

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.195 of 2017

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Renu Devi, wife of Ravindra Kumar @ Arvind Singh, resident of Village-
Dhansingra, Police Station- Mahkar, and District- Gaya.

.... Petitioner

Versus

1. The State of Bihar through Home Secretary, Government of Bihar, Patna.
2. The Director General of Police, Bihar, Patna.
3. The I.G. (Prison), Govt. of Bihar, Patna.
4. The Senior Superintendent of Police, Gaya.
5. The Sub Divisional Police Officer, Wazirganj, District- Gaya.
6. The Station House Officer, Muffasil Police Station, District- Gaya.
7. Mr. Sona Prasad Singh, S/o Shiv Pujan Singh, resident of Village and Police
Station- Suryapura, District- Rohtas, presently posted as SHO Muffasil, P.S.
District- Gaya.
8. The SHO Khijarsarai Police Station, District- Gaya.
9. The District Magistrate, Gaya.

.... Respondents

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Appearance:

For the Petitioner : Mr. Chakrapani, Advocate
Mr. Sanjay Kumar Singh, Advocate
Mr. Dipak Kumar, Advocate
Mr. Madhuresh Singh, Advocate
Mr. Ashutosh Kumar, Advocate

For the Respondents : Mr. Sheo Shankar Prasad, SC 8

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH
and
HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 23-02-2017

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

2. It is a strange case that the petitioner's husband was



arrested by the Officer-in-Charge of Gaya Mufassil Police Station on 21.08.2016. On the next day he was forwarded to the learned Chief Judicial Magistrate, Gaya for being remanded. The learned Chief Judicial Magistrate did not accept the prayer because there was no record whatsoever available in respect of the petitioner's husband either being accused in a case or being declared absconder in any case. He was thus returned to police custody.

3. We are surprised at this, as the action is against the Constitution and in particular Article 22 of the Constitution, apart from the Code of Criminal Procedure which clearly stipulates that no person shall be detained without being produced before a Magistrate within 24 hours. But how the learned Chief Judicial Magistrate allowed custody to be retained by the police beyond 24 hours and the petitioner's husband being returned to the police custody in absence of any record is a matter itself to be considered. On the next day, i.e., 22.08.2016 he was produced again before the learned Chief Judicial Magistrate, Gaya. Again the learned Chief Judicial Magistrate, in absence of any record refused to remand the petitioner's husband. But instead of directing that he be released forthwith allowed the police to take him back to custody. On 24.08.2016 the Officer-in-Charge Mufassil Police Station, Gaya again produced him for remand, this time accompanied by notarized affidavit stating that the petitioner's husband was a named accused in Gaya Mufassil P.S. Case No. 110 of



1996 dated 06.09.1996 under Section 302/34 of the Indian Penal Code and Section 27 of the Arms Act. From the case diary it was shown that he was charge sheeted on 06.12.1996 being charge sheet no. 112 of 1996 and shown as an absconder. It is on this basis that he is said to have been arrested and sent up for remand. The learned Chief Judicial Magistrate, Gaya again in absence of any judicial record or any other record with him merely on the basis of averment in the notarized affidavit, as aforesaid, has remanded the petitioner's husband to judicial custody. His bail application is pending before the learned Additional Sessions Judge VI, Gaya. The learned Additional Sessions Judge VI sought a report from the concerned Court. The learned Chief Judicial Magistrate, Gaya replies by his communication, which is Annexure-5 to the writ petition, wherein he clearly admits that in spite of search no judicial records declaring the petitioner's husband as absconder have been produced nor could be traced. Still merely on the affidavit of the Officer-in-Charge, the petitioner's husband has been remanded to custody. The learned Additional Sessions Judge VI is now sitting tight over the matter. We are indeed surprised, we are dealing with life and liberty of a citizen. Articles 21 and 22 of the Constitution have still to be looked into. What we are surprised about is the conduct of the Judicial Officers. They admit in no uncertain terms that there are no judicial records to show that the petitioner's husband is an accused and that too an absconder and against whom permanent warrants have



been issued and despite this admission, merely on an affidavit of the Officer-in-Charge he has been remanded to custody. We fail to understand whether the learned Chief Judicial Magistrate considers the notarized affidavit of the Officer-in-Charge to be a substitute for judicial orders and judicial records. A person's liberty cannot be treated so lightly. In absence of any judicial records a person cannot be taken into custody and kept in custody awaiting discovery of the records. Life and liberty are too precious. If at all, like the learned Chief Judicial Magistrate did on earlier occasion he refused to take him in custody, he could have taken a bond or an undertaking from the petitioner's husband and should have released him and on the undertaking that he should be present in the Court at a future date. In the meantime the records could be searched. But, in absence of records remanding a person in custody and that too on the basis of an affidavit of the Officer-in-Charge in relation to a 20 year old case is wholly impermissible.

4. We thus have no hesitation in holding that in violation of Article 21 and 22 of the Constitution the petitioner's husband is being kept in custody. We have no option but to allow the writ petition and direct the release of the petitioner's husband from custody forthwith, if not required in any other case.

5. Let a copy of this judgment be sent to the learned Additional Sessions Judge VI, Gaya and to the learned Chief Judicial



Magistrate, Gaya, forthwith through special messenger at the cost of the Court.

(Navaniti Prasad Singh, J)

(Vikash Jain, J)

Chandran

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	01.03.2017
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