

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.546 of 2014

=====

1. Jayesh Narendra Kapadia S/o Narendra Karshandas Kapadia Sales Manager of Parshwanath Jewellers Pvt. Ltd. Resident of 17, Gautam Apartment Kastur Park, Opposite Datta Temple, Shimpoli Road, P.S.- Boriwali West Station, Town AND District- Mumbai, Maharastra

.... Petitioner/s

Versus

1. The State of Bihar Through The Principal Secretary Department of Home, Govt. of Bihar, Patna
2. The Director General of Police Govt. of Biah, Patna
3. The Senior Superintendent of Police Patna
4. The Officer-In-Charge Kadamkuan, P.S., District- Patna

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Madhu Prasun

For the Respondent/s : Mr. S.Pandey(Gp-21)

=====

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL ORDER

3 09-03-2015

The petitioner is informant of Kadamkuan P.S. Case No. 306 of 2013 registered for the offences punishable under section 404, 406, 420 and 379 of the Indian Penal Code. This application under Articles 226 and 227 of the Constitution of India has been filed by the petitioner seeking two reliefs. They are:- (i) for issuance of a direction to the respondents concerned to ensure the of the arrest of the accused named in the aforesaid police case ; and (ii) for issuance of an appropriate direction to the respondents to get the case investigated by the C.I.D. as the case relates to serious offences committed by the accused and his associates. Initially a complaint case was filed which was referred to the police under section 156(3) of the Code of Criminal Procedure for investigation pursuant to which the aforesaid police case was registered and investigation was taken up.

According to the first information report the petitioner is the sales Manager of Parshwanath Jewellers Pvt. Ltd, a company incorporated



under the Indian Companies Act, 1956. The head office of the company is situated at Mumbai and the petitioner is in charge of sales for the territory of Bihar. The said company deals into imitation jewellery and had been in business relations with the two firms owned by the accused Anit Das for the last two years. The accused Anit Das used to take articles on credit from the company and as per terms and condition after sales of goods used to make payment to the company. The total outstanding dues of the company is Rs. 4,78,957 and Rs. 10,72,468/- respectively against the two firms of the petitioner namely Krishna Sales and Shivshakti Jewelers.

On the basis of the aforesaid allegations made in the complaint lodged by the petitioner the police case was registered.

Learned counsel for the petitioner submits that though the first information report was registered on 08.06.2013 but till date no effort has been made to arrest the accused. According to him there is no progress in the investigation of the case. The investigation of the case is tainted and the petitioner has no hope of fair and impartial investigation by the local police.

Learned counsel for the State has contested the matter. He has submitted that the allegation being made by the petitioner regarding bonafide of investigation has no substance.

Be that as it may, though the police have discretion to arrest an accused suspected to be involved in a cognizable offence but such discretion has to be exercised with care and caution. The desirability of arrest of an accused in course of investigation depends on several facts which unfurls in course of investigation . At this stage the court has no role to play. Hence I find no merit in respect of prayer no.1 of the petitioner.

So far as the prayer of the petitioner in respect of transfer

of investigation of the case to the C.I.D. is concerned , in my considered opinion this extra ordinary power of transfer of investigation to any other agency than the local police has to be exercised under Article 226 of the Constitution of India only and in exceptional situation where it become necessary to provide credibility and instill confidence in investigation or where the incidence may have national or international ramification. The present case is certainly not a case of that nature. In that view of the matter, this application being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J)

M.Rahman/-

U		T	
---	--	---	--