

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.478 of 2019

Arising Out of PS. Case No.-167 Year-2018 Thana- PATAHI District- East Champaran

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Sanjay Tiwary (male), aged about 45 years, son of Ramadhar Tiwary Resident
of Village- Bara Shankar, P.S.- Patahi, District- East Champaran at Motihari.

... .. Petitioner

Versus

1. The State of Bihar through the Director General of Police, Bihar, Patna
2. The Inspector General of Police, Tirhut Range, Muzaffarpur. Bihar
3. The Superintendent of Police, East Champaran at Motihari, District- East
Champaran at Motihari. Bihar
4. The Sub Divisional Police Officer, Pakari Dayal, District- East Champaran
at Motihari.
5. The Station Head Officer, Patahi Police- Station District- East Champaran at
Motihari.

... .. Respondents

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Appearance :

For the Petitioner/s : Mr. Vijay Kumar Singh, Advocate

For the Respondent/s : Mr. M. Nasrul Huda Khan, SC-1

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 07-03-2019

This application under Article 226 of the
Constitution of India has been filed by the petitioner for directing
the respondents to hand over investigation of Patahi P.S. Case
No. 167 of 2018 to an independent investigating agency.

2. Learned counsel for the petitioner submitted that the



minor daughter of the petitioner was found hanging in her own room. The petitioner suspected that it was a case of rape and murder. He lodged a first information report (for short 'FIR') against one Golu Singh, who used to tease her from before. As the petitioner used to earn livelihood in Delhi, he came back to his village after he came to know about the death of his daughter. Thereafter, he instituted the case, which was registered under Sections 302, 376, 201/120-B/34 of the Indian Penal Code and Sections 4, 6 and 8 of the Protection of Children from Sexual Offences Act, 2012, but the investigation done so far does not instill confidence. The investigating agency is not conducting the investigation in a fair and impartial manner.

3. He contended that though more than six months have lapsed since the date of institution of the FIR, no one has been arrested by the police. The investigating agency is sitting tight over the matter. He submitted that since the offence alleged is quite serious and there is no progress in investigation of the case, the investigation needs to be handed over to the CBI.

4. On the other hand, learned counsel appearing for the State submitted that from perusal of the FIR itself, it would appear that the alleged victim died in her own room when the father of the petitioner was present in the house. Her body was



found hanging from the ceiling fan. It is not known whether it was a case of suicide or homicide. The alleged occurrence took place in the night intervening between 1st and 2nd September, 2018, but the police was informed after four days on 05.09.2018 at 4:30 pm. There is nothing on the basis of which it can be said that the investigation of the case is not in right direction. Simply because the accused named in the FIR has not been arrested, the investigation can not be handed over to another agency. The arrest of an accused named in the FIR would depend on several factors. The police may not arrest a person named in the FIR. Though Section 41 of the Code of Criminal Procedure gives discretion to a police to arrest a person without warrant who commits a cognizable offence, the said discretion has to be exercised scrupulously. He further contended that the informant of the case would not choose the investigating agency of his own choice.

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

6. Since the case is under investigation, it would not be proper for me to make any comment on the merit of the allegations made in the FIR. There is no doubt that a sensitive and committed investigation is the need of the hour. However,



having said so, I must say that there is no material on the basis of which the Court may come to the conclusion that the investigation is either tainted or biased.

7. Learned counsel for the State is right in his submission that simply because a person is named in the FIR as an accused, it is not incumbent on the police to arrest him. The arrest of an accused would be necessary if the police officer is satisfied that such arrest is necessary for the follow reasons:-

a) to prevent such person from committing any further offence; or

(b) for proper investigation of the offence; or

(c) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or

(d) 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

(e) as unless such person is arrested, his presence in the Court whenever required



cannot be ensured.

8. The police officer is also required to record reason for making arrest of an accused while forwarding the case before the Magistrate for trial.

9. It is well settled position in law that an order for handing over investigation to another agency like CBI in exercise of powers conferred under Article 226 of the Constitution of India is to be exercised by the court sparingly, cautiously and in exceptional situations.

10. In **State of W.B. v. Committee for Protection of Democratic Rights [(2010) 3 SCC 571]**, the Supreme Court has laid down as under:-

“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.”

(emphasis mine)

11. Keeping the ratio laid down by the Supreme Court in **State of W.B. v. Committee for Protection of Democratic Rights** (Supra) and taking into account the facts and circumstances of the case in hand, I am of the opinion that the relief prayed for by the petitioner cannot be allowed.



12. Accordingly, this writ application is dismissed.

(Ashwani Kumar Singh, J)

kanchan/sneha

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.03.2019
Transmission Date	13.03.2019

