

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Criminal Writ Jurisdiction Case No.2433 of 2017
Arising out of Kadam Kuan P.S. Case No. 375 of 2017, District Patna**

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Vivek Kumar, Son of Tej Narayan Mahto, Resident of Village- Madhiya, Post
Office- Singhwahini, Police Station- Sonbarsa, District- Sitamarhi.

.... Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Government of Bihar, Patna.
2. The Home Secretary, Government of Bihar, Patna.
3. The Director General of Police, Bihar, Patna.
4. The Inspector General of Police, Bihar, Patna.
5. The Deputy Inspector General of Police, Bihar, Patna.
6. The Senior Superintendent of Police, Patna.
7. The Superintendent of Police, Central, Patna.
8. The Deputy Superintendent of Police, Patna, Bihar.
9. The Officer-in-Charge, Kadam Kuan, Police Station, Patna.
10. Neeraj Kumra, Investigation Officer, Kadam Kuan, Police Station, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Arjun Prasad Singh, Adv.
Mr. Kameshwar Singh, Ad.
For the Respondent/s : Mr. Md. Nadim Seraj, GP-5

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT
Date: 16-01-2018

Heard learned counsel for the petitioner and learned
counsel representing the State.

2. The present writ application has been filed for
issuance of an appropriate direction to the respondents for recovery of



the brother of the petitioner in connection with Kadamkuan P.S. Case No.375 of 2017 lodged under Sections 363 and 365 of the Indian Penal Code.

3. Grievance of the petitioner is that after lodging of the FIR, police is not conducting proper investigation and they are not taking steps which are required to be taken for recovery of the brother of the petitioner and for arresting the accused.

4. Learned counsel for the State submits that in the present case the named accused persons have already been arrested.

5. In the opinion of this Court, the petitioner may file an application before the court of learned C.J.M., Patna or in the appropriate court of the learned Judicial Magistrate and can raise his grievance as regards the police in not conducting the proper investigation.

6. Now in view of the judicial pronouncements of the Hon'ble Apex Court in the case of **Sakiri Vasu Vs. State of U.P. & Ors. reported in (2008) 2 SCC 409** which has been recently followed in the case of **Sudhir Bhaskarrao Tambe Vs. Hemant Yashwant Dhage & Ors. reported in (2016) 6 SCC 277**, it is well settled that the learned C.J.M./Judicial Magistrate has got all supervisory powers for investigation (though he cannot investigate himself). It is also settled that the learned C.J.M./Judicial Magistrate



can monitor the investigation for the purpose of it's proper conduct by the investigating officer. The Hon'ble Apex Court has also held that if such powers are vested with the regular courts under Section 156(3) Cr.P.C. which provision is though not very widely worded but have been interpreted confirming wide and implied power on the magistrates in the regular courts in the matter of supervision and monitor of the investigation, the High Court under Article 226 of the Constitution of India, being a Constitutional Court, should discourage filing of application under Article 226 of the Constitution directly for such purpose.

7. In the facts and circumstances, if an application is filed either before the learned C.J.M., Patna or the learned Judicial Magistrate with whom the cases of concerned police station are pending, they would consider the same giving such applications priority and shall see to it that if the police authorities are not conducting investigation properly, an appropriate order be passed directing them to do so.

8. It is made clear that if the police authorities do not act pursuant to the direction of the learned C.J.M./Judicial Magistrate, they would be further within their right to direct the senior police officers including the Director General of Police, Patna to change the Investigating Officer.



9. The writ application is disposed of with the above observations and directions.

(Rajeev Ranjan Prasad, J)

Arvind/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

