

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.595 of 2019

Arising Out of PS. Case No.-267 Year-2017 Thana- ALAMGANJ District- Patna

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Hari Nandan Singh Son of Late Keshav Narayan Singh Resident of Village-
Madhurapur, P.S.- Biddupur, District- Vaishli

... .. Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Govt. of Bihar, Patna
2. Director General of Police Bihar, Patna
3. Deputy Director of Police (Administration) Govt. of Bihar, Patna
4. Senior Superintendent of Police, Patna
5. Sub Divisional Police Officer, Patna city
6. Officer-in -charge, Sultanganj Police Station, Patna
7. Sonu Kumar Singh
8. Monu Kumar Singh

Both sons of Balbant Singh.

9. Balbant Singh Son of Name not Known
10. Mother-in law of deceased wife of Balbant Singh
11. Pooja Daughater of Balbant Singh

All resident of Village- Banglapar Bochaha, P.S.- Mohiuddin
Nagar, District- Samastipur

12. Priti Kumari Wife of name not known, Resident of Village and P.O.-
Dumari, District-Samastipur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Amod Kumar Singh, Advocate
For the Respondent/s : Mr.Manish Kumar,GP-24

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 08-04-2019

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

2. Heard learned counsel for the petitioner and



learned counsel for the State.

3. This application under Article 226 of the Constitution of India has been filed by the petitioner for issuance of a direction to the respondents nos. 4 to 6 to arrest respondent no.7 in connection with Alamganj P.S. Case No. 267 of 2017 registered under Section 304B of the Indian Penal Code.

4. Learned counsel appearing for the petitioner submits that the petitioner is informant of Alamganj P.S. Case No.267 of 2017 dated 08.07.2017 registered under Section 304B of the Indian Penal code. Respondent No.7 is one of the named accused in the said first information report (for short 'FIR'). There is allegation against him that being husband of the daughter of the informant he killed his wife within six years of marriage for non-fulfillment of demand of dowry. Till date he is neither arrested by the police nor he has surrendered before the court. He is in active service in Indian Army. He contended that due to inaction on the part of police, it is in the interest of justice that a direction be issued to the official respondents to immediately arrest the respondent no.7.

5. Per contra, learned counsel for the State submits that in course of investigation, it would not be proper



for this Court to issue any direction for arrest of the persons named in the FIR. It is not the case of the petitioner that the respondent no.7 is evading arrest rather the case of the petitioner is that he is in active service of Indian Army. Merely because a person is named in the FIR, it cannot be presumed that he is involved in the crime. The culpability of an accused is to be ascertained in course of investigation.

6. Having heard learned counsel for the parties and perused the materials on record, I find substance in the submission of learned counsel for the State. Section 41 of the Code of Criminal Procedure confers power upon the police to arrest any person who commits a cognizable offence without warrant of arrest. However, such powers should be exercised after reasonable care and justification that such arrest is necessary and required. As far as the instant case is concerned, admittedly, the investigation is still continuing. It is not known whether the culpability of the petitioner has been found in course of the investigation or not. It has been rightly pointed out that merely because a person is named in the FIR, there cannot be an automatic arrest. An arrest in course of investigation, would depend on the facts and circumstances of the case.

7. In M.C.Abraham and another vs. State of



Maharashtra and others [(2003) 2 SCC 649] the Supreme Court has held that arrest of the accused is discretionary power of the investigating agency and judicial interference under Article 226 of the Constitution of India would amount to exceeding the jurisdiction.

8. Having regard to the discussions made above and in view of the ratio laid down by the Supreme Court in M.C. Abraham (supra), the relief prayed for by the petitioner cannot be allowed.

9. The writ petition is dismissed.

(Ashwani Kumar Singh, J)

Md. S/SKSuman.

AFR/NAFR	NAFR
CAV DATE	NA
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