

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.809 of 2014

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Tamanna Arjoo wife of Late Saiyad Arjoo, resident of Mohalla- Chhajju (Badi Adan), Police Station- Bihar, District- Nalanda

.... Petitioner/s

Versus

1. The State of Bihar through the Director General of Police, Government of Bihar, Patna
2. The Superintendent of Police, Nalanda at Biharsharif
3. The Deputy Superintendent of Police, Biharsharif, Nalanda
4. The S.H.O. Bihar Police Station, Nalanda at Biharsharif
5. Raju Mian son of Late Manjoor, resident of Mohalla- Konasarai, Nawab Toli, Police Station- Laheri, District- Nalanda
6. Nadim Zafar @ Gulrej
7. Kamar Rijbi
8. Afsar Nadim

All sons of Late Kamrul

All are resident of Mohalla- Chhajju (Telanpar), Police Station- Bihar, District- Nalanda

9. Dinesh Mahto son of Chandeshwar Mahto, resident of village- Makanpur, Police Station- Noorsarai, District- Nalanda
10. Md. Jahangir son of Late Asgar
11. Arjoo son of Sarfaraj

Both are residents of Mohalla- Chhajju (Telabpar), Police Station- Bihar, District- Nalanda

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Arun Kumar, Advocate

For the Respondent/s : Mr. Mr. Dhurendra Kumar, A.C. to G.P.20

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL ORDER

3 03-04-2015 This application has been filed under Articles 226 and 227 of the Constitution of India for directing the respondents to immediately arrest the accused persons named in the Bihar Police Station Case No.47 of 2014 registered under section 364 of the Indian Penal Code.

It has been contended that despite lapse of over one year

from the date of institution of the FIR, the police are sitting tight over the matter and taking no action against the accused persons named in the FIR.

On the other hand, learned counsel for the State has submitted that it is true that FIR has been lodged on 28th January, 2014 on the report given by Md. Tanvir Alam @ Guddu full brother of the victim Sayeed Arzoo Tanzeem but in course of investigation and supervision the police found the allegation doubtful as no positive evidence on the point of kidnapping of the victim Sayeed Arzoo Tanzeem transpired. The involvement of the accused persons in the aforesaid case could also be not substantiated. Hence, the police are still continuing the investigation of the case and in case some materials would transpire against the accused persons certainly an appropriate action would be taken against them.

In view of the submissions made on behalf of the State, I am of the considered opinion that no direction can be issued by this Court to arrest the accused persons named in the first information report simply for the reason that though section 41 of the Code of Criminal Procedure confers discretion upon the police to arrest a person suspected to be involved in commission of a cognizable offence but such discretion is always to be exercised

with due care and caution and it is not expected from the police that immediately after instituting an FIR, they would mechanically arrest a person named in the FIR. An arrest in a criminal case is an encroachment upon personal liberty of a person and it should be made only if it is necessary in the interest of justice and in accordance with law.

In that view of the matter, I find no merit in the application. It is, accordingly, dismissed.

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Md.S./-

(Ashwani Kumar Singh, J)

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