

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.154 of 2017

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

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1. Usha Devi W/o late Mathur Yadav Resident of Village- Khutaha, P.S. Lodipur,
District- Bhagalpur.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Home Department, Govt. of Bihar, Patna.
3. The Director General of Police, Bihar, Patna.
4. The Senior Superintendent of Police, Bhagalpur.
5. The Superintendent of Police(Rural), Bhagalpur.
6. The Deputy Superintendent of Police, Bhagalpur.
7. The S.H.O. Jagdishpur, P.S. District- Bhagalpur.
8. The Investigating Officer, Jagdishpur, P.S. District- Bhagalpur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Indeshwari Prasad Mandal, Advocate

For the Respondent/s : Md. Nadeem Seraj, GP-5

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date: 16-03-2017

Heard learned counsel for the petitioner and learned
Government pleader for the State-respondents.

2. The petitioner has invoked the criminal writ
jurisdiction of this Court for a direction to investigate Jagdishpur P.S.
Case No.187 of 2015, registered under Sections 302/201/34 of the
Indian Penal Code, in proper manner and arrest the accused persons,
who are moving scot-free. Further prayer is to protect the life of the
petitioner from the threat of the accused of the case.

3. In the counter-affidavit, the State-respondent has



specifically stated that even attachment of the property against the absconding accused had already been effected and after completion of the investigation charge sheet has already been submitted in this case vide Annexure-A. Therefore, one of the grievances of the petitioner has already been redressed regarding early completion of the investigation.

4. So far direction to arrest the accused in exercise of this writ jurisdiction is concerned, the Apex Court in **M. C. Abraham v. The State of Maharashtra, reported in (2003)2 SCC 649**, has categorically stated that mere rejection of anticipatory bail application of a person is no ground for arrest of the accused. It may or may not warrant arrest upon the facts and circumstances of the case and other aspects of the case. Power under Section 41 is discretionary power of the investigating agency. This Court under Article 226 of the Constitution of India had no jurisdiction to direct the State to arrest the accused persons, which would amount to judicial interference in the investigation of the case.

5. In the light of aforesaid judgment no such direction for arrest of the accused can be given especially when the material shows that the police is not lethargic; rather has effected execution of the process under Section 83 of the Cr.P.C.

6. So far the claim of the petitioner for security is



concerned, counter affidavit of the State-respondents is silent on the point. Therefore, it is directed that the Superintendent of Police, Bhagalpur, shall take all measures to ensure the security of the petitioner Usha Devi from the accused persons.

7. With the aforesaid observations, this application stands disposed of.

(Birendra Kumar, J)

Mkr./-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	21.03.2017
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