

# IN THE HIGH COURT OF JUDICATURE AT PATNA

## Criminal Writ Jurisdiction Case No.16 of 2017

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

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1. Sunita Devi, Wife of Late Pramod Yadav, resident of Village- Rasalpur, P.S.- Naugachia, District- Bhagalpur.

.... .... Petitioner/s

Versus

1. The State of Bihar through Home Secretary, Department of Home, Government of Bihar, Patna.
2. The Home Secretary, Department of Home, Government of Bihar, Patna.
3. The Director General of Police, Old Secretariat, Patna.
4. The District Magistrate, Bhagalpur.
5. Pankaj Sinha, The Superintendent of Police, Bhagalpur.
6. The Officer-in-Charge Police Station- Naugachia, Bhagalpur.
7. Sumit Kumar alias Rupesh Kumar
8. Rajiv Kumar, Both sons of Late Naresh Yadav. Resident of Village- Rasalpur, P.S.- Naugachia, District- Bhagalpur.
9. Saurabh Kumar Singh, Son of Late Banarasi Singh, Resident of Village- Sripur, P.S.- Naugachia District- Bhagalpur.
10. Mankeshwar Singh alias Mantu Singh, Son of late Surendra Singh.
11. Kamando Rai, Son of Bhola Rai. Both residents of Village- Pakra, P.S. Naugachia District- Bhagalpur.
12. Chhotu Yadav, Son of Ramrati Yadav, Resident of Village- Lahra, P.S.- Gopalpur, District- Bhagalpur.
13. Kumodi Yadav, Son of Late Rajendra Yadav, Resident of Village- Bhavanipur, P.S.- Rangra, District- Bhagalpur.
14. Arvind Yadav, son of Jyotish Yadav, Resident of Village- Sadhopur, P.S.- Rangra, District- Bhagalpur.
15. Balkeshwar Singh alias Balo Singh, Son of Late Surendra Singh Residents of Village- Pakra, P.S. Naugachia District- Bhagalpur.
16. Ajit Kumar, Son of late Naresh Yadav, Resident of village- Rasalpur, P.S.- Naugachia, District- Bhagalpur.
17. Sachin alias Sachcho Yadav, Son of Haro Yadav, Resident of Village- Rasalpur, P.S.- Naugachia, District- Bhagalpur.
18. Pintu Singh, Son of Late Prakash Singh, Resident of Village- Mill Tola, P.S. Naugachia District- Bhagalpur.

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mrs. Sushmita Mishra, Advocate  
For the Respondent/s : Md. N. Hoda Khan, SC-1

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**CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR**

**ORAL JUDGMENT**

**Date: 21-11-2017**

Heard learned counsel for the petitioner and the State.

2. This writ application has been preferred for a direction



to the respondent authorities to arrest respondent Nos. 7 to 15, who are named accused in connection with Naugachia P.S. Case No.149 of 2016, a case under Section 302 and other minor sections of the of the Indian Penal Code and Section 27 of the Arms Act.

3. The writ Court cannot grant such relief in exercise of this extra ordinary jurisdiction because arrest of the accused is within the realm of the jurisdiction of the investigating agency as held by the Apex Court in **M.C. Abraham and Another vs. State of Maharashtra and Others** reported in (2003) 2 Supreme Court Cases 649.

4. Another prayer is for taking suitable action against respondent No.5, Mr. Pankaj Sinha, the Superintendent of Police, Bhagalpur, because he is instrumental in gruesome murder of the victim of the case in the sense that for helping the accused he had already recommended, for cancellation of the license of the arms of the deceased, to respondent No.4.

5. Since Superintendent of Police is a recommending officer on the basis of report gather from other police agency at the local level, hence, he cannot be attributed with mala fide for his each and every action performed during discharge of his official duty. The authority competent to cancel the license is the District Magistrate concerned, who is respondent No.4 herein and he is expected to take decision after application of his mind on different aspects of the



matter. Hence, this relief cannot be granted to the petitioner.

6. Third prayer is for issuance of notice directing the respondents to conclude the investigation of the aforesaid case immediately.

7. In the counter affidavit, the State-respondents have stated that investigation of the case is already complete and charge sheet has already been submitted in the case.

8. At this stage, learned counsel for the petitioner submits that it requires to be verified whether the process of attachment against the accused was executed by the police or not to procure the appearance of the accused persons.

9. Since, the Hon'ble Supreme Court has already held in **M.C. Abraham's** case that it is discretion of the police to arrest or not to arrest any accused according to the facts and circumstances of the case. Hence, this writ Court cannot direct such execution after conclusion of the investigation.

10. In the result, it stands disposed of as devoid of any merit.

**(Birendra Kumar, J)**

Mkr./-

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