

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.82 of 2014

Arising Out of PS.Case No. -367 Year- 2013 Thana -Gardanibagh District- PATNA

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1. Ganga Kharwar S/O Late Sita Ram Kharwar Resident Of Village- Turki, P.S.- Kudra, District- Kaimur (Bhabhua). At Present Resident Of Mohalla- Madhurikunj, Gardanibagh, P.S.- Gardanibagh, District- Patna

.... Petitioner/s

Versus

1. The State Of Bihar Through The Principal Secretary Department Of Home, Government of Bihar, Patna
2. The Director General of Police, Bihar, Patna
3. The Inspector General of Police, Patna Range, Patna
4. The Senior Superintendent of Police, Patna
5. The Superintendent of Police City, Patna
6. The Deputy Superintendent of Police, Patna, Sadar, Patna
7. The Inspector of Police, Gardanibagh, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shiopujan Singh, Adv.
Mr. Mukesh Kumar Singh, Adv.
For the Respondent/s : Mr. Kinkar Kumar, SC 27

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 10-02-2015

The petitioner is informant of Gardanibagh P.S.Case Case No. 367 of 2013 dated 6th November, 2013 registered for the offence punishable under section 364 of the Indian Penal Code. The said case relates to the fact that the minor son of the petitioner went missing on 21st September, 2013. The petitioner being tenant in the house of one Pappu Sah has suspected in the F.I.R. that Pappu Sah, his nephew Shani Kumar and his sister Anjali Devi might be involved in kidnapping of son of the petitioner.

By filing the present application under Articles 226 and 227 of the Constitution of India, the petitioner has made the following prayer in paragraph 1 of the application :-

- “1. That the petitioner seeks indulgence of this Hon’ble Court for the following reliefs :-
- I. For issuance of appropriate writ in the nature of mandamus directing the respondents specially respondent No. 5 and 7 to take action in Gardanibagh P.S. Case No. 367/2013 which has been lodged by the petitioner against the named accused Pappu Sah, Sani kumar and Anjali Devi and other persons registered under section 364 of Indian Penal Code.
 - II. For further directing the respondent no.5 and 7 to proceed on the F.I.R. which has been lodged by the petitioner and do investigation and take necessary action on the accused persons.
 - III. For any other relief/reliefs for which petitioner is found entitled to with the facts and circumstances of the case.”

Learned counsel for the petitioner has submitted that the investigating agency has not been able to trace the missing son of the petitioner till date and they have not taken any step to arrest the accused persons named in the F.I.R. He has further submitted that the petitioner has submitted several representations to different authorities of the State but to no effect. He has contended that a direction be issued by this Court to arrest the accused persons named in the F.I.R.

On the other hand, learned counsel for the State has submitted that the Investigating Officer of the case has investigated



the case on all points. In course of investigation it has been revealed that the petitioner has solemnized two marriages and the missing boy is son from his first wife, who lives in village and the petitioner used to live at Patna along with his second wife and his missing son. It has also been revealed that the second wife of the petitioner used to assault and torture the missing boy. On 21st September, 2013 the missing boy had gone to the shop of the petitioner and when the petitioner asked him whether he had his meal, the boy replied that he had not eaten. Upon this, the petitioner told him to go home and have his meal. Thereafter, the missing boy went on the tea shop of one Jagdish and borrowed Rs.10/- and went towards east. In course of investigation, the statement of the witnesses including the said Jagdish has been recorded and Jagdish has stated in his statement recorded under section 161(3) of the Code of Criminal Procedure that on 21st September, 2013 at about 9.00 a.m., when he enquired from the missing boy as to why he was crying, he told that his mother (second wife of the petitioner) had beaten him and had not given food to him. The boy then asked Rs.10/- which was given to him by said Jagdish and thereafter the boy went towards east. Learned counsel for the State has further submitted that the photograph of the missing boy has been sent for publication in daily newspaper and his photograph has also been compared with the record of U.D. cases of G.R.P.,

Patna. Despite best efforts of the police, till date the boy could not be recovered. The police have also made correspondences with the S.P.(C), Anti-kidnapping Squad, CID Bihar, Patna and S.P., SCRB, Bihar, Patna. Learned counsel for the State has also submitted that since no clue of the missing child could be found in course of investigation, the investigation of the case is still continuing.

I have also perused two counter affidavits filed on behalf of the State. It would appear that the petitioner was a tenant in the house of Pappu Sah. Prior to the institution of the F.I.R., Pappu Sah had asked him to vacate the house as he was not paying rent and electricity bill to the landlord. Despite Pappu Sah and his family members being made named accused in the F.I.R., no positive material could be found against him in course of investigation.

Having considered the facts and circumstances of the case, I find no merit in the present application. The petitioner may have anxiety that his son is missing but his anxiety or apprehension cannot make the police investigation tainted. The Investigating Officer is not expected to act mechanically in each and every case to arrest a person, who has been named in the F.I.R. It depends on several facts, which transpire in course of investigation. There may be a case in which a person may not be involved but the informant of the case may raise suspicion against him. There may be a case of even

false implication. Section 41 of the Code of Criminal Procedure gives discretion to the police in the matter of arrest of a person against whom there appears to be reasonable material to have committed a cognizable offence. There is nothing on the basis of which the intention on the part of the investigating agency to recover the missing boy can be doubted.

In that view of the matter, I find no merit in the present application. Accordingly, the writ petition is dismissed.

(Ashwani Kumar Singh, J)

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