant or any other people nor do I have any information about what they are doing. Merely because Nandu Sah's room is close by my house cannot be assumed that I knew Nandu Sah and I cannot be held guilty on the basis of mere assumption. The decision appears to have been based on a statement recorded by the police that was extracted in a coercive manner. I had no involvement in planning the kidnapping, and I am unaware of who committed the offence. It is imperative that objective and corroborative evidence be presented to establish guilt. The complainant's father, Ram Babu Gupta, filed a petition on 2071/05/10 requesting an investigation and there is no written complaint against me. Likewise, Ajay Kumar Rai was neither produced nor examined. It is also unclear as to whether or not the mobile number 9819624022, allegedly used in the kidnapping and ransom demand was registered in the name of Zohra Khatun. The identification document prepared on 2071/06/31, by retaining only one person without following the procedure under Court Proceeding No. 173 of the *Muluki Ain*, is therefore fabricated. When filing charges, it is imperative to determine who committed what kind of offence and what liability arises therefrom. However, in this case, it is clear that the prosecution was filed in a manner contrary to the principles of criminal justice. Only my independent statement made in court should have been relied upon as evidence, but the Parsa District Court relied solely on the statement recorded by the police and the police report rendered its decision, and the High Court upheld this decision and therefore, the decision of the High Court is erroneous. Furthermore, my witness, Harilal Yadav, through his deposition has corroborated my denial. The prosecution's witnesses have attested that their names, surnames, and signatures were recorded and verified in statements prepared by the police. Since the prosecution has failed to support its claims with other evidence, it is not justifiable to assume and convict us on the mere possibility that we may have kidnapped and held the victim hostage. In D.S.P. Rudraraj Kadel's report, it is stated that the victim was held hostage in the forest located under Shankar Saraiya VDC, Parsa District; however, in his report submitted on 2071/05/19, he mentions that the hostage was held in the Bagwana forest, Parsa District. The discrepancy in the location of the incident places the incident itself in doubt. According to the report of D.S.P. Rudraraj Kadel, the main planner of the crime was Pramod alias Nandu Sah, who was in prison, and accordingly, he was held guilty and sentenced as the planner. However, no investigation was conducted regarding another individual, Ajay Kumar Rai, the Director of an Indian tech consultancy company in Patna. I, the appellant, do not know Ajay Kumar Rai and was not involved in the alleged offence, and therefore, I am innocent. Although call detail records were submitted as annexures showing that various persons made telephone or mobile contacts, mere reliance on such call details cannot establish guilt in a serious criminal case, especially since no voice recordings were produced. Even if a crime had been committed by me, the prosecution should have presented evidence showing with whom, on what date, and how much ransom was demanded. Allegations have been made that contact from India had been made. The seized mobile phone cannot be treated as evidence against me, because the number 9816280470 was not in use from 2071/05/06 to 2071/05/19, and there is no record of contact with 9819624022.

Under the law, such call details cannot be relied upon as proof against me. Pursuant to the principle of criminal justice, the benefit of doubt must be given to the accused. If the facts of the case are contradictory, inconsistent, or unproven by evidence, the accused cannot be held guilty based solely on the prosecution's allegations. Therefore, in light of the facts and submissions stated above, the established principles of criminal justice, the absence of necessary factual and evidentiary support to sustain convictions for kidnapping, hostage-taking and organized crime, the precedents cited, and the hostile depositions of the prosecution's witnesses, it is clear that I, the appellant am innocent. Accordingly, the decision of the High Court, Janakpur, Temporary Bench Birgunj, which erroneously sentenced me to nine (9) years' imprisonment and a fine of NPR 50,000 based on a baseless prosecution, should be set aside, and that the appellant be granted acquittal and justice.

The appeal petition filed by defendant Surendra Thakur before this court is as follows: I, the appellant Surendra Thakur, state that the prosecution has failed to present any evidence establishing that I kidnapped the complainant Ritesh and held him hostage for ransom. The trial court's conviction is based solely on a statement allegedly recorded under coercion before the competent authority and the police report, and therefore, the decision is unjust. In a criminal case, mere allegation is insufficient; the charge must be objectively proven. My witness, Dipendra Thakur, has deposed before the court supporting my denial, and the prosecution witnesses Thakur Prasad Sah and Ramsevak Mahato have submitted hostile affidavits contradicting the prosecution's claims, further undermining the allegations. The complainant was unable to positively identify me and has only expressed suspicion. Mere suspicion is insufficient in criminal cases; the offence must be established through independent evidence. However, the prosecution has failed to prove by evidence that I committed the crime. Ajay Kumar Rai, the Director of an Indian tech consultancy appears to be the principal person involved in the alleged crime which is also reflected in Ram Babu Gupta's petition, and all actions seem to have been carried out by him. He has not been brought within the scope of investigation. Simply lodging a charge against a person is not sufficient to hold them guilty or impose punishment; the allegation must be corroborated by independent, concrete, and incontrovertible evidence. The complainant's father, Ram Babu while submitting a petition on 2071/05/10, has not stated that I, the appellant Surendra Thakur had kidnapped and held his son Ritesh hostage. The petitioner who had submitted a petition for finding his son, never appeared in court to testify. No weapons, ropes, or sticks were recovered from the alleged hostage location. Which parts of the forest or which houses were used to hold the victim have not been identified? The prosecution's claim based solely on notes recorded during the investigation cannot be treated as conclusive evidence and punishment cannot be imposed on that basis alone. There is no objective evidence establishing that the victim was held hostage. Pursuant to the principles of criminal justice the benefit of doubt must be given to the accused. There is no scientific evidence (test evidence), demonstrative evidence (such as diagrams, sketches, or photographs), or conclusive proof. In the second complaint dated 2071/06/21, the complainant explicitly stated that they did not see me, which raises doubt. Similarly, in the in the deposition made by D.S.P. Rudraraj Kadel before the court, it was stated that the accused Jay Chandra Sah and Surendra Thakur were previously not acquainted. Given that the prosecution witnesses' depositions contradict the complainant's claims, and that the incident documentation included in the annexures contains numerous inconsistencies and points of doubt, the prosecution's allegations have not been objectively and satisfactorily proven. Therefore, based on the facts and submissions mentioned above, the established principles of criminal justice, the absence of necessary facts and evidence to sustain convictions for kidnapping, hostage-taking and organized crime, the precedents cited, and the depositions of the prosecution's witnesses, it is clear that I, the appellant, am innocent. Accordingly, the decision of the High Court, Janakpur, Temporary

Bench Birgunj, which erroneously sentenced me to nine (9) years imprisonment and a fine of NPR 50,000 based on a baseless prosecution, should be set aside, and be acquitted and granted justice.

The appeal petition filed by the plaintiff Government of Nepal before this court is as follows: In the present case, it has been established that the accused, in a planned manner, kidnapped the victim Ritesh Kumar, transferred him among members of the criminal group, took him to the forest, and demanded ransom, which constitutes organized crime under Sections 2 (d), 2 (g), and 3 (3) of the Organized Crime (Prevention) Act, 2070. Therefore, not imposing additional punishment under Section 9 (a) of the same Act for the convicted defendants to that extent constitutes an error. Section 2(d) of the Organized Crime (Prevention) Act, 2070, defines a “criminal group” as a group of three or more persons, organized or unorganized, within or outside Nepal, whose direct or indirect purpose is to commit organized crimes as listed in Chapter 2 of the Act. The same Act states that “organized crime” refers to offences specified under Chapter 2. Chapter 3 further provides that any offence punishable with imprisonment of more than three years under the prevailing law is considered an organized crime under this Act. Under Section 3 of the Act, it is provided that any person who knowingly commits a serious offence for the benefit of a criminal group, under its direction, on its behalf, in collaboration with the group, or as a founder or member of the group, shall be deemed to have committed an organized crime. In the present case, ten defendants have been involved in the offence. All the defendants according to their respective roles have contributed to the commission of the offence. The demand of NPR 5,000,000 as ransom from the victim’s family demonstrates the intended financial gain from the crime. The trial and high court were satisfied with the fact that the victim was abducted by the hands of these defendants and determined appropriate punishment. Given the extensive planning, network formation, and mutual communication and coordination among the defendants, the facts establish that the offence cannot be treated merely as a common crime of kidnapping and hostage-taking, and doing so would be contrary to the provisions of Chapters 2 and Chapter 3 of the Organized Crime (Prevention) Act, 2070. In the case of the defendant Deependra Thakur, who was acquitted of the prosecution’s allegations, it is evident from the case documents that a mobile number registered in his name was used in connection with the offence. From the call details it is confirmed that the user of the mobile number 9811247477 was the defendant. It is further apparent that this number was utilized for the purpose of abducting the victim and demanding ransom. He was made a defendant only after a proper investigation of the incident. Although the defendant gave a denial statement in court, the acquittal granted to him by the prosecution’s claims cannot be justified in the absence of corroborating evidence, which is contrary to the principles of criminal justice. Therefore, on the above grounds and reasons, the decision of the High Court, Janakpur, Temporary Bench, Birgunj appears erroneous, and should be set aside, and the accused should be punished in accordance with the original charges.

An order had been set aside by the court on 2073/3/1 (corresponding to 15 June, 2016) which reads as follows: It is noted that a cross-appeal has been submitted by the plaintiff Government of Nepal and the defendants. In this context, and for the purpose of Section 140 (3) of the National Criminal Procedure Code, 2074, the court hereby directs that the Office of the Attorney General be notified of the appeal petition submitted by the defendants and likewise, notify the appellants of the appeal petition submitted by the plaintiff Government of Nepal and directs to present the case upon the presence of the defendants or upon expiry of the limitation period.

### **Decision of this Court**

सीताराम गिरी वि. नेपाल सरकार (०७५-CR-०२२४), जयचन्द्रप्रसाद साह कानु वि. नेपाल सरकार (075-CR-0528), सुरेन्द्र ठाकुर वि. नेपाल सरकार (075-CR-0529) र नेपाल सरकार वि. जयचन्द्रप्रसाद साह कानु (075-CR-0831) मुद्दा: अपहरण तथा शरीर बन्धक एवं संगठित अपराध, पृष्ठ 27

The present case which was entered in the cause-list had been submitted before the Bench for adjudication. The learned advocates Mr. Dhananjaya Khanal, Mr. Radha Krishna Pathak, Mr. Prakash Basnet, Ms. Kamal Kumari Bharti, and Mr. Jitendra Bahadur Pandey appearing on behalf of the appellant/defendant, Sitaram Giri argued that the name of the defendant Sitaram Giri is not mentioned in the initial First Information Report (FIR) lodged by the victim Ritesh Kumar on 2071/05/19. Despite repeated attempts by the court to summon the said victim informant for the purpose of recording his testimony, the victim has failed to appear before the court. Furthermore, the prosecution witnesses who attested the on-the-spot document while deposing before the court have rebutted the contents of the document. The allegations made by the co-defendants against the defendant have also not been corroborated by any independent evidence. In such circumstances, a decision was rendered by the High Court by accepting the false and fabricated complaint lodged by the informant, who neither had any acquaintance nor any prior interaction with the defendant Sitaram Giri, and without due consideration, examination, or analysis of the statements made by the defendant before the competent authority and the court, the depositions of the prosecution witnesses, and the other evidence on record, the court rendered its decision which ought to be set aside, and the defendant Sitaram Giri should be acquitted. The learned advocate Mr. Dhananjaya Khanal, appearing on behalf of the appellant/defendant Surendra Thakur, submitted that the prosecution has failed to produce any evidence whatsoever to substantiate the allegation that the defendant Surendra Thakur abducted the informant Ritesh and held him in unlawful confinement and demanded ransom. In criminal cases, the mere framing of an accusation is not sufficient; the charge must be established by objective and cogent evidence. The decision convicting the defendant Surendra Thakur solely on the basis of a confession extracted under coercion before the competent authority and the police report is not legally justifiable. Although Ajay Kumar Rai, the proprietor of an Indian tech consultancy, appears to be the principal offender involved in the present offence, he has not been brought within the ambit of investigation. Moreover, no weapons, ropes, or sticks were recovered from the place of occurrence. The depositions of the prosecution witnesses have been made in a manner that negates the prosecution's claim, thereby rendering the incident-related documents included in the case record doubtful and giving rise to substantial grounds for suspicion. In such circumstances, the prosecution's charge has not been substantiated by cogent evidence. Therefore, in light of the recognized principles of criminal justice, the essential elements required to establish the offences of abduction, hostage-taking, and organized crime, the absence of supporting evidence, and the hostile depositions of the prosecution witnesses, manifest that the appellant/defendant Surendra Thakur is innocent. Accordingly, the judgment of the High Court ought to be quashed and the said defendant should be acquitted of the charges framed against him.

The learned Joint Government Attorney Mr. Chandrakanta Khanal, appearing on behalf of the appellant/plaintiff, the Government of Nepal, submitted that the involvement of ten defendants in the present incident is apparent, and that each of the defendants contributed to the commission of the offence according to their respective roles. It has been established that the offence was committed through prolonged preparation by the defendants, the formation of a network, and their mutual communication and coordination. Consequently, treating the incident merely as an offence of abduction and hostage-taking and awarding punishment accordingly would be contrary to the provisions of the Organized Crime Control Act, 2070. Further, it is clearly evident from the documents included in the case record that the offence was committed using the mobile number 9811247477 registered in the name of the acquitted defendant Dipendra Thakur. The call detail records reveal that the said mobile number was used in a significant manner for the purpose of abducting the victim and extorting ransom. Although the accused denied the commission of the offence before the court, such denial could not be substantiated by cogent and

reliable evidence. The acts of the defendants namely, abducting the victim Ritesh Kumar in a pre-planned manner, handing him over to other members of the criminal group, leading him into the forest, and demanding ransom fall within the purview of offences prohibited by the Organized Crime Control Act, 2070. Despite the establishment of such organized criminal conduct, the High Court failed to impose additional punishment under Section 9 (a) of the said Act to the convicted accused and further erred in acquitting the defendant Dipendra Thakur. Accordingly, to that extent, the disputed decision is erroneous and ought to be set aside, and all the defendants should be sentenced pursuant to the charge-sheet.

Upon considering the above factual background, the arguments advanced by both the parties, the references made, and upon perusal of the case file, it is apparent that the following questions need to be resolved:

- (a) What is the nature and extent of the involvement of the defendants in the alleged offence?
  - (b) Do the acts committed by the defendants' fall within the ambit of the Organized Crime Control Act, 2070?
  - (c) As to whether or not the decision of the High Court, Janakpur, Temporary Bench, Birgunj, is appropriate, and as to whether or not the appeals filed by the appellants are sustainable?
2. Upon consideration of the matter, it appears that the defendants Pramod alias Nandu Sah, Jaychandra Prasad Kanu, Arvind Kumar Mandal, Surendra Thakur, Sitaram Giri, Mukesh Kumar Mahato, Budhan Ram Chamar, Rambabu Mahato, Bhoja Tharu, Ajay Kumar Rai (absconding Indian national), and Dipendra Thakur (on supplementary charge-sheet) have been charged under Sections 1 and 3 of the *Muluki Ain* relating to abduction and hostage-taking. Punishment under Section 3 and additional punishment under Section 7 of the same Act were also sought, as well as compensation to the victim Ritesh Kumar under Section 12. Furthermore, charges under Section 3 (3) of the Organized Crime Control Act, 2070, were also made and additional punishment under Section (9) (a) had been sought for committing acts prohibited by Section 3 (2) of the same Act. At the trial court, the following decisions were rendered wherein pursuant to Section 3 the defendants Pramod alias Nandu Sah, Jaychandra Prasad Kanu, Arvind Kumar Mandal, and Rambabu Mahato each sentenced to 8 (eight) years imprisonment and pursuant to Section 7 an additional 2 (two) years totaling the imprisonment to 10 years and a fine of Rs. 60,000. Likewise, pursuant to Section 2, the defendants Surendra Thakur, Sitaram Giri, Mukesh Kumar Mahato, Budhan Ram Chamar, and Bhoja Tharu were each sentenced to 7 (seven) years and pursuant to Section 3 and an additional 2 (two) years totaling 9 years with a fine of NPR 50,000 each. Similarly, pursuant to Section 12, compensation of Rs. 9,100 (nine thousand one hundred rupees) from the 9 defendants on a proportionate basis was to be provided to the complainant, since the Indian national Ajay Kumar Rai was not present and had not been presented before the court, no action need to be taken from the time being, and defendant Deependra Thakur was acquitted from the charges and no additional punishment was imposed pursuant to the Organized Crime Control Act, 2070. Subsequently, cross appeals were filed by the plaintiff, the Government of Nepal and the defendants. The decision of the trial court to some extent was overruled by the High Court, Janakpur, Temporary Bench, Birgunj. The High Court while rendering its decision had applied No. 205 of the Court Proceedings (*Adalati Bandobast*) in favor of the defendant Rambabu Mahato. Likewise, the High Court pursuant to Section 3

sentenced the defendants Jay Chandra Prasad Kanu, Pramod alias Nandu Sah, Arvind Kumar Mandal, and Rambabu Mahato to 7 (seven) years imprisonment and pursuant to Section 7 an additional punishment of 2 (two) years and a fine of NPR 50,000 and other aspects of the trial court's decision was upheld. However, the High Court did not impose additional punishment under the Organized Crime Control Act, 2070, and acquitted Dipendra Thakur of all charges. The plaintiff, the Government of Nepal and defendants Jay Chandra Prasad Kanu, Sitaram Giri, and Surendra Thakur also filed appeals challenging the acquittals and sentencing.

3. The complainant (victim) stated that Ajay Kumar Rai offered him employment at Hulas Steel in Simra, which he accepted. Upon arriving at Raxaul railway station, an associate of Ajay Kumar Rai brought him to Birgunj Clock Tower (Ghantaghar). Subsequently, another individual forced him into a tempo and took him to Parwanipur Bazaar, from where a third person placed him on a motorcycle and transported him into a forest. There, he was placed under the custody of three male individuals who tied him up, assaulted him, and kept him confined. After five days, they compelled him to contact his father to demand ransom. On the morning of 2071/05/19, at approximately 4:00 a.m., upon learning that the police were conducting a search of the forest, the perpetrators released him and fled the scene. He was subsequently rescued by the police. Accordingly, he filed an FIR seeking the arrest and prosecution of the defendants responsible for his abduction and unlawful confinement. The complainant's father, Rambabu Gupta, stated that Ajay Kumar Rai had promised to secure employment for his son at Hulas Steel in Simra. Accordingly, his son, Ritesh Kumar left home to take up the job. When he failed to return home and his whereabouts remained unknown, the complainant made inquiries at Hulas Steel and other factories in Simra but was unable to locate him. On 2071/05/10, the complainant received a phone call on his mobile from his son's number, in which the caller claimed that his son was in their custody and demanded a ransom of NPR 5,000,000, stating that they would release his son only upon payment. Based on this, the complainant filed a petition requesting a search and investigation, which has given rise to the present case.
4. Based on the FIR and case record, seizure and search reports, identification documents, the statements of the defendants, the telephone call details obtained therein, it is established that the abduction and hostage-taking of the complainant, Ritesh Kumar, was carried out pursuant to a common plan and active participation of the defendants. The principal orchestrator of the scheme was the defendant Pramod alias Nandu Sah, who, together with the other defendants Jay Chandra Prasad Kanu, Arvind Kumar Mandal, Surendra Thakur, Sitaram Giri, Mukesh Kumar Mahato, Budhan Ram Chamar, Rambabu Mahato, Bhoja Tharu, and Ajay Kumar Rai executed the plan to abduct Ritesh Kumar from 2071/05/06 to 2071/05/19 (a period of 14 days) with the intent to extort ransom. Accordingly, it is established that the defendants committed offences under Sections 1 and 3 of the *Muluki Ain* relating to Abduction and Hostage-Taking. The prosecution, therefore, seeks that the defendants be punished pursuant to Section 3, with additional punishment pursuant Section 7, and that compensation be awarded to the victim pursuant to Section 12. Further, it is prayed that the defendants be sentenced in accordance with Section 9 (a) of the Organized Crime Control Act, 2070. Subsequently, a supplementary charge-sheet was also submitted, stating that the defendant Deependra Thakur was involved in the abduction and hostage-taking of the complainant, Ritesh Kumar and accordingly, since his conduct constitutes an offence under Sections 1 and 3 of the *Muluki Ain* relating to Abduction and Hostage-Taking, the

prosecution sought to punish Deependra Thakur under Section 3 with an additional punishment under Section 7 and provide compensation to the victim Ritesh Kumar pursuant to Section 12. Furthermore, it was prayed that Deependra Thakur be sentenced in pursuant to Section 9 (a) of the Organized Crime Control Act, 2070.

5. Regarding the first question, as to the nature and extent of the defendants' involvement in the offence, it is noted that the defendant Pramod alia Nandu Sah has not filed any appeal petition before this court. The defendants Mukesh Kumar Mahato and Arvind Kumar Mandal had filed appeals before this court but subsequently withdrew their appeal petition. Likewise, the defendants Bhoja Tharu, Budhan Ram Chamar, and Rambabu Mahato have expired the limitation period for submission of appeal. As for the defendant Ajay Kumar Rai, being an Indian national and at large outside the territory of Nepal, the law will take its course upon his arrest within the territory of Nepal and therefore, the court need not have to make any further observation against these defendants.
6. Defendant Sitaram Giri had filed an appeal petition before this court stating that complainant Ritesh Kumar did not mention his name in the initial FIR dated 2071/05/19. Furthermore, in the supplementary FIR dated 2071/06/21, submitted by the complainant, no reference could be made of him either. Repeated attempts to summon the complainant to record his deposition in court were made but he failed to appear and therefore, under these circumstances, the FIRs in question cannot be accorded probative value. To rely on the statements of a co-accused as evidence, such statements must be corroborated by other independent evidence. I, the appellant/defendant, am employed as an Assistant Sub-Inspector in the Armed Police Force of Nepal, and one of the defendants, Surendra Thakur, serves as a peon in the same force. Given our acquaintance and the fact that the amount of NPR 2,000 sent from Birgunj in my name was collected and handed over to him, such isolated acts cannot serve as a basis to establish any criminal liability on my part. Since I and the defendant Surendra Thakur are employed in the same organization and have an acquaintance, and because there was merely telephone communication between us, it would be prejudicial and unjust for the investigators to have coerced him to implicate me, leading to the registration of a false case and imposition of criminal liability, and sentencing. Moreover, the prosecution witnesses in their depositions have disowned and contradicted the documentary evidence in its entirety. Accepting the false and fabricated FIR lodged by the complainant with whom I had no acquaintance or prior interaction, and without considering or analyzing my statements before the competent authority and in court, as well as the disavowal and contradictions of the documentary evidence by the prosecution witnesses and other evidence, and convicting me under Section 3 of the *Muluki Ain* relating to Chapter of Abduction and Hostage-Taking with a sentence of seven (7) years imprisonment and a fine of NPR 50,000, along with an additional two (2) years under Section 7, by the trial court and the High Court's decision to uphold the said decision be set aside and and that I be fully acquitted of all charges.
7. In the incident in which an Indian national Ritesh Kumar was abducted and held captive from 2071/05/06 and subsequently released on 2071/05/19, a report was submitted on 2071/05/21, and further investigation and inquiry were conducted in relation thereto. According to the user details of the mobile numbers used in the incident, 9807261657, 9813571422, and 9841679756, it was found that the mobile number 9841679756 was registered in the name of Sitaram Giri, residing in Pujarichok-2, Palchok, Sindhupalchok District. According to the statement of Surendra Thakur, peon of Armed Police Force and currently under detention, it was revealed that among the users of the mobile phones, Sitaram Giri serving as an Assistant

Sub-Inspector at the Regional Armed Police Force Headquarters, Rudra Bahini, Pathlaiya, Bara was the subscriber of the mobile number in question. Assistant Sub-Inspector Sitaram Giri was also deployed alongside the detained Surendra Thakur in plainclothes for intelligence collection. It was further revealed that Assistant Sub-Inspector Sitaram Giri had prior knowledge of the involvement of Jay Chandra Prasad Sah Kanu in criminal activities. Evidence also indicates that Jay Chandra Prasad Sah Kanu, along with Surendra Thakur, Arvind Mandal, and Sitaram Giri, jointly planned the abduction of the complainant, the Indian national Ritesh Kumar, and discussed holding him captive and demanding ransom of NPR 5,000,000. In view of these facts, it is evident that Assistant Sub-Inspector Sitaram Giri was also involved in the abduction, and therefore needed to be apprehended and investigated. A report to this effect was submitted by D.S.P. Inspector Rudra Raj Kandel on 2071/05/23, indicating that an investigation was likewise initiated against these appellants/defendants. After being released from captivity, the victim lodged an FIR on 2071/05/19, naming the then-arrested Jay Chandra Sah Kanu and Arvind Mandal, as well as the absconding accused Rambabu Mahato, Budhan Ram Chamar, Bhoja Tharu, and Surendra Thakur. During the course of investigation, upon identifying and ascertaining the identities of those subsequently apprehended Surendra Thakur and Sitaram Giri, further inquiry revealed that the abduction and hostage-taking of the victim, followed by the demand for ransom had been carried out with the involvement of the arrested defendants Jay Chandra Prasad Kanu, Arvind Kumar Mandal, Surendra Thakur, and Sitaram Giri, along with the abscondee Bhoja Tharu, Rambabu Mahato, Budhan Ram Chamar, and Pramod alias Nandu Sah, who was then in judicial custody. It was further revealed that on 2071/05/06, the abscondee Rambabu Mahato went to Raxaul, India, and transported the victim from that location; Arvind Kumar Mandal conveyed him to the forest via motorcycle bearing registration number Lu.13 Pa 6535, which has since been recovered; and Jay Chandra Prasad Kanu regularly visited the place where the victim was being held and threatened him, stating that his parents should pay the ransom. Moreover, on the evening of 2071/05/11, Sitaram Giri and Surendra Thakur also arrived at the location, threatened that the victim would be killed if the ransom was not paid, and arranged telephone communication with the victim's father to extort ransom. It is further revealed that the arrested defendants, Jay Chandra Prasad Kanu, Sitaram Giri, Surendra Thakur, Arvind Kumar Mandal as well as the abscondee Budhan Ram Chamar, Bhoja Tharu, Rambabu Mahato, and Pramod alias Nandu Sah, an Indian national incarcerated in Birgunj prison were comprehensively implicated in the incident and accordingly, a supplementary FIR on 2071/06/21 providing these details was submitted by the complainant Ritesh Kumar.

8. Furthermore, while giving his statement before the competent authority, from among the defendants Surendra Thakur stated that he, along with Arvind Kumar Mandal and Jay Chandra Prasad Kanu, had formulated a plan with one Pramod alias Nandu Sah, who was detained in Birgunj Prison, to obtain contact numbers of Indian nationals, contact them and lure them into Nepal on the pretext of providing employment, abduct them, keep them confined as hostages, release them upon receiving the ransom money, and thereafter share the proceeds among themselves; and that A.S.I. Sitaram Giri had also agreed to cooperate, stating that he would support them if any problem arose. After it was ascertained that the informant would come to Nepal for employment, Ram Babu Mahato, Budhan Ram Chamar, and Bhoja Tharu also undertook the responsibility of taking the informant into the forest and hold him hostage; and that Jay Chandra Prasad Kanu, Arvind Kumar Mandal, and I were responsible for demanding and receiving the ransom money, Arvind Kumar Mandal was to arrange a motorcycle and transport the informant up to the forest, and Ram Babu Mahato

was to go to Raxaul and bring the informant along with him; and accordingly, on the date 2071.5.6, as per the plan we successfully abducted the informant. On 2071.5.10, I sent my associates Arvind Kumar Mandal and Ram Babu Mahato to Raxaul and instructed them to demand a ransom of NPR 5,000,000/-; that upon being informed by the associates who were keeping the victim in confinement that they required money for expenses, I requested NPR 2,000/- from Mukesh Kumar Mahato, and the said amount was withdrawn from I.M.E. by A.S.I. Sitaram Giri and handed over to Jay Chandra Prasad Kanu; that upon receiving information that the police had become aware of the victim being kept hostage and were searching for him, the victim was released on the morning of 2071.5.19; and that further, another accused, Pramod alias Nandu Sah, while giving his statement before the competent authority, stated that I, along with Sitaram Giri, Surendra Thakur, and Jay Chandra Prasad Kanu, who are presently under arrest, were involved in the incident of abducting and keeping the informant, Ritesh Kumar, in confinement; and that he also came to know that Arvind Kumar Mandal, abscondee Budhan Ram Chamar, Ram Babu Mahato, Bhoja Tharu, and Ajay Kumar Rai Yadav were likewise involved in the said offence; and that I had instructed Jay Chandra Prasad Kanu in the manner of carrying out the abduction and had also provided him with the contact numbers of Indian nationals. That Sitaram Giri also came to meet me, and I told him to cooperate in the plan; and after the abduction of the informant on 2071/5/6, he stated that the work had been completed and that ransom money was being demanded; and that on 2071/5/19, the informant was released by them, wherein Sitaram Giri was also implicated through this deposition.

9. That in abducting the informant Ritesh Kumar on 2071.5.6 and keeping him confined until 2071/5/19 while demanding ransom money, I, along with Arvind Kumar Mandal, Sitaram Giri, Surendra Thakur, Indian national Pramod alias Nandu Sah currently detained in Birgunj Prison and abscondee defendant Ram Babu Mahato, Budhan Ram Chamar, and Bhoja Tharu, were involved; that the principal planners of the abduction of the informant were Pramod alias Nandu Sah, Surendra Thakur, and Arvind Kumar Mandal, whereas after the abduction, Sitaram Giri, Bhoja Tharu, Budhan Ram Chamar, and Ram Babu Mahato jointly agreed to keep the informant in confinement and to receive and share the ransom money, and accordingly committed the abduction. That while Pramod alias Nandu Sah was in detention, and when I went to meet him, he stated that Indian nationals would be lured to Nepal, abducted, kept in confinement, released upon payment of ransom, and that the ransom proceeds would be shared; he also provided contact numbers of the Indian nationals, and Surendra Thakur agreed to the plan to abduct the Indian nationals. That on 2071/5/10, I sent my associates Arvind Kumar Mandal and Ram Babu Mahato to Raxaul, India, to demand a ransom of NPR 5,000,000/-, and that the accused Arvind Kumar Mandal, following my advice along with Pramod alias Nandu Sah, Jay Chandra Prasad Kanu, and Surendra Thakur abducted the informant Ritesh Kumar and held him hostage. That on 2071/5/6, after Ram Babu Mahato went to Raxaul, India, and escorted the informant, I placed the informant on a motorcycle from Parwanipur Bazaar, with Ram Babu Mahato also seated on the same motorcycle and drove the motorcycle to the location where Bhoja Tharu and Budhan Ram Chamar were waiting. The informant was then taken into the forest and held hostage by my associates. On 2071/5/10, Ram Babu Mahato and I went to Raxaul and, using the informant's mobile phone contacted his father to demand a ransom of NPR 5,000,000/-. The ransom demand was made after discussing the matter with A.S.I. Sitaram Giri. That when the associates who were keeping the informant in confinement required money to meet their expenses, and as we had no funds, I requested NPR 2,000/- from Mukesh Kumar Mahato on

the pretext that a friend's wife was ill, had the amount remitted via I.M.E. in the name of Sitaram Giri wherein the defendant Sitaram Giri has also been implicated by this deposition

10. According to the user detail records of the mobile numbers 9807261657, 9813571422, and 9841679756 used in the incident, it has been obtained that the mobile number 9841679756 was registered in the name of Sitaram Giri, residing at Pujarichok-2, Palchok, Sindhupalchok District; and it appears that Surendra Thakur, a member of the Armed Police currently in custody has disclosed that the user of the said mobile is Sitaram Giri, who is serving in the rank of Assistant Sub-Inspector at the Mid-Western Armed Police Headquarters, Rudra Bahini, Pathlaiya, Bara. The co-accused Arvind Kumar Mandal, Surendra Thakur, Pramod alias Nandu Shah, and Jay Chandra Prasad Kanu, while giving their statements before the competent authority have disclosed that the defendant Sitaram Giri was also involved in the planning and consultation regarding the abduction of the informant Ritesh Kumar and the demand for ransom and was involved in the execution of the said acts. Although the said disclosure has been denied by the defendant Sitaram Giri, it is noted that the defendant Sitaram Giri has not been able to refute these disclosure with factual evidence. Even if the disclosure made by a co-accused, implicating themselves is not taken as conclusive evidence, it cannot be entirely disregarded if other circumstantial and relevant evidence supports such disclosure. Similarly, the co-accused have admitted the fact that when the associates keeping the informant in custody required money for their expenses, an amount of NPR 2,000/- was deposited in the account of the defendant Sitaram Giri, which A.S. I. Sitaram Giri withdrew via I.M.E. and handed over the amount to Jay Chandra Prasad Kanu, and it is evident that the defendant Sitaram Giri has acknowledged the receipt of Rs. 2000. Although the defendant states that he was unaware that the said amount was to be used by other individuals associated with the incident, he has not been able to substantiate with evidence for what purpose the money was given. It is noted that the defendant Pramod alias Nandu Sah, who is described as one of the planners of the incident by the defendants have also been identified by Sitaram Giri and other defendants namely Surendra Thakur, Arvind Kumar Mandal, Jay Chandra Prasad Kanu, and Mukesh Kumar Mahato. Regarding the claim that the defendant Sitaram Giri had no involvement in the abduction, hostage-taking and demanding ransom from the informant Ritesh Kumar, he has not been able to substantiate this claim with factual evidence. On the contrary, the informant Ritesh Kumar identified Sitaram Giri. Ram Babu, the father of the complainant and victim Ritesh Kumar, who lodged a petition concerning the abduction of his son, is an Indian national. Although he did not depose before the court, the First Information Report, the petition, and the annexed documents and evidence collectively substantiate the occurrence of the incident. Consequently, the defendant's assertion that the FIR is false cannot be sustained and is immaterial and irrelevant. The defendant, Sitaram Giri, has not been able to establish any grounds or reasons why the victim-complainant, who had no prior acquaintance with him, would file a false complaint. Although the defendant relied on various precedents and legal principles to assert his innocence in the appeal, such precedents and principles were decided in different factual and contextual circumstances and are therefore not applicable to the present case.

11. Upon consideration of the evidence, it is noted that although the defendant Sitaram Giri has denied commission of the offence, the statements of the co-accused Arvind Kumar Mandal, Surendra Thakur, Pramod alias Nandu Sah, and Jay Chandra Prasad Kanu recorded before the competent authority, admit that an amount of NPR 2,000/- was remitted via I.M.E. in the name of the defendant. Further, the call detail records annexed to the case file, the written complaint of the informant, the identification of the defendant by the victim Ritesh Kumar, the petition submitted by the victim's father, Ram Babu Gupta, and the report of D.S.P.

Rudra Kandel, together with other documentary evidence, collectively establish that the defendant was involved in the abduction of the informant, his confinement, and the demand for ransom. In light of the foregoing, the decision of the High Court with respect to the defendant cannot be interfered with and deemed otherwise.

12. Upon consideration of the appeal filed by the defendant-appellant Jay Chandra Prasad Kanu, the appellant states that there is no clarity as to whether Ajay Kumar Rai is an Indian national. Regarding the confinement of the victim, Ritesh Kumar, he further states that whether the victim's hands and feet were tied, or whether there were any marks, bruises, or impressions on his body has not been ascertained through physical examination. The appellant contends that his voluntary statement given before the court should have been taken as evidence, whereas the impugned decision relied solely on statements recorded during the investigation and police reports, which renders the judgment flawed. He further submits that since the incident occurred outside the territory of Nepal, the case cannot be tried within Nepal; that under established principles of criminal justice, the offence of abduction, confinement, and organized crime requires the existence of certain evidentiary facts, which are absent in this case; and that precedents cited and the hostile testimony of the complainant's witnesses do not establish his guilt. Consequently, the appellant maintains that he is innocent, and seeks to overturn the decision of the High Court convicting him to nine (9) years of imprisonment and imposing a fine of NPR 50,000/-.
13. Although the defendant, Jay Chandra Prasad Sah Kanu, denied the commission of the offence before the court, his statement recorded before the competent investigating authority clearly establishes his involvement in the crime. From the said statement, it is evident that the defendant, acting in concert with Arvind Kumar Mandal, Sitaram Giri, Surendra Thakur, the Indian national Pramod alias Nandu Sah (presently detained at Birgunj Prison), and absconding accused Ram Babu Mahato, Budhan Ram Chamar, and Bhoja Tharu, participated in the abduction of the informant and victim, Ritesh Kumar, during the period from 2071/5/6 to 2071/5/19, and subsequently demanded for ransom. The evidence on record further reveals that the principal conspirators behind the abduction were Pramod alias Nandu Sah, Surendra Thakur, and Arvind Kumar Mandal, whereas Sitaram Giri, Bhoja Tharu, Budhan Ram Chamar, and Ram Babu Mahato agreed to confine the victim after the abduction and to receive and distribute the ransom proceeds. While Pramod alias Nandu Sah was in detention, the appellant met him, during which it was disclosed that Indian nationals would be lured into Nepal, abducted, unlawfully confined, released upon payment of ransom, and that the ransom amount would be shared among the conspirators. Pramod alias Nandu Sah also provided contact numbers of Indian nationals, and Surendra Thakur consented to and joined the plan to abduct them. On 2071/5/10, pursuant to the said conspiracy, the appellant dispatched his associates Arvind Kumar Mandal and Ram Babu Mahato to Raxaul, India, with the specific intent of demanding a ransom of NPR 5,000,000/-. The record further shows that upon receiving information that the police had become aware of the victim's unlawful confinement and had commenced a search operation, the victim Ritesh Kumar was released on the morning of 2071/5/19. It is also established that Pramod alias Nandu Sah identified the defendant Jay Chandra Prasad Sah Kanu as one of the perpetrators. From the defendant's own statement before the investigating authority, it stands conclusively proved that he was actively involved in planning the abduction, arranging the confinement of the victim, and demanding ransom. Notwithstanding his denial before the court, the defendant has failed to adduce any substantive, cogent, or fact-based evidence to discredit or rebut his earlier admission or the prosecution's case. Accordingly, the defendant's statement recorded by the investigating officer, read in conjunction with the complaint and petition filed by the

informant and victim, and the report submitted by Deputy Superintendent of Police Rudra Kandel, collectively and conclusively establish that the defendant committed the offence of abduction and hostage-taking under Section 3. Consequently, the defendant Jay Chandra Prasad Sah Kanu is hereby held guilty of abduction and unlawful confinement under Section 3 and is sentenced to eight (8) years of imprisonment and a fine of NPR 60,000/-. The decision of the trial court is thus partially modified to impose upon the defendant a sentence and fine consistent with those awarded to the other convicted co-accused. In view of the foregoing findings and conclusions, no ground is made out to interfere with the impugned decision of the High Court, and the same is hereby affirmed as lawful, proper, and just.

14. Likewise, upon consideration of the grounds of appeal raised by the appellant/defendant Surendra Thakur, it has been contended that the conviction based solely on the alleged confessional statement purportedly obtained under coercion before the competent authority and on the police report is not justifiable. In criminal cases, the mere filing of charges is not sufficient; the allegations must be established through objective and reliable evidence. The appellant's witness, Dipendra Thakur, has deposed in support of the appellant's statement of denial, whereas the prosecution's witness has given a hostile testimony contradicting the prosecution's claim. It has been contended by the appellant Surendra Thakur that he had no involvement whatsoever in the planning, preparation, inter-gang communications, or the acts carried out by various groups in relation to the present offence. He further asserted that no weapons, ropes, or sticks were recovered from the scene of the incident. Relying on the settled principles of criminal justice, the essential elements and evidentiary requirements necessary to establish the offences of abduction, hostage-taking, and organized crime, the absence of requisite facts and proof, the applicable judicial precedents, and the hostile testimony of the prosecution's witness, the appellant maintained that his innocence stands clearly established. Despite this, the High Court, on the basis of conjectural and unsubstantiated charges, imposed a sentence of nine (9) years' imprisonment and a fine of NPR 50,000/- (Rupees Fifty Thousand only). On these grounds, the appellant has sought the quashing of the impugned judgment of the High Court and prayed for justice by allowing the appeal.
15. Although the defendant Surendra Thakur denied having committed the offence as charged while deposing before the court, his statement recorded before the competent authority clearly reveals his involvement. In the said statement, he admitted that he, together with Arvind Kumar Mandal and Jay Chandra Prasad Kanu, obtained contact numbers of Indian nationals from Pramod alias Nandu Sah, who was then detained at Birgunj Prison, contacted them, lured them to Nepal on the pretext of providing employment, abducted and unlawfully confined them, released them upon receipt of ransom, and shared the ransom proceeds pursuant to a pre-conceived plan. It further transpires from the said statement that A.S.I. Sitaram Giri also agreed to participate in the plan, stating that he would provide support if required. Upon confirmation that the informant would travel to Nepal for employment, Ram Babu Mahato, Budhan Ram Chamar, and Bhoja Tharu undertook the responsibility of taking the victim to a forest area and keeping him in confinement. Likewise, the defendant himself, along with Jay Chandra Prasad Kanu and Arvind Kumar Mandal, assumed responsibility for demanding and collecting the ransom; as per the agreed plan, Arvind Kumar Mandal arranged a motorcycle to transport the victim to the forest, and Ram Babu Mahato went to Raxaul to bring the informant along with him. Accordingly, in execution of the aforesaid conspiracy, the accused persons successfully abducted the informant on 2071/5/6, in

accordance with the plan, as admitted by the defendant in his statement before the competent authority. The record reveals that on 2071/5/10, the defendant dispatched his associates Arvind Kumar Mandal and Ram Babu Mahato to Raxaul with instructions to demand a ransom of NPR 5,000,000/-. It further emerges that, upon being informed that the associates responsible for keeping the victim in confinement required funds for expenses, the defendant arranged for NPR 2,000/- to be obtained from Mukesh Kumar Mahato, which amount was withdrawn through IME by A.S.I. Sitaram Giri and handed over to Jay Chandra Prasad Kanu. The defendant further disclosed that, upon receiving information that the police had become aware of the victim being held hostage and had commenced search operations, the victim was released in the morning of 2071/5/19. The materials on record also indicate that the co-accused, in their respective statements before the competent authority, admitted their own involvement in the offence and implicated the present appellant/defendant as well. Moreover, the victim and informant Ritesh Kumar personally identified the defendant Surendra Thakur, thereby corroborating the prosecution case. The contention raised by the appellant/defendant Surendra Thakur, to the effect that he had no manner of involvement in the abduction and unlawful confinement of the informant Ritesh Kumar, has not been substantiated by any cogent, reliable, or fact-based evidence. On the contrary, the materials on record establish that the defendant consented to and participated in the acts of abducting the informant and victim Ritesh Kumar, unlawfully confining him, and demanding ransom. Such involvement of the defendant is duly supported by his own statement recorded before the competent authority, the incriminating statements made by the co-accused before the investigating officer implicating the present defendant, the identification documents executed by the victim and informant, the written complaint lodged by the informant, and the deposition of D.S.P. Rudra Kandel. Taken together, these evidentiary materials form a consistent and corroborative chain establishing the defendant's participation in the offence. Accordingly, in view of the existence of sufficient grounds, reasons, and evidence confirming that the defendant committed the offence of abduction and hostage-taking, no circumstance is made out to hold otherwise or to interfere with the judgment rendered by the High Court, which is therefore which cannot be deemed otherwise and is therefore, upheld.

16. While considering the case of the defendant Dipendra Thakur, who was acquitted of the charges, it is noted that he denied committing the offence as alleged while deposing before the court. However, in his statement recorded before the competent authority, he stated that his elder brother Surendra Thakur, who was employed as a constable in the Armed Police Force and had been arrested in connection with the present case, had been using his Ncell SIM card. He further stated that approximately two to three months prior to the arrest of his brother Surendra Thakur, A.S.I. Sitaram Giri and Jay Chandra Sah Kanu, among others, had visited his residence, during which he overheard discussions regarding a plan to abduct Indian nationals and demand ransom. Upon questioning his brother about the matter, he was told that they were in the process of planning an abduction and was instructed to remain silent and not disclose the matter to anyone. He accordingly refrained from informing anyone. He further stated that Jay Chandra Prasad Kanu, Sitaram Giri, Arvind Kumar Mandal, Mukesh Kumar Mahato, who were arrested along with his brother, as well as absconding accused Budhan Ram Chamar, Ram Babu Mahato, Bhoja Tharu, and Ajay Kumar Yadav, had jointly formulated a prior plan and, on 2071/5/6, abducted the informant and unlawfully confined him. Notwithstanding the foregoing, the defendant Dipendra Thakur consistently maintained in his statement of denial that he had no involvement whatsoever in the act of abducting or unlawfully confining the informant. On examination of the complaint lodged by the informant Ritesh Kumar, there is no evidence to suggest that the defendant Dipendra Thakur was involved in the abduction and unlawful confinement of the informant.

While the call details attached to the case indicate that the mobile number 9811247477 used in connection with the incident was registered to Dipendra Thakur, the statements recorded before the competent authority by the other accused Surendra Thakur, Pramod alias Nandu Sah, Jay Chandra Prasad Kanu, and Arvind Kumar Mandal do not implicate Dipendra Thakur in the abduction of the informant. Furthermore, the prosecution has failed to produce any cogent, fact-based evidence or material proof to establish that the defendant committed the offence as alleged. In view of the foregoing, there exists no ground to interfere with the judgment of the High Court, which held that the charges against the defendant Dipendra Thakur were not made out, and the same is accordingly upheld.

17. Similarly, upon consideration of the appeal filed by appellant/plaintiff, the Government of Nepal, it appears that the accused had, in a premeditated manner, abducted the informant Ritesh Kumar, transferred him among members of the criminal group, and took him to a forested area to demand ransom. Such acts, in the context of the Organized Crime (Prevention) Act, 2070, fall within the ambit of Sections 2(d) and (g) and Section 3 (3) of the said Act, thereby establishing that the offences committed by the convicted accused constitute organized crime. The High Court, in not imposing additional punishment under Section 9(a) of the Act in respect of the accused whose guilt has been established, is therefore found to be erroneous to that extent. Further, it is evident from the annexed call detail records that the mobile number registered in the name of the acquitted defendant Dipendra Thakur was used in connection with the commission of the offence. It has been established that the user of the mobile number 9811247477, as reflected in the call detail records, was indeed the defendant himself. The said number was also used, with significant purpose, in connection with the abduction of the victim and the collection of ransom. Although the defendant denied involvement while deposing before the court, such denial has not been substantiated by any credible or corroborative evidence. The acquittal granted to him by the High Court, therefore, is contrary to the principles of criminal justice. Accordingly, the Government of Nepal through its appeal petition seeks the quashing of the High Court's decision and the imposition of additional punishment on all the convicted accused under the provisions relating to organized crime, as charged.
18. Turning to the second question of whether the acts committed by the accused constitute organized crime, it becomes necessary to examine and analyze the nature and characteristics of organized crime. A review of the historical origin of organized crime indicates that in the 1860s, the "Mafia Group"<sup>1</sup> emerged in the city of Sicily, Italy, and for a considerable period remained confined within Italy. It appears that the debate concerning crimes committed in an organized manner began only after the group, having affiliations with the Mafia, established the La Cosa Nostra in the United States in the 1920s and became actively engaged in criminal activities. Similarly, the Yakuza in Japan, which developed in the 18th century, as well as the Triads and Black Societies in China, have historically been involved in organized criminal activities<sup>2</sup>. The criminal activities perpetrated by the Italian Mafia, the Japanese Yakuza, the Chinese Triads, and the American La Cosa Nostra were distinct in nature and character from ordinary or conventional crimes. The nature of such crimes is characterized by the involvement of multiple individuals, differentiated roles, secrecy, absence of direct evidence, and a hierarchical structure<sup>3</sup>. Crimes in which individuals remain

<sup>1</sup> Ruggiero V. The Italian Mafia. In M.Natarajan (ED.), International Crime and Justice (2010),p.255

<sup>2</sup> Shore, H, A Brief History of the Underworld and Organized Crime, c.1750 to c. 1950. (2016), p.12

<sup>3</sup> Fijnaut, C,' Searching for organized crime in history', in Letizia Paoli(ed.), The oxford handbook of organized crime, Oxford Handbooks (2014) p.15

organized over a prolonged period have come to be recognized as organized crime. From the mid-19th century, the phenomenon of the Mafia emerged, and by the mid-20th century, organized crime had been recognized as a distinct category of offence within modern criminology.

19. In the 1990s, several countries recognized the need to specifically address the prevention, investigation, and prosecution of organized crime and accordingly enacted specialized legislation. Given that such criminal activities are not confined to any particular locality or nation but often possess an transnational character, and in view of their potential to facilitate serious threats such as terrorism, the United Nations Convention against Transnational Organized Crime, 2000 was adopted to address these challenges. To combat the global threat posed by organized crime, states worldwide have enacted specialized laws and established dedicated institutions to implement these laws, thereby creating a structured legal framework for the prevention and suppression of organized criminal activities. Examining the nature of the offence, it is apparent that the structure of organized crime differs fundamentally from that of conventional crimes. Typically, criminal groups are established with the objective of generating economic gain by meeting the high demand for illegal goods or services, such as narcotics, firearms, prostitution, or human resources. These groups operate in an organized manner, with offenders planning and executing criminal activities according to a structured scheme, giving them the appearance of formal organizations. Organized crime generally exhibits a three-tiered structure: (a) criminal groups or gangs directly engaging in illegal activities; (b) protectors; and (c) institutionalized businesses that support the criminal operations<sup>4</sup>. It is further noted that the definition of organized crime has evolved over time, reflecting changes in its methods, scope, and legal understanding. The United Nations Convention against Transnational Organized Crime, 2000 defines an “organized criminal group” as a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing offences, in order to obtain, directly or indirectly, a financial or other material benefit<sup>5</sup>. Further, the Convention defines a “serious crime” as conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or by a more severe penalty<sup>6</sup>. In accordance with the aforementioned provisions, it is apparent that, for an offence to qualify as organized crime, certain prerequisites must be satisfied. Specifically, there must exist a structurally organized group of at least three persons, maintaining a degree of continuity, and acting collectively to obtain, directly or indirectly, financial or other material benefit. Such an organized criminal group must have committed, at least once, a serious crime, which is defined as an offence punishable by a deprivation of liberty of four years or more, or by a more severe penalty.
20. In the context of India, although no special law has been enacted by the central government specifically to address organized crime, various states have enacted legislation within their territorial jurisdiction to define and prevent organized criminal activities. For instance, the Maharashtra Control of Organized Crime Act, 1999 defines “organized crime” as: “any continuing unlawful activity by an individual, singly or jointly, either as a member of an organized crime syndicate or on behalf of such syndicate, by use of violence, threat of violence, intimidation, coercion, or other unlawful means, with the objective of gaining pecuniary benefits, or obtaining undue economic or other advantage for oneself or any other

4 . Anand Mohan Bhattarai, Transnational Organized Crime: Effective Preventive Measures, Organized Crime: An

Introduction, National Judicial Academy, Harihar Bhavan, 2068, pg. 6

5 United Nations Convention against Transnational organized crime, 16 November 2000, 2225, U.N.T.S. 209, Art.2(a)

6 United Nations Convention against Transnational organized crime, 16 November 2000, 2225, U.N.T.S. 209, Art.2(b)

person, or promoting insurgency<sup>7</sup>.” For the purposes of the definition, in order for an activity to qualify as a “continuing unlawful activity”, the individual must have been involved, either singly or jointly as a member of a criminal group, in offences punishable by imprisonment of three years or more, on at least two occasions within a period of ten years. Further, according to the definition of an “organized crime syndicate”, the group must consist of two or more persons who are associated and organized as a unit for the purpose of committing criminal activities<sup>8</sup>. In the United Kingdom, the Serious Crime Act, 2015 provides a definition of organized crime. Section 45 of the Act criminalizes participation in or assistance with the criminal activities of an organized crime group and defines both “organized crime group” and “organized criminal activity<sup>9</sup>”. Under the UK legal framework, organized crime is defined on the basis of the existence of an “organized crime group” and the commission of criminal activities by such a group. Additionally, the law provides that where an offender is found, on the basis of substantial evidence, to be involved in gang-related activities, a court may issue orders prohibiting the individual from performing certain acts or requiring him to refrain from certain conduct.

21. In Australia, the control and prevention of organized crime is addressed through legislation such as the Proceeds of Crime Act, 2002 and the Australian Crime Commission Act, 2002. The Australian Crime Commission Act, 2002 federally designates certain offences as “Serious and Organized Crime” and provides the following definition: “Serious and organized crime means an offence that involves two or more offenders and substantial planning and organization, the use of sophisticated methods and techniques, which is committed, or is of a kind that is ordinarily committed, in conjunction with other offences of a like kind, and constitutes a serious offence. This includes offences under Subdivision B or C of Division 471, or D or F of Division 474 of the Criminal Code, offences prescribed by the regulations, or offences involving theft, fraud, tax evasion, money laundering, currency violations, illegal drug dealings, illegal gambling, obtaining financial benefit from vice engaged in by others, extortion, violence, bribery or corruption of, or by, an officer of the Commonwealth, a State, or a Territory, perverting the course of justice, bankruptcy and company violations, harboring of criminals, passport forgery, firearms and armament dealings, illegal importation or exportation of fauna, cybercrime, or matters of the same general nature as those listed above; and which is punishable by imprisonment for a period of three years or more, or constitutes a serious offence.” Thus, the Act provides a comprehensive federal definition of organized crime, encompassing both the nature of the offence and the structured involvement of multiple offenders<sup>10</sup>.

<sup>7</sup> The Maharashtra Control of Organized Crime Act, 1999 (Maharashtra Act No. XXX of 1999) S.2(c)

<sup>8</sup> The Maharashtra Control of Organized Crime Act, 1999 (Maharashtra Act No. XXX of 1999) S.2(d)

<sup>9</sup> Serious Crime Act 2015, S.45: Criminal activities’ are activities within subsection (4) or (5) that are carried on with a view to obtaining (directly or indirectly) any gain or benefit activities are within this subsection if,

- a) They are carried on in an England and Wales, and
- b) They constitute an offence in England and Wales punishable on conviction on indictment with imprisonment for a term of 7 years or more

Activities are within this subsection if

- a) They are carried on outside England and Wales,
- b) They constitute an offence under the law in force of the country where they are carried on, and
- c) They would constitute an offence in England and Wales of the kind mentioned in subsection 4(b) if the activities were carried on in England and Wales;

<sup>10</sup> Australian Crime Commission Act 2002, S.4

22. In the context of Nepal, the Organized Crime (Prevention) Ordinance, 2069, was promulgated on 2069/11/04 (corresponding to 15 February, 2013) which was repealed and replaced by the Organized Crime (Prevention) Act, 2070, that was subsequently enacted on 2070/12/12 (corresponding to 26 March, 2014). Under the Organized Crime (Prevention) Act, 2070<sup>11</sup>, a person is deemed to have committed organized crime if he or she, either for the benefit of a criminal group, under the direction of a criminal group, on behalf of a criminal group, in collusion with a criminal group, or as a founding member or member of a criminal group, intentionally commits a serious offence. The Act thus provides a clear definition of organized crime within the Nepalese legal framework. For the purposes of the definition provided in Section 3 (2) of the Act, the following offences are considered serious crimes: (a) offences punishable under prevailing law by imprisonment of more than three years; (b) offences specified under Paragraph 3 of the Act; and (c) offences which, under prevailing law, constitute corruption, money laundering, or financial investment in terrorist activities<sup>12</sup>. With respect to the prevention of organized criminal activities, Nepal ratified the United Nations Convention against Transnational Organized Crime, 2000, in 2011, thereby incorporating international standards and provisions into the Nepalese legal system. The Convention recognizes the following as criminal acts: (a) participation in an organized criminal group<sup>13</sup>; (b) criminal acquisition of proceeds<sup>14</sup>; (c) corruption<sup>15</sup>; and (d) obstruction of justice<sup>16</sup>. Further, the Convention defines an organized criminal group as a structured group of three or more persons, existing for a period of time and with a common purpose, to commit or facilitate the commission of one or more serious offences, with the expectation of obtaining financial or other material benefits<sup>17</sup>. In addition to these offences, any conduct of a domestic nature, punishable by a maximum deprivation of liberty of four years or more, in which an organized criminal group is involved, also falls within the ambit of organized crime<sup>18</sup>. Legal provisions exist to hold persons involved in such offences accountable under civil, criminal, and administrative law. Given that organized crime often involves government officials and holders of public office, specific measures regarding administrative liability have also been provided. The framework further recognizes that the seriousness of the offence must guide the determination of punishment, and that prosecutorial authorities possess discretionary powers in matters of prosecution. Such powers are intended to facilitate the prevention and suppression of organized crime, ensuring that the legal system is equipped to address its complex and multifaceted nature<sup>19</sup>.
23. A review of decisions of this court indicates, in the case of Dinesh Ale, the court has propounded that “not all accused may have an equal role in organized crime. Each member performs their respective function, and the accused, remaining in contact with one another, commit the offence in a premeditated and planned manner. The nature of organized crime differs from ordinary crime. In organized crime, which is executed with extensive planning and preparation, multiple persons perform distinct roles. The separate acts of individual

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<sup>11</sup> Section 3 (2) of Organized Crime (Prevention) Act

<sup>12</sup> Section 3 (3) of Organized Crime (Prevention) Act.

<sup>13</sup> UNTOC, Art.5

<sup>14</sup> UNTOC, Art.6

<sup>15</sup> UNTOC, Art.7

<sup>16</sup> UNTOC, Art.23

<sup>17</sup> UNTOC, Art. 2 (a)

<sup>18</sup> UNTOC, Art 2 (b)

<sup>19</sup> UNTOC, Art 11(2)

members, occurring at different levels, collectively constitute the commission of a single organized criminal offence<sup>20</sup>.” Further, in the case of Charles Sobhraj, it has been observed that: “given the inherent difficulty in obtaining direct evidence in organized crime, where criminal schemes are meticulously planned and executed, the prosecution must rely on indirect and circumstantial evidence to establish the commission of the offence. Upon such evidence, if the accused is found to have participated in the organized criminal activity, the accused should be held liable and subjected to appropriate punishment<sup>21</sup>.” This court, in the case of Raju Lama, observed that the trafficking and distribution of narcotic drugs cannot be accomplished solely through the effort of a single individual. Rather, it is carried out by an organized group, including the collector, purchaser, transporter, and distributor. Consequently, the fact as to whose possession the narcotics were seized from is immaterial. The court noted that offences related to narcotics can also constitute organized crime. With regard to offences of money laundering, which fall within the principal crimes of organized crime, this court has held that: “money laundering is not an independent offence in itself, but constitutes a concomitant offence, arising as a co-product of the principal offence. The nature of the offence and the burden of proof must be assessed in that context.” The offence of money laundering falls within this category when proceeds derived from a principal offence are concealed and subsequently made to appear lawful. It constitutes a multi-dimensional financial crime. Since the principal offence is itself concealed, the assessment does not focus on whether the offender actually committed the principal offence or whether there was intent to commit it. Rather, where assets of an unnatural or disproportionate nature are identified, the burden lies upon the accused to prove the legitimacy of the source of such assets<sup>22</sup>. Organized crime is characterized by a purposeful intent to achieve economic or other objectives, or to adversely affect an individual, group, or even a state, through malicious and deliberate criminal conduct. It involves a planned modus operandi, structured framework, and operational network. In the context of organized crime, individual offences are not to be viewed in isolation; rather, the focus must be on the group as an integrated entity working collectively to perpetrate the crime<sup>23</sup>.

24. In the context of organized crime, the preceding sections have discussed various conceptual aspects, definitions, comparative legal frameworks, international preventive and suppressive measures, as well as the judicial analysis of this court. It is observed that, due to developments in science, technology, international trade, and increased cross-border human mobility, the forms and manifestations of organized crime are continually evolving in the global arena. While organized crime has long been associated primarily with the pursuit of economic gain, it is now evident that bilateral and multilateral relations between states, and the underlying factors of religion, culture, and social dynamics, have introduced non-economic objectives into organized criminal activities. Traditionally, the definition of organized crime emphasized not merely the individual offences, but rather the organization of groups established to commit criminal acts. Traditionally, for an activity to qualify as organized crime, it was required that there be at least three persons and that a division of labor exist among them. However, in contemporary times, the emphasis has shifted from the mere organizational structure to the nature of the criminal activity itself. Members of a criminal group may operate under a loose nexus rather than strict hierarchical discipline,

<sup>20</sup> Arjun Lamsal alias Dinesh Ale vs. Nepal Government, Nepal Government vs. Masud Ale et.al., Decision No. 10668

<sup>21</sup> Charles Gurumukh Shobraj vs. Nepal Government, Decision No. 8378

<sup>22</sup> Madhav Kumra Bhagat vs. Nepal Government, Decision No. 9708

<sup>23</sup> Arjun Lamsal alias Dinesh Ale vs. Nepal Government, Nepal Government vs. Masud Ale et.al., Decision No. 10668

and the purpose of the criminal act has become the key consideration. Such objectives may extend beyond economic gain to include attaining notoriety, instilling fear in society, or pursuing collective revenge, among others.

25. In cases of organized crime, the burden of proof lies with the prosecution. Accordingly, the prosecuting authorities must appropriately utilize this procedural framework and ensure that there is sufficient evidence to establish the involvement of each accused in the organized criminal activity before proceeding with prosecution. In cases of organized crime that have reached the stage of prosecution and trial, the evaluation of evidence must be conducted differently. It becomes necessary to determine whether the offense constitutes a collective crime or an organized crime. The provisions of the prevailing law treat organized and collective crimes in a nearly similar manner; therefore, investigation, prosecution, and adjudication in such matters must be approached with particular sensitivity. For an offence to qualify as organized crime, the following preconditions must be satisfied: the existence of a structurally organized criminal group comprising at least three persons, with continuity and permanence; participation in more than one offence; a sequence of criminal activities, reflecting a sustained pattern; the presence of an organizational structure, including a group name or identifying symbol; specialized modus operandi and planned activities; and The collective commission of at least one serious offence, punishable by imprisonment of three years or more, or by a more severe penalty, undertaken either directly or indirectly for the purpose of obtaining financial or other material benefits. These factors constitute the essential criteria for establishing the commission of organized crime. In cases of abduction and unlawful confinement, where the punishment under Section 7 of the relevant statute has already been imposed on members of the group, the imposition of additional sentences for organized crime must be carefully considered. When there is no definitional distinction between offences committed collectively or in an organized manner, the criminal justice system must give serious consideration to the impact on the personal liberty of the accused or defendants, including in cases involving loosely associated groups or offences committed collectively<sup>24</sup>. The potential infringement on individual freedom in such circumstances requires careful balancing under the principles and safeguards of the criminal justice system. **“Organized crime”** is not a specific or standalone offense; rather, it refers to any form of crime that is, by its nature, grave and serious. The organizational structure of the individuals involved in such crime may not be uniform. There may or may not be a clearly visible hierarchy with defined rights and duties. Organized criminals may operate within a single country or through networks spread across multiple countries. What is essential to examine is whether the group is not merely a casual gathering or an ad hoc assembly formed for the commission of a particular offense, but rather a group of organized criminals. The mere involvement of three or more persons in the commission of an offense does not, by itself, conclusively establish the existence of an organized group. In order to establish that an

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<sup>24</sup> For further reference on matters relating to restrictions on personal liberty, attachment of property, bail for the purpose of preventing flight in organized crime, and guidance on sentencing for organized crime, see the following authorities: United States v. Shamah, 624 F.3d 449, 454-55 (7th Cir. 2010); Blockburger v. United States, 284 U.S. 299, 304 (1932); United States v. Bajakajian, 524 U.S. 321, 334-37 (1998); Savoie and Others v. National Director of Public Prosecutions and Another (CCT 71/13) [2014] ZACC 5; National Director of Public Prosecutions v. Botha and Another (CCT280/18); State of Maharashtra v. Bharat Shanti Lal Shah & Ors. [2008] INSC 1478 (1 September 2008); Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra and Another, (2005) 5 SCC 294. General Guidelines relating to determination of punishment for offences under Organized Crimes (Prevention) Act, have been approved by the Full Court of the Supreme Court on 2075/11/8 (corresponding to 20 February, 2019)

offense constitutes organized crime, it is necessary to examine whether there exists a planned design or scheme, either by an organized group or even by a loosely connected group (*loose nexus*). In crimes of this nature, factors such as whether the act was pre-planned, whether there is identifiable leadership within the group, whether any government official was involved or secrecy was maintained, whether protection or patronage of influential persons existed, and whether the group acted for collective benefit rather than individual gain, must be carefully assessed. Where a group formed for the purpose of committing crime operates for the interest of the group itself, the offense committed by such group ought to be treated as organized crime. Furthermore, for an offense to qualify as organized crime, the existence of a relatively permanent and institutionalized structure formed specifically for the commission of crimes must also be discernible. The mere fact that a few individuals come together temporarily, or form a group for a short duration or for obtaining a one-time benefit, and commit an offense does not justify categorizing such conduct as organized crime. Treating such persons as offenders of organized crime solely on that basis would not appear to be just or appropriate.

26. From the legal framework of the Organized Crime Control Act, 2070, it does not appear that the mere involvement of three or more persons in the commission of an offense automatically establishes the offense of organized crime. For an offense to qualify as organized crime, it must be proved by cogent and reliable evidence that a group of three or more persons, associated within a permanent structure established for criminal, economic, or other material gain has knowingly committed a serious offense under the direction of, on behalf of, in association with, or as a founding member or member of a criminal group. In the present case, the prosecution has also invoked charges under organized crime, on the basis that more than two accused were allegedly involved in abducting and unlawfully confining the victim. In this context, however, the prosecution has not been able to present concrete and substantial evidence to establish that the accused had created a permanent organized structure and, through that structure, acted for the benefit of the criminal group, under its direction, on its behalf, or in concert with the group, to abduct and confine the victim, Ritesh Kumar, and demand ransom. Further, aside from the involvement of three or more persons, the prosecution has not been able to present objective evidence establishing the additional elements necessary for organized crime, such as institutional continuity, hierarchical organizational structure, sequential criminal activities, secretive and limited membership, and coordination or networking with national or international organizations. In the absence of such evidence, the High Court correctly held that the accused cannot be subjected to additional punishment under Section 9 (a) of the Organized Crime (Prevention) Act, 2070, and there is no ground to interfere and deem that decision otherwise.
27. Thus, based on the complaint filed by the victim, the report submitted by DSP Rudra Raj Kandel, the victim's written statements, call detail records of the phone used in the incident, confessional statements made by the accused before the investigating officer implicating one another, the victim's identification of the accused, and confessional documents exchanged among the accused themselves, it is established that the accused—Jay Chandra Prasad Kanu, Pramod alias Nandu Sah, Arvind Kumar Mandal, Ram Babu Mahato, Sitaram Giri, Mukesh Kumar Mahato, Surendra Thakur, Bhoja Tharu, and Budhan Ram Chamar—committed the offence of abduction and unlawful confinement of the victim. However, there is no evidence to substantiate that the accused committed an offence under the Organized Crime (Prevention) Act, 2070. In the absence of such proof, there is no ground to interfere with the decision of the High Court, Janakpur, Birgunj Bench, and the same is hereby upheld.

28. Accordingly, based on the aforementioned facts, grounds, and evidence, it is held that among the accused, Dipendra Thakur is acquitted of the charges. Regarding the accused Sitaram Giri, Mukesh Kumar Mahato, Surendra Thakur, Bhoja Tharu, and Budhan Ram Chamar, each is sentenced to seven (7) years of imprisonment and a fine of NPR 50,000 under Section 3 of the offence of abduction and unlawful confinement, with an additional two (2) years of imprisonment under Section 7 of the Act. For the accused Jay Chandra Prasad Kanu, Pramod alias Nandu Sah, Arvind Kumar Mandal, and Ram Babu Mahato, each is sentenced to eight (8) years of imprisonment and a fine of NPR 60,000 under Section 3 of the offence of abduction and unlawful confinement, with an additional two (2) years of imprisonment under Section 7 of the Act. Upon reconsideration, and in view of the use of A.V. 205 in relation to the accused Ram Babu Mahato, it is deemed appropriate that the accused Jay Chandra Prasad Kanu, Pramod alias Nandu Sah, Arvind Kumar Mandal, and Ram Babu Mahato receive uniform sentences. Accordingly, each is sentenced to seven (7) years of imprisonment and a fine of NPR 50,000 under Section 3 of the offence of abduction and unlawful confinement, with an additional two (2) years of imprisonment under Section 7 of the Act. Furthermore, the accused Jay Chandra Prasad Kanu, Sitaram Giri, Surendra Thakur, Arvind Kumar Mandal, Mukesh Kumar Mahato, Budhan Ram Chamar, Ram Babu Mahato, Bhoja Tharu, and Pramod alias Nandu Sah are jointly liable to pay the victim Ritesh Kumar NPR 9,100 as compensation. Since the decision of the High Court, Janakpur, Birgunj Bench, dated 2074/12/20, is consistent with these findings, it is hereby upheld. The appeal of the accused seeking acquittal and the acquittal of Dipendra Thakur stands confirmed, while the other accused are sentenced only for the offence of abduction and unlawful confinement. The appeal of the Government of Nepal seeking additional punishment for organized crime cannot be entertained.
29. It is hereby ordered to provide a copy of the decision to the Office of the Attorney General and to upload the decision in the electronic system of this court and to deregister the case from the case diary and submit it to the record section.

### **Concurring with the above Opinion**

Honorable Justice Ishwor Prasad Khatiwada

Bench Officer : Beshraj Koirala/Laxmi Rana

Computer Operator : Mandira Ranabhat

Dated: Year 2080 of the Month of Ashar Date 25 Day 2

(Corresponding to Year 2023 of the Month of July Date 10 Day 2)