

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.542 of 2014

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Birbal Rai son of Late Shiv Nandan Rai, Resident of Village - Bajahiya,
P.S. - Dariyapur, District - Saran.

.... Petitioner/s

Versus

1. The State of Bihar through the Home Secretary, Govt. of Bihar, Patna .
2. The Director General of Police-cum-inspector General of Police, Bihar, Patna.
3. The Deputy Inspector General of Police, Saran Division, Saran at Chapra.
4. The Superintendent of Police, Saran at Chapra.
5. The Sub Divisional Police Officer, Sonapur, Saran.
6. The Officer-in-charge, Dighwara Police Station, Saran.
7. Shailesh Rai son of Dwrika Rai
8. Praveen @ Ghosh Rai son of Dwrika Rai
9. Dwrika Rai son of Late Panchi Rai
10. Arun Rai son of Dwrika Rai

Respondent nos. 7 to 10 are resident of village - Gopalpur, P.S. -
Nayagaon, District - Saran.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Arvind Kumar Sinha, Advocate

For the State : Mr. Raj Kumar, Singh, A.C. to S.C.-8

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL ORDER

2 06-02-2015 By filing the present application under Articles 226 and

227 of the Constitution of India, the petitioner has made following

prayer in paragraph no.1 of the writ petition.

“1. That this writ petition has been filed for
issuance of an appropriate order/orders,
direction/directions including a writ preferably
in the nature of Mandamus commanding and
directing upon the state respondents to provide
the Constitutional Safe Guard to the petitioner
and to take suitable clear action against the
private respondents 7 to 10 at their behest

petitioner's life and property is in danger.

Further the respondents may be directed to provide security to the petitioner which has been withdrawn by the state respondents.

The State Respondents may be directed to proceed with the private respondent no.7 to 10 in accordance with law who are apprehending their arrest from the police in connection with Dariyapur Police Station case no.52 of 2013 registered under section 365/34 of the Indian Penal Code lodged by the petitioner who is informant.

Further the state respondents may be directed to arrest the private respondent no.7 to 10 hence forth who are giving threatening to the petitioner and his family members with dire consequences.

Further respondents may be directed to recover to minor son of the petitioner who has been kidnapped by them and produced him to the nearest Magistrate so that statement under section 164 of Cr.P.C. may be recorded.

The petitioner seeks indulgence of this Hon'ble Court to grant him any other relief/s for which he is entitled in the facts and circumstances of the case."

Earlier the petitioner had filed Cr.W.J.C. No.584 of 2013 before this Court seeking same relief as prayed for in the present

application. On 19th November, 2013, after some arguments, learned counsel for the petitioner had sought for permission to withdraw the application which was accorded and the said writ was dismissed as withdrawn.

It has been contended that till date missing son of the petitioner has not been recovered. Learned counsel for the petitioner has further submitted that in the FIR it was categorically stated that the petitioner has reason to believe that respondent nos. 7 to 10 might be involved in abduction of his son. He has submitted that despite there being a report regarding commission of a cognizable offence, the police have failed to take any step to apprehend the respondent nos. 7 to 10.

On the other hand, learned counsel for the State has submitted that the instant application is misconceived. The application is barred by principle of *res judicata*. He has submitted that initially the petitioner had lodged a missing person report in the police station. However, after few days he raised suspicion against respondent nos. 7 to 10. He has submitted that the police is conducting investigation of the case in a fair and impartial manner.

Be that as it may, to hold investigation into a cognizable case is the statutory right of the police. Neither the accused nor the informant can dictate the terms of investigation. Section 41 of the

Code of Criminal Procedure gives power to the police to apprehend a person against whom there is reason to believe that he has committed some cognizable offence. However, despite there being such power, the police may refrain from arresting of an accused on the basis of materials unfurled in course of investigation.

The investigating agency is not expected to act mechanically in each and every case in order to arrest the accused named in the FIR. It depends upon the facts and circumstances of each case. The issue of arrest of an accused in a criminal case at the stage of investigation is left to the discretion of the police.

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

(Ashwani Kumar Singh, J)

Md.S./-

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