

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.838 of 2014

Arising Out of PS.Case No. -100 Year- 2014 Thana –Rasulpur(Kahalgaon) District- BHAGALPUR

1. Deep Narayan Paswan Son of Late Yamuna Paswan, resident of village- Ekchari (Purab Tola), P.S.- Rasatpur (Kahalgaon), District- Bhagalpur

.... Petitioner/s

Versus

1. The State of Bihar
2. The Director General of Police, Bihar, Patna
3. The Deputy Inspector of Police, Bhagalpur
4. The Senior Superintendent of Police, Bhagalpur
5. The Deputy Superintendent of Police, Bhagalpur
6. The Station House Officer Rosalpur (Kahlagaon), Bhagalpur
7. Raushan Kumar son of Deep Narayan Paswan, village- Ekchari (Purab Tola), P.S.- Rasatpur (Kahalgaon), District- Bhagalpur

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Sunil Kumar Singh, Adv.
Mr. Rajesh Kumar Pandey, Adv.

For the Respondent/s : Mr. Ratna Deep Prasad, A.C. to AAG-XI

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 17-03-2015

The petitioner is informant of Rasulpur (Kahalgaon)

P.S.Case No.100 of 2014 initially registered under sections 366-A and 506 read with 34 of the Indian Penal Code but subsequently section 302 of the Indian Penal Code was also added to the F.I.R.

By filing this application under Articles 226 and 227 of the Constitution of India, the petitioner has sought for a direction from this Court to be issued to the respondents to immediately arrest the F.I.R. named accused Roshan Kumar Paswan in the aforesaid police case.

It has been contended that despite lapse of sufficient time since the date of institution of the F.I.R., the police have failed to arrest the aforesaid Roshan Kumar Paswan.

Learned counsel for the State has submitted that in course of investigation the police have found the allegation to be true against one Harendra Paswan and Kundan Paswan and they were arrested and charge sheet has already been submitted against them. So far as the F.I.R. named accused Roshan Kumar Paswan is concerned, the matter is still under investigation and the police are verifying as to whether he was involved in the offence or not. It has also been submitted on behalf of the State that till date no concrete evidence could be found against accused Roshan Kumar Paswan and as such he has not been arrested by the police so far.

In my considered opinion, the application is misconceived. It is true that the police have power and discretion to arrest an accused under section 41 of the Code of Criminal Procedure, but such discretion has to be exercised with great care and caution. The police are not expected to act mechanically in each and every case and arrest the accused immediately after an F.I.R. is instituted. It is the duty of the police to find out the veracity of the allegations made in the F.I.R. in course of investigation. It would appear that till date no material has been found in this case against the F.I.R. named

accused Roshan Kumar Paswan and in that circumstance, it will be highly improper for this Court to issue any direction to arrest him.

Accordingly, the application, being devoid of any merit, is dismissed

(Ashwani Kumar Singh, J)

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