

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.390 of 2019

Arising Out of PS. Case No.-87 Year-2018 Thana- MAHILA P.S. District- Araria

Chunni Kumari Daughter of Raj Kumar Mandal Resident of Mohalla-
Mathura South, Ward No. 3, P.S.- Narpatganj, District- Araria.

... .. Petitioner/s

Versus

1. The State of Bihar through the D.G.P. Bihar, Patna
2. The Deputy Inspector General, Purnea Range, Purnea
3. The Superintendent of Police, Araria
4. The Thana in Charge, Mahila Police Station, Araria
5. Devendra Sharma @ Babloo Sharma Son of Than Singh Sharma, Resident of
Mohalla- Mathura Dakhshin, Narpatganj, P.S.- Narpatganj, District- Araria.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Sanjay Kumar Ghosarvey, Advocate
For the Respondent/s : Md. Nadim Seraj, GP-5

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 18-02-2019

The defects, as pointed out by the registry, are
ignored.

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

3. The petitioner is informant of Mahila P.S.
Case No. 87 of 2018 dated 20.08.2018 instituted under Section
376 of the Indian Penal Code against one Devendra Sharma in
the first information report (for short 'FIR'). In her written
report dated 18.08.2018 submitted to the Officer-in-charge of
Mahila Police Station, Araria on 20.08.2018, she has alleged
that at 10:00 p.m. on 18.08.2018, while she was sleeping alone



in her house, the accused Devendra Sharma @ Babloo Sharma entered into her house after breaking open the door and on the point of dagger, he raped her. In the next morning, she called for a Panchayat, but the accused did not participate in the Panchayat. Hence, the written report is being submitted to the police.

4. The contention of the petitioner is that the investigation of the case is not being conducted in a fair and impartial manner. After institution of the FIR the accused was interrogated by the police, but he was let off from the police station. The police are in collusion with the named accused, who is an influential person. Hence, a direction is required to be issued by this Court to the respondent authorities to arrest him forthwith and put him on trial.

5. Per contra, learned counsel appearing for the State submitted that though the accused Devendra Sharma is named in the FIR lodged by the informant of the case, it would not be proper for this Court, at the stage of investigation, to issue any direction for his arrest. He contended that once a cognizable offence is reported to the police, they have the exclusive domain to investigate the case. Though they have power to arrest an accused under Section 41 of the Code of



Criminal Procedure (for short 'Cr.P.C'), even without obtaining warrant of arrest, such arrest is not to be made mechanically. The arrest of an accused named in the FIR would depend on several factors. In case, the police would be satisfied that an innocent person has been implicated falsely in the case, instead of arresting him, the police would submit a final report before the court holding the accusation to be false.

6. I have heard learned counsel for the parties and carefully perused the record.

7. True it is that the accused Devendra Sharma has been named in the FIR registered under Section 376 of the Indian Penal Code, which is not only a cognizable offence, but also a very grave offence. However, simply because an accused is named in the FIR, it does not mean that his culpability in the offence is proved. The veracity of the allegation has to be examined by the police in course of investigation. The investigation into a cognizable offence is within the exclusive domain of the police. At this stage, the court has no role to play. Save and except, the statements made in the application that the investigation is not fair and impartial, there is no other material to corroborate such contention.

8. The role of the court would start only after a



report under Section 173(2) of the Cr.P.C is submitted before the court on completion of investigation. In absence of a police report, it has rightly been contended by the learned counsel appearing for the State that any direction by this court to arrest the person named in the FIR would not be proper.

9. In that view of the matter, I find no merit in this writ petition. It is dismissed, accordingly.

(Ashwani Kumar Singh, J)

Md. S/SKSuman.

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.02.2019
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