

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.490 of 2019

Arising Out of PS. Case No.-86 Year-2018 Thana- BHAIKAVSHTHAN District- Madhubani

Munni Devi, Wife of Late Parmeshwar Yadav, resident of Village - Chanka,
P.S.- Bhairav Asthan, Distt.- Madhubani

... .. Petitioner

Versus

1. The State of Bihar through Director General of Police (Bihar) D.G.P. Old Secretariat, Patna.
2. Inspector General of Police, Madhubani, Distt.- Gandhi Maidan Patna.
3. Dy. Inspector General of Police (D.I.G.) of Madhubani Distt.- Darbhanga.
4. S.P., Madhubani.
5. Dy. S.P. of Bhairav Asthan Sub Divisional Jhunjharpur, Distt.- Madhubani
6. Officer Incharge Bhairav Asthan, Police station.
7. District Magistrate , Madhubani
8. Mahendra Yadav son of late Banshi Yadav, resident of Village - Chanka, P.S.- Bhairav Asthan, Distt.- Madhubani
9. Ramanjee Yadav son of Mahendra Yadav resident of Village - Chanka, P.S.- Bhairav Asthan, Distt.- Madhubani
10. Investigating Officer of case Bhairav Asthan Distt.-Darbhanga

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Binoy Kumar Sinha, Advocate
For the Respondent/s : Mr. Sheo Shankar Prasad, SC-8

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 11-03-2019

The petitioner is informant of Bhairav Asthan P.S. Case No.86 of 2018 registered under sections 363 and 366A of the Indian Penal Code. She has filed the instant writ petition under Article 226 and 227 of the Constitution of India for directing the respondents to arrest all the accused persons named in the aforesaid Bhairav Asthan P.S. Case No.86 of 2018. She has further



prayed that a direction be issued to the police to submit charge-sheet against all the accused persons named in the First Information Report (for short 'FIR').

2. Learned counsel appearing for the petitioner submitted that the daughter of the informant was abducted by the accused Bauaji Yadav, Mahendra Yadav, Ramanji Yadav and others on 24.07.2018. Thereafter, a complaint was made to the local panchayat, but the accused persons failed to turn up in the panchayati. Subsequently, on 03.08.2018, an FIR was instituted against the aforesaid three named accused persons under Sections 363 and 366A of the Indian Penal Code. Till date, the daughter of the petitioner has not been recovered. The petitioner has information that her daughter has been married to some unknown persons and her safety and security is at risk. He contended that in view of the allegations made in the FIR, it was incumbent upon the police to submit charge-sheet against the named accused persons, but, till date, the police have not submitted their report before the Court. They have also failed to arrest accused persons named in the FIR.

3. *Per contra*, learned counsel appearing for the State submitted that during pendency of the investigation, it would not be proper for this Court to issue any direction either for arrest of



the accused persons or for submitting charge-sheet against them. He contended that though there is allegation of abduction, the allegation needs to be investigated upon. Unless the culpability of the accused persons is found in the offence, the police are not required to mechanically arrest the persons named in the FIR.

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

5. Apparently, for an alleged offence, which took place between 24.07.2018 and 27.07.2018, the FIR was registered belatedly on 03.08.2018. Since the investigation is in progress, it would not be proper for this Court to make any comment on the merit of the allegation.

6. As far as the prayer of the petitioner for directing the police to arrest the accused persons named in the FIR is concerned, it is true that under Section 41 of the Code of Criminal Procedure, the police have jurisdiction to arrest any person without an order from the Magistrate or without a warrant of arrest against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists that he has committed a cognizable offence. However, such arrest has not to be made mechanically only after institution of the FIR. In case, the police doubts culpability of an accused, they may not arrest the



person even though he may be named in the FIR. The arrest of an accused by the police depends on several factors such as, (a) to prevent such person from committing any further offence or for proper investigation of the offence; or (b) to prevent such persons from causing the evidence of the offence to disappear or tampering with the such evidence in any manner; or (c) to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or (d) unless such person is arrested, his presence in the Court whenever required cannot be ensured.

7. Thus, I am of the considered opinion that during pendency of the investigation, it would not be proper for this Court to issue any direction for arrest of named accused persons in exercise of extraordinary writ jurisdiction.

8. As far as the second prayer of the petitioner to direct the police to submit charge-sheet against the named accused persons is concerned, the same also cannot be allowed in view of the fact that the court cannot anticipate or assess as to what will be the outcome of the investigation. In case, the police would find sufficient material to proceed against the named persons, the police may submit charge-sheet against them. But, in case, the



culpability of the named accused persons is not found in course of investigation, it would be highly unjust to direct the police to submit charge-sheet against the named accused persons. Under such circumstance, the police may submit a final form holding the accusation to be false.

9. In view of the discussions made above, I am not inclined to accede to the request made by the petitioner. However, the writ petition is disposed of with a direction to the respondent no.4 and 6 to investigate the case promptly and submit their report before the Court without any undue delay.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	15.03.2019
Transmission Date	15.03.2019

