

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.761 of 2019

Arising Out of PS. Case No.-227 Year-2018 Thana- PAKRIDAYAL District- East Champaran

Bhagwan Rai Son of Late Janak Rai, Resident of Village - Dumarvana, P.S.-
Pakridayal, Distt.- East Champaran.

... .. Petitioner

Versus

1. The State of Bihar, through the Director General of Police, Bihar, Patna
2. The Superintendent of Police, East Champaran.
3. The S.H.O. Pakridayal P.S., East Champaran. Bihar
4. Ramji Prasad son of Ganesh Prasad
5. Sitaram Prasad son of Late Milu Sah
6. Krishna Prasad son of Sitaram Prasad
7. Jagannath Paswan son of Late Varan Paswan
8. Birju Rai son of Chalitar Rai
9. Anandi Rai son of Birju Rai

All resident of village - Dumarvana, P.S.- Pakridayal, Dist.- East
Champaran.

... .. Respondents

Appearance :

For the Petitioner/s : Mr.Sangeet Deokuliar, Advocate
For the Respondent/s : Mr.Sheo Shankar Prasad, SC-8.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 30-04-2019

This application under Articles 226 and 227 of the Constitution of India has been filed by the petitioner for directing the respondent nos.1 to 3 to arrest the accused persons named in the first information report in connection with Pakridayal P.S. Case No.227 of 2018 dated 20.12.2018 registered under Sections 302/34 and 120B of the Indian Penal Code.



2. The petitioner has prayed for the following reliefs:-

" A. A writ in the nature of MANDAMUS and/or any other appropriate writ/s, order/s, direction/s directing the Respondent authorities (Respondent No.1 to 3) to arrest the accused persons, in connection with Pakridayal P.S. Case No.227 of 2018 dated 20.12.2018 instituted for offences under Sections 302/120B/34 of the Indian Penal Code.

B. For issuance of an appropriate writ/s, order/s, direction/s commanding the respondents for transfer of investigation in connection with Pakridayal P.S. Case No.227 of 2018 dated 20.12.2018 (State Vs. Ram Janam Rai & Ors.) to another agency; for initiation of appropriate action/actions against the erring police official; and award of suitable compensation for the ongoing harassment and mental agony of the petitioner by the local police.

C. To any other relief/s to which the petitioner is found entitled to."

3. Learned counsel for the petitioner submitted that the first information report (for short 'FIR') was instituted by the petitioner on 20.12.2018 against six accused persons named in



the FIR alleging that they were involved in murder of his son due to previous enmity. However, after the FIR was instituted, till date they have not been arrested by the police. The investigation is tainted and the petitioner has lost faith in the investigating agency. Being aggrieved by inaction of the investigating agency, he has also filed a complaint in the Court of Chief Judicial Magistrate in the nature of protest. On the basis of the aforesaid submissions, learned counsel for the petitioner urged that a direction be given to respondent nos.1 to 3 to arrest the accused persons named in the FIR forthwith. He pleaded that the respondents should be directed to hand over investigation of the case to any other independent agency.

4. The State has contested the matter. Learned Standing Counsel for the State submitted that on perusal of the FIR itself it would transpire that the petitioner is not an eye witness to the occurrence. He has given the name of the accused persons in his written report merely on suspicion. The investigation is in progress. There is no material on record on the basis of which it can be said that the investigation is tainted or is not being done in a fair and impartial manner. He urged that at the stage of investigation, it would not be proper for this Court to issue any direction to arrest any person.



5. Having heard the parties, it would be apt at this stage to refer to Section 41 of the Code of Criminal Procedure (for short 'Cr.P.C') which deals with arrest of a person without warrant. It provides that any police officer may without an order from a Magistrate and without a warrant, arrest any person, who, in presence of a police officer, commits a cognizable offence, or against whom a reasonable complaint has been made, or a credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine subject to certain conditions enumerated therein.

6. Thus, under Section 41 of the Cr.P.C the police have been given power to arrest any person against whom a reasonable complaint, or a credible information has been received that he has committed a cognizable offence.

7. However, such power to arrest conferred upon the police officer must be exercised after reasonable care and justification and that such arrest is necessary and required in the facts and circumstances of the case.

8. The investigation in a criminal case is the exclusive domain of the police. They conduct investigation upon



institution of the FIR in exercise of powers conferred under Sections 156 and 157 of the Cr.P.C. The investigation is supposed to be confidential in nature. During investigation, culpability of an accused may be found true or false. This aspect of the matter is to be seen by the police in course of investigation and, therefore, only if the culpability appears to be justified, an individual liberty of a person may be curtailed and he may be arrested. Therefore, it would not be proper for this Court, at this stage, to issue any direction to arrest or not to arrest any person named in the FIR. As far as change of investigating agency is concerned, for that, there is no material before this court to suggest that the investigation is not being done in a fair and impartial manner. In absence of any material, the order of this nature cannot be passed even in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India.

9. Accordingly, the application, being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J)

Md. S/-

AFR/NAFR	NAFR
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