

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Writ Jurisdiction Case No.633 of 2014**

Arising Out of PS.Case No. -null Year- null Thana -null District- MADHUBANI

Nagendra Mandal, son of Late Kapileshwar Mandal, resident of village-Uchal, P.S.-  
Basopatti, District-Madhubani.

.... .... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Home , Govt.  
of Bihar, Patna
2. The District Magistrate, Madhubani.
3. The Superintendent of Police, Madhubani.
4. The Officer Incharge, Madhuapur Police Station, Madhubani.
5. The Officer Incharge, Basopatti Police Station, Madhubani.

.... .... Respondents

**Appearance :**

For the Petitioner/s : Mr. Karuna Nath Sahay, Advocate

For the Respondent/s : Mr. Ajay, GA-12

**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH**

**ORAL JUDGMENT**

**Date: 16-02-2015**

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

The petitioner is informant of Basopatti P.S. Case No.  
24 of 2013 registered for the offences punishable under Sections  
147, 148, 149, 313, 452 and 365 of the Indian Penal Code and 27 of  
the Arms Act. Initially, a complaint was filed which was referred to  
the police under Section 156(3) of the Code of Criminal Procedure

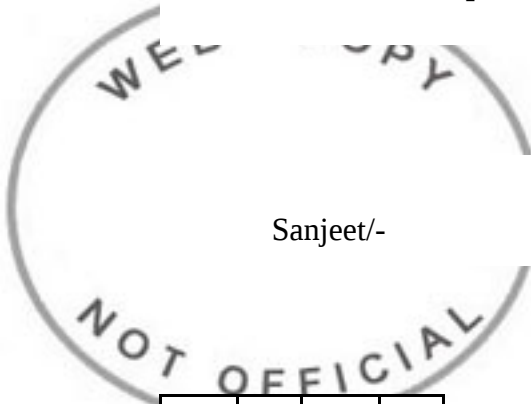
for investigation pursuant to which the aforesaid Basopatti P.S. Case No. 24 of 2013 was registered and investigation was taken.

In this application filed under Articles 226 and 227 of the Constitution of India, the prayer of the petitioner is to direct the respondents to investigate the aforesaid police case in proper manner and arrest the accused persons of the said case immediately.

In my view, the application is misconceived. To hold investigation into a criminal case is the statutory right of police. The informant of a case cannot dictate the terms for investigation. There is nothing on record on the basis of which a presumption can be raised that the investigation of the case is not being done in fair and impartial manner. I am also of the view that in course of investigation, it would not be proper for this Court to direct the police to apprehend a person named in the FIR.

Section 41 of the Code of Criminal Procedure confers discretion to the police to arrest an accused of a cognizable offence in course of investigation. However, such discretion has to be exercised carefully. It is not expected from the police that in each and every case, they will mechanically arrest a person named in the first information report arising out of a cognizable offence. It depends on several factors including the circumstances unfurled in course of investigation.

For the reasons stated hereinabove, I find no merit in  
the present application. Accordingly, the application is dismissed.



Sanjeet/-

**(Ashwani Kumar Singh, J.)**

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