

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.147 of 2014

Arising Out of PS.Case No. -null Year- null Thana -null District- NALANDA (BIHARSHARIFF)

Kaushlendra Singh, son of Sri Yogeshwar Prasad Singh, resident of Mohalla-Narsaliganj, P.S.-Bihar, District-Nalanda. Petitioner

Versus

1. The State of Bihar, through the Chief Secretary, Govt. of Bihar.
2. The Director General of Police-cum-Inspector General of Police, Bihar, Patna.
3. The Inspector General of Police, Bihar, Patna Zone, Patna.
4. The Deputy Inspector General of Police, Patna, District-Patna.
5. The Superintendent of Police, Nalanda at Biharsharif.
6. The Station House Officer, Bihar Police Station, District-Nalanda at Biharsharif.
7. Lallu Kumar @ Satyendra Kumar, Son of Late Ram Prasad Mahto, resident of Village-Kewti, P.S.-Kewti (Sheikhpura), District-Sheikhpura.
8. Chandan Kumar.
9. Bandan Kumar.
Both Sons of Subhashchandra Bose @ Munna. Both resident of Village-Fud Bigha, Manorampur, P.S.-Asthawan, District-Nalanda.
10. Munchun Kumar, son of Sujit Prasad @ Nabu, resident of village-Utrathu, P.S.-Bind, District-Nalanda.
11. Balmukund @ Balia, son of Baleshwar Prasad, resident of village-Kakayan, P.S.-Ghoswari, District-Nalanda.
12. Tinku Kumar, Son of Ashok Kumar @ Mukhiya, resident of village-Pachetna, P.S. & Post-Asthawan, District-Nalanda.
13. Manu @ Abhimanyu, son of Shrawan Mahto, resident of village-Alipur, Post-Korari, P.S.-Bind, District-Nalanda.

.... Respondents

Appearance :

For the Petitioner/s : Mr. Dinu Kumar, Advocate
Mr. Shiv Kumar Prabhakar, Advodcate
Mr. Rajesh Kumar Singh, Advocate
For the Respondent/s : Mr. P.K. Verma, AC to SC-26

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 12-03-2015

Heard learned counsel for the petitioner and learned counsel for the State.

In compliance with the order dated 23.2.2015, learned counsel for the State has produced the case diary. I have perused the same. Let the case diary be returned to the learned counsel for the State.

This application has been filed by the petitioner for commanding the respondents to complete the investigation of Bihar P.S. Case No. 447 of 2013 dated 5.11.2013 registered under Sections 302 read with 34, 201 and 120B of the Indian Penal Code and further for commanding the respondents to give direction to the S.H.O. Bihar Police Station to take the FIR named accused persons and others unknown who are involved in committing murder of son of the petitioner into custody.

Learned counsel for the petitioner has submitted that the son of the petitioner was found missing since 4.11.2013 and, as such, a missing person report was made to the Station House Officer, Bihar, Nalanda on 4.11.2013 pursuant to which Station Diary Entry No. 207 of 2013 was registered. However, on the very



next day, the dead body of the son of the petitioner was found pursuant to which a written report was filed in the Bihar Police Station by the petitioner on 5.11.2013. Accordingly, Bihar P.S. Case No. 447 of 2013 was registered under Sections 302 read with 34, 201 and 120B of the Indian Penal Code against seven persons named in the FIR and others unknown. In course of investigation, the police apprehended one of the named accused persons, namely, Balmukund @ Balia and a report under Section 173 of the Code of Criminal Procedure was filed against him on 3.3.2014 but investigation of the case was kept open as against other accused persons.

Learned counsel for the petitioner has submitted that after 3.3.2014, the police have made no efforts to apprehend the accused persons involved in the crime and there is no progress in investigation of the case thereafter. The accused persons named in the FIR are roaming free in collusion with the police. He has further submitted that the manner in which investigation is being conducted casts a serious doubt on the bona fide of the investigation.

Per contra, learned counsel for the State has submitted that the investigation of the case is being conducted in a fair and impartial manner. There is no slackness on the part of the investigating agency. He has submitted that efforts are being made

to find out the truth. He concedes that there is some delay in investigation of the case but it is not deliberate.

Be that as it may, Section 41 of the Code of Criminal Procedure gives discretion to the police to arrest a person suspected to be involved in a cognizable offence. However, such discretion is to be exercised with great caution. The investigating agency is not expected to act mechanically in each and every case and arrest the accused named in the FIR immediately after an FIR is instituted. It depends on several factors which unfurl in course of investigation. Hence, so far as the prayer of the petitioner for commanding the respondents to give direction to the S.H.O. Bihar Police Station to take the accused persons named in the FIR into custody is concerned, the same cannot be allowed as the matter is still under investigation. However, so far as the other prayer of the petitioner is for commanding the respondents to complete the investigation of the police case promptly is concerned, the same seems to be justified.

True, to hold investigation into a cognizable offence is the statutory right of police but the police cannot sit tight over the matter of investigation for an indefinite period. A prompt and sensitive investigating agency is indispensable to the criminal justice system. In a serious case of murder, the investigation of the

case cannot be lingered for over one year.

Considering the facts and circumstances of the case, I direct the Superintendent of Police, Bihar, Nalanda to personally look into the matter and ensure that the investigation of the case is carried out promptly and on conclusion of investigation a report under Section 173 of the Code of Criminal Procedure is filed before the Magistrate concerned without any delay.

It is made clear that it would be open to the investigating agency to submit such report as it deems fit and proper in the facts and circumstances of the case depending upon the outcome of investigation.

With these directions and observations, the application is disposed of.

Registry is directed to communicate a copy of the order to the Superintendent of Police, Bihar, Nalanda through Fax.

(Ashwani Kumar Singh, J.)

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