

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1117 of 2016

Arising Out of PS. Case No.-25 Year-2014 Thana- ISHAKCHAK District- Bhagalpur

Himanshu Bhushan Narayan, Son of late Dr. Mahesh Narayan, Resident of Shakti Commercial Complex, Boring Road, P.S.-Buddha Colony, District-Patna, one of the Directors of M/s Animesh Estates Pvt. Ltd. Having its office situated at Shakti Commercial Complex, Boring Road, P.S.-Buddha Colony, District-Patna

... .. Petitioner

Versus

1. The State of Bihar through Home Secretary, Government of Bihar, Patna.
2. The Inspector General of Police, Bhagalpur.
3. The Deputy Inspector General of Police, Bhagalpur.
4. The Senior Superintendent of Police, Bhagalpur.
5. The Deputy Superintendent of Police, Sadar Bhagalpur, District-Bhagalpur
6. The Station House Officer, Ishakchak Police Station, District-Bhagalpur.
7. The Investigating Officer in Ishakchak P.S. Case No.25 of 2014, P.S.-Ishakchak, District-Bhagalpur.

... .. Respondents

Appearance :

For the Petitioner : None
For the Respondents-State: Mr. Sheo Shankar Prasad, SC-8

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 03-07-2019

No one appears for the petitioner and the State.

2. Perused the writ petition and the counter affidavit filed on behalf of respondent no.4.

3. This application under Article 226 of the Constitution of India has been filed by the petitioner for directing the respondents to arrest the accused persons in Ishakchak P.S. Case



No.25 of 2014 dated 08.03.2014 registered under Sections 420, 406, 465, 467, 468, 471 and 120B of the Indian Penal Code.

4. On the basis of the written report dated 08.03.2014 submitted by the petitioner, the First Information Report (for short 'FIR') of Ishakchak P.S. Case No.25 dated 08.03.2014 was registered against eight accused persons.

5. In the FIR, it has been alleged that all the accused persons approached the petitioner and proposed to acquire 200 bigha of land in favour of the company of the petitioner situated in village-Baijudih, Koinda, Basudeopur, in the district of Banka and Bhagalpur and one of the accused persons namely, Deepak Kumar Srivastava, Proprietor of M/s Srivastava Consultant entered into an agreement on 01.12.2012 and thereafter, received a huge amount from the company of the petitioner. It is further alleged that the informant had later on learnt that the consent of the land owners on so called consent letters were forged. It is further alleged that signature of some of the dead persons were also fraudulently made by the accused persons in order to receive amount from the company of the petitioner.

6. It has been pleaded by the petitioner that since the date of institution of the FIR, the petitioner is running from pillar to post for arrest of the accused persons, who are evading their



presence before the court and before the investigating officer, but the respondent have not paid any attention to the request made by the informant.

7. In the counter affidavit filed on behalf of the State, it has been contended that out of the eight accused persons, two namely, Sanjeev Kumar and Sanjay Kumar Singh have been granted bail and process for attachment of property of one of the accused Jyoti Kumari has been obtained and sent to Nathnagar (Madhusudnpur) Police Station for attachment whereas charge-sheet has been submitted against one Deepak Kumar Srivastava and investigation is going on against five accused persons. It has further been contended that the police are discharging their duty without any favour, fear or lust from any quarters. The investigation of the case is going on in the right direction and required action would be taken.

8. The writ petition was filed on 28.10.2016 and the counter affidavit was filed on 03.02.2017, it is not known what happened to the investigation of the case after 03.02.2017.

9. As far as the prayer of the petitioner for issuance of direction to the official respondents to arrest the accused persons of the case is concerned, I am of the opinion that such a blanket direction can not be given by the court.



10. Section 41 of the Code of Criminal Procedure (for short 'CrPC') gives discretion to the police to arrest any accused persons in a cognizable offence without an order from a Magistrate and without a warrant. However, such arrest is not to be made mechanically only because an FIR is instituted against the person. The police may arrest a person against whom a reasonable complaint has been made or credible information has been received or reasonable suspicion exists that he has committed cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years or more if the police officer has reason to believe on the basis of such complaint, information or suspicion that such person has committed the said offence and his arrest is necessary to prevent such person from committing any further offence, or for further investigation of the case, or to prevent such person from causing the evidence of the offence to disappear, or tampering with such evidence in any manner, or to prevent such person from making any inducement, threat or promise to a witness so as to dissuade him from disclosing such facts to the court or the police officer, or unless such accused person is arrested, his presence in the court whenever required cannot be ensured.



11. On the availability of any of the aforesaid conditions, the police officer would be required to record the reason in writing before arresting any person.

12. Since the discretion is vested with the police in a case when it is under investigation, it would not be proper for this Court to issue any direction to the police to arrest any person who is named in the FIR.

13. The application is dismissed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	06.07.2019
Transmission Date	06.07.2019

