

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.39 of 2014

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1. Sunil Kumar Sah Son Of Late Surya Narayan Sah Resident Of Village -
Siswar, P.O. - Kalapatti, P.S. - Phulparas, District - Madhubani

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Director General Of Police, Bihar, Patna
3. The Deputy Inspector General Of Police, Darbhanga
4. The Superintendent Of Police, Madhubani
5. The S.H.O., Phulparas Police Station, Phulparas, District - Madhubani

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Siddharth Harsh

For the Respondent/s : Mr. Asit Kumar Jha, A.C. to GP 6

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL ORDER

3 09-01-2015 Heard learned counsel for the petitioner and

learned counsel for the State.

The petitioner has been made a named accused in

Phulparas P.S.Case No.40 of 2011 registered for the offences

punishable under sections 302 read with 34 and 120(B) of the

Indian Penal Code as well as section 27 of the Arms Act.

In paragraph 1 of the present application filed

under Articles 226 and 227 of the Constitution of India, the

petitioner has made the following prayers :-

“1. That by way of this writ application petitioner
seeks indulgence of this Hon’ble Court for
issuance of an appropriate writ/writs,
order/orders, direction/directions for the
following RELIEFS :-

i) For issuance of writ in the nature of certiorari

for quashing of charge-sheet filed in Phulparas P.S.Case No. 40/2011 on the basis of erroneous consideration of the facts and on the basis of faulty and unlawful investigation.

- ii) For issuance of writ in the nature of mandamus directing the authority concerned to investigate the case afresh from independent agency such as C.I.D. or C.B.I.
- iii) And/or for any other relief(s), the petitioner would be found entitled to, on the facts and circumstances of the case.

Initially Criminal Writ No. 768 of 2011 was filed by the petitioner challenging the F.I.R. of the said case. However, on 17th September, 2012 the said application was disposed of as withdrawn at the request of counsel for the petitioner. Thereafter, petitioner moved for grant of anticipatory bail before this Court vide Cr.Misc. No. 24486 of 2011. His application for anticipatory bail filed under section 438 of the Code of Criminal Procedure was rejected by a Bench of this Court on 10th August, 2011. The petitioner chose not to surrender thereafter. He filed another application under section 438 of the Code of Criminal procedure for grant of anticipatory bail vide Cr.Misc. No. 37486 of 2013. The said second petition for grant of anticipatory bail was also rejected by a Bench of this Court on 18th September, 2013. In the meantime, charge-sheet in the case had already been submitted and the Magistrate



concerned had taken cognizance of the offence on 6th June, 2011. The petitioner filed an application under section 482 of the Code of Criminal Procedure for quashing the aforesaid order of cognizance dated 6th June, 2011 passed by the learned A.C.J.M., Jhanjharpur. The said petition under section 482 of the Code of Criminal procedure was also rejected by a Bench of this Court on 2nd September, 2013 in Cr. Misc. No. 36437 of 2013. The fact about filing of Cr.Misc. No. 36437 of 2013 has not been disclosed in the present writ petition.

In the background of the facts narrated hereinabove, it is apparent that the petitioner has not approached this Court with clean hands. The petitioner being charge-sheeted in the case under section 302 of the Indian Penal Code is evading arrest despite his application for anticipatory bail being rejected by this Court twice. His application under section 482 of the Code of Criminal Procedure challenging the order taking cognizance of the offence has also been rejected by a Bench of this Court. This fact has been suppressed and a writ petition has been filed challenging the charge-sheet submitted by the police as also for issuance of a writ of mandamus to direct the authority concerned to investigate the case afresh from independent agency such as C.I.D. or C.B.I.

To hold investigation in a cognizable case is the statutory right of the police. An accused of a case has no right to choose the investigating agency for the purposes of further investigation after the investigation of the case is over and pursuant to the submission of charge-sheet the Magistrate has already taken cognizance of the offence. The investigation having been completed by the police, there is no reason for this Court to re-open the investigation specially by entrusting the same to a special agency such as C.I.D. or C.B.I.

The application is not only frivolous but misconceived too. Accordingly, the same is dismissed.

(Ashwani Kumar Singh, J)

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