

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.543 of 2019

Arising Out of PS. Case No.-1269 Year-2018 Thana- SAHARSA District- Saharsa

Rishikesh Kumar @ Goldy, Son of Sri Sudhir Kumar Verma, Resident of
Panchhati Chowk, Ward No. 17, P.S.- and District - Saharsa.

... .. Petitioner

Versus

1. The State of Bihar through the Home Secretary, Bihar Patna
2. The Chief Secretary, State of Bihar, Patna.
3. The Director General of Police, Bihar, Patna.
4. The Superintendent of Police, Saharsa.
5. Sri Prabhakar Tiwari, the Sub-Divisional Police Officer, Sadar, Saharsa.
6. The District Magistrate, Saharsa.
7. The Investigating Officer, P.S.- Saharsa P.S. Case No. 1269/18.

... .. Respondents

Appearance :

For the Petitioner/s : Mr. Anil Kumar Mukund, Advocate
For the Respondent/s : Mr. M. Nasrul Huda Khan, SC-1

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 02-04-2019

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

2. In the instant writ petition the petitioner has made
four prayers. The first prayer is to direct the respondent authorities
to get investigation of Saharsa Sadar P.S. Case No.1629 of 2018
and 1270 of 2018 done by a credible independent investigating
agency like, CBI or CID. The second prayer is that in case there is
any difficulty in getting the case investigated by an independent
investigating agency like, CBI or CID, the respondents be directed



to get the investigation of the aforesaid Saharsa Sadar P.S. Case No. 1269 and 1270 of 2018 done on the basis of CCTV footage of CCTV camera fixed in an around the concerned police station. The third prayer is to direct and command the respondent authorities to obtain call detail report and tower location of the cellular no.7361871819 of the petitioner and make it a part of investigation. The fourth prayer is that on the basis of the aforesaid scientific investigation, if it is found that the petitioner has been booked in a frivolous case, a direction be issued to compensate him adequately and sufficiently from the perks of the erring police personnel.

3. Learned counsel appearing for the petitioner submitted that in the aforesaid Saharsa Sadar P.S. Case No.1269 of 2018 and 1279 of 2018, the petitioner has been falsely implicated with ulterior motive. The investigation of the case is tainted. Though, scientific evidences are available in an around the police Station, deliberately they are not being collected. The inaction and/or mala fide action on the part of police has caused serious prejudice to the rights of the petitioner. In case, an independent and scientific investigation is not conducted, it would be difficult for the petitioner to establish his innocence.



4. *Per contra*, learned counsel appearing for the State submitted that the application filed by the petitioner is totally misconceived. The petitioner is a named accused in Saharsa Sadar P.S. Case No.1270 of 2018 registered under Sections 25(1-B)a, 26 and 35 of the Arms Act. He is also a suspect in connection with Saharsa Sadar P.S. Case No.1269 of 2018 registered under Section 302 of the Indian Penal Code against three unknown persons. There is no material on record to show that the investigation is either tainted or unfair. Neither the accused has a liberty to choose investigating agency of his choice nor he can determine the mode and manner of investigation.

5. I have heard learned counsel for the parties and perused the materials available on record.

6. I find substance in the submission of the learned counsel for the State.

7. To hold investigation into a cognizable offence is the statutory right of a police. In course of investigation into a criminal case, the accused named or suspected cannot seek a remedy under the writ jurisdiction for change of investigating agency.

8. Moreover, there is absolutely no material before this Court to arrive at any finding that the investigation is tainted, mala



fide, unfair or arbitrary save and except the oral assertion of the petitioner.

9. In **Divine Retreat Centre v. State of Kerala and Ors. [(2008) 3 SCC 542]**, the Supreme Court has held that the High Court in exercise of its inherent jurisdiction cannot change the investigating officer in the midstream and appoint an investigating officer of its own choice to investigate a crime on whatsoever basis. The court further held that neither the accused nor the complainant or informant are entitled to choose their own investigating agency to investigate the crime in which they are interested. The Supreme Court, however, clarified that the High Court in exercise of its power under Article 226 of the Constitution can always issue appropriate direction at the instance of aggrieved person if the high Court is convinced that the power of investigation has been exercised by the investigating officer malafide.

10. In **State of West Bengal and Ors. vs. Committee for Protection of Democratic Right, West Bengal and Ors. [(2010) 3 SCC 571]**, the Constitution Bench of the Supreme Court observed thus:-

“Before parting with the case, we deem it necessary to emphasise that despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing



any order, the Courts must bear in mind certain self-imposed limitations on the exercise of these constitutional powers. The very plenitude of the power under the said articles requires great caution in its exercise. Insofar as the question of issuing a direction to CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Otherwise CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations.”

11. In the present case, except making some vague allegations in collecting materials in course of investigation, no specific facts have been pleaded in the petition about mala fide exercise of power by the investigating officer. A vague and unsubstantial allegation by an accused can not give rise to any occasion for change of investigating agency. Furthermore, the



accused can not be permitted to determine the mode and manner of investigation in order to prove his innocence.

12. In view of the ratio laid down by the Supreme Court in the aforementioned decisions as also in view of the pleadings made before the court, I am of the considered opinion that no case for change of investigating agency is made out.

13. The application is dismissed.

(Ashwani Kumar Singh, J.)

Sanjeet/R.Ranjan

AFR/NAFR	NAFR
CAV DATE	NA
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