

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.1159 of 2016

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

Md. Ainul Haq @ Ainul Haq S/o Late Md. Nasiruddin Resident of Sabzibagh Coffee House Gali, P.S.- Pirbahor, Distt- Patna.

....Petitioner

Versus

1. The State of Bihar through the Senior Superintendent of Police, S. S. P, Patna
2. The Officer-in-Charge (S.H.O.), Pirbahore Police Station, Patna.
3. Surendra Rai S/o Gandhi Rai R/o Village- Sabalpur 28 P.S.- Sonepur, Distt- Saran at Chapra.
4. Binod Rai S/o Naresh Rai R/o Village- Sabalpur Nevas Tola, P.S.- Sonepur, Distt- Saran at Chapra.

.... Respondents

Appearance :

For the Petitioner : Mr. Ravi Kumar, Advocate
Mr. Rajiv Ranjan Singh, Advocate
Mr. Priya Choubey, Advocate
For the State : Mr. Prabhat Kumar Verma, AAG-III
Mr. S.K. Sharma, AC to AAG-III

CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

And

HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

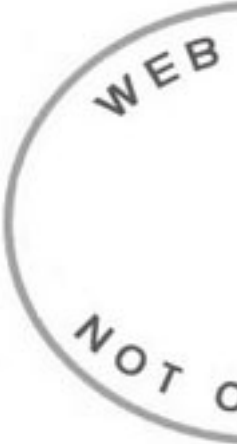
ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 23-11-2016

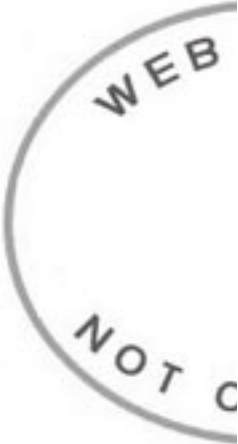
This is an application in the nature of writ of Habeas Corpus as well as for appropriate directions to the police to conduct the investigation effectively.

2. The petitioner namely, Md. Ainul Haq @ Ainul Haq, is the father of a boy namely, Md. Shahnawaz @ Golu, aged about 16 years. It appears that on the evening of 15th February, 2016, the son had gone to the Kali Ghat



along with his friends and other boys for immersion of an idol. He do not return home, parents waited, then, on 17.02.2016, the petitioner, being father lodged a First Information Report with the Pirbahore Police Station, Patna, with regard to the aforesaid fact, that his son had not returned. Police registered Pirbahore P.S. Case No. 52 of 2016 under Section 363, 365 of the Indian Penal Code. Petitioner, thereafter, made more inquiry from the friends of his son. It was disclosed that two persons namely, Surendra Rai and Vinod Rai, who were Boatman (*Mallah*) at the Ghat, had some dispute with regard to money payable for the immersion of the idol with the petitioner's son. When the dispute escalated, they forcibly took him in their boat across the river. That was when his son was last scene. Petitioner immediately went to the police on 17th February, 2016 itself, and his further statement under Section 161 Cr.P.C. was recorded, wherein he disclosed the aforesaid information which he had received. Police took no action.

3. The counter affidavit, in paragraph-6, states that Investigating Officer had taken the help of diver and sincere efforts to search the missing boy nearby the bank of



river, but did not get any positive result. From the case diary, a copy of which is produced by the petitioner, it appears that on 18th February, 2016, some boys also disclosed to the Investigating Officer the aforesaid fact, naming the two boatmen, and in spite of that, no immediate effort was made to apprehend the boatmen. It is three days after on the 20th February, 2016, it is said that efforts were made to arrest the two boatmen. Naturally, the persons accused had enough time and being boatmen they easily vanished.

4. Even though, the police could not apprehend the named persons, they were fully aware of the facts. Now, it appears that on 06.04.2016, the two accused persons aforesaid filed Anticipatory Bail Application No. 2445/2016 before the Sessions Judge, Patna, which was taken up on 07.04.2016. This is the order that was passed:

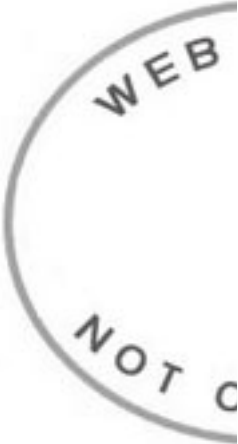
“Heard.

Call for case diary. Learned P.P. also to produce the same.

No coercive step shall be taken against the petitioners in connection with Pirbahore P.S. Case No. 52/2016 till further order, with a direction that the petitioners shall fully co-operate with

investigation. Inform the court below.

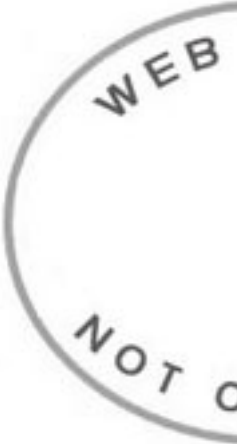
Put up on 28.04.2016 for hearing.”



5. A copy of this order was immediately sent to the police through the Chief Judicial Magistrate, and the same has been produced by the State before us. Thus, Investigating Officer was fully aware that these two persons, whom they could not otherwise apprehend, had moved the Court for Anticipatory Bail, and had got an interim protection from the Court. The Court had taken caution to direct them to cooperate in the investigation. What steps Investigating Officer took thereafter is not disclosed.

6. Ultimately, on 20.06.2016, the Anticipatory bail Application, upon production of the case diary and perusal thereof, was dismissed. The father being distressed, then, he gave written application to the Senior Superintendent of Police, Patna. He also informed that he was being threatened to withdraw the cases, but nothing happened. Neither petitioner's son has been recovered nor the accused persons have been apprehended. Hence, the writ application.

7. In the counter affidavit, general and vague



statements are made. In the counter affidavit, all efforts have been made to hide the truth rather than state the facts. It is regrettable. In the counter affidavit, it is mentioned (paragraph-9) there was order of no coercive steps by the Court, but deliberately it is left out, that, along with that order, there was order to the accused persons to cooperate in the investigation. In the counter affidavit, there is no mention that on 17th February, 2016 itself, in the further statement, the petitioner had disclosed the names. In the counter affidavit, efforts have been made to show that some boys, later, on investigation, disclosed the names.

8. It is obvious that instruction given to the State counsel were half truth only to mislead the Court. This is serious matter especially when we are dealing with the life and liberty of a citizen.

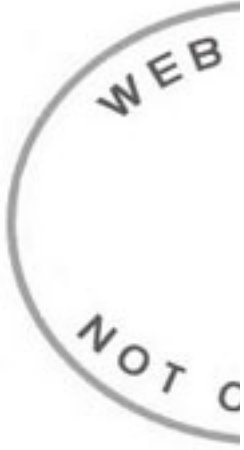
9. From the facts aforesaid, it is clear that the names of the accused persons were disclosed to the police on the day itself when the First Information Report was registered. It took police three days to arrange to raid for arrest of persons, giving them enough time to flee. Thereafter, the Investigating Officer was fully aware that the accused persons had moved the Court for Anticipatory

Bail and got an interim protection, which order had been communicated to him by the Court as well. (Copy whereof was produced by the State in course of hearing before us.) Still, the Investigating Officer deliberately took no effective steps. We will explain why we are saying this.

10. Code of Criminal Procedure has Section 438 which deals with bail in anticipation of arrest. This provision underwent change in the year 2005, over a decade back. New provision i.e. Sections 438(1-A) and 438(1-B) were inserted which are quoted hereunder:

“(1-A) Where the Court grants an interim order under sub-section (1), it shall forthwith cause a notice being not less than seven days notice, together with a copy of such order to be served on the Public Prosecutor and the Superintendent of Police, with a view to give the Public Prosecutor a reasonable opportunity of being heard when the application shall be finally heard by the Court.

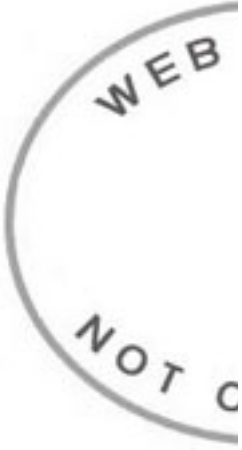
(1-B) The presence of the applicant seeking anticipatory bail shall be obligatory at the time of final hearing of the application and passing of final order by the Court, if on an



application made to it by the Public Prosecutor, then Court considers such presence necessary in the interest of justice.”

11. If the Investigating Officer was aware of these provisions, which we expect him to be, then, immediately on receipt of the information from the Court, which is a requirement of Section 438(1-A) above, he should have immediately asked the Additional Public Prosecutor/ Public Prosecutor to file an application for personal presence of the accused persons in the Court in terms of Section 438(1-B). The whole purpose of the aforesaid amendment is that firstly, the person, who enjoys the benefit of an interim order, can be made to cooperate with the investigation and upon rejection of his application, after interim order has been obtained, he would be available to the investigating agency. Nothing of this sort was done by the Investigating Officer.

12. We, thus, find that the investigation, for the reasons best known, has deliberately mishandled investigation at all stages. Normal procedures were given up only to the miseries of the helpless father and for benefit of accused. These are very serious issues.



13. We would like the Senior Superintendent of Police, Patna to look into the matter and take all remedial steps including such steps, as he may think appropriate against the Investigating Officer, so that such incident do not occur again. The police are there not only to investigate a crime, they are to protect the right of a citizen. If this is the manner in which they conduct themselves, throwing the law to the winds, then, no citizen would be safe in the State.

14. We would also request the D.G.P. and the Home Secretary, Government of Bihar, Patna, to whom copy of this order be sent, to take steps to educate the Investigating Officers as well as the Public Prosecutor/Additional Public Prosecutor with regards the change of law which was made over a decade back.

15. In the hope that some justice would now be done to the petitioner, we dispose of this application, accordingly.

(Navaniti Prasad Singh, J.)

(Jitendra Mohan Sharma, J.)

Rajeev/N.A.F.R.

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