

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.920 of 2019

Arising Out of PS. Case No.-138 Year-2017 Thana- PATNA GRP CASE District- Patna

Ravi Shankar Kumar Akela, Son of Kameshwar Prasad, Resident of Village-Karpi, P.O.- Takya Karpi, P.S.- Mahakar, District- Gaya, present address- New Yarpur, South of Poddar Bhawan, Raj Kamal Niwas, P.S.- Gardanibagh, District- Patna.

... .. Petitioner

Versus

1. The State of Bihar through the Home Secretary, Government of Bihar, Old Secretariat, Patna.
2. The Director General of Police, Patna, Bihar.
3. The Inspector General, Patna, Bihar.
4. The Deputy Inspector General, Magadh Range, Gaya, Bihar.
5. The Superintendent of Police, Patna, Bihar.
6. The Dy. Superintendent of Police, Rail, Patna, Bihar.
7. The S.H.O., Rail Police Station, Patna, Bihar.
8. Devendra Prasad Sharma (First Investigating Officer), S.I., Rail Police Station, Patna, Bihar.
9. Rajbindu Prasad (Second Investigating Officer), Rail Police Station, Patna, Bihar.

... .. Respondents

Appearance :

For the Petitioner : Mr. Om Prakash Singh, Advocate
For the Respondents-State: Md. Nadim Seraj, GP-5

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 24-06-2019

Heard learned counsel for the petitioner and learned counsel for the State.

2. This application under Article 226 of the Constitution of India has been filed by the petitioner for directing the respondents to initiate an inquiry and departmental proceedings against the persons who have arrested him in connection with



G.R.P.S. Case No.138 of 2017 initially under Sections 363 and 365 of the Indian Penal Code but later on 302, 201 and 120B of the Indian Penal Code was added in the first information report.

3. Learned counsel appearing for the petitioner submitted that the police arrested the petitioner on 28.04.2017 without following statutory law and without obtaining warrant of arrest, they illegally detained him for one day and subjected him to various kind of torture. They took his signature on blank sheet of paper and have illegally shown the date of arrest as 29.04.2017 in the arrest memo, which shows that the police have acted in an arbitrary and high-handed manner. The said action of the police is violative of Section 57 of the Code of Criminal Procedure and Article 22 (2) of the Constitution of India. He has submitted that the duty of the police is to protect innocent persons and not to implicate them in false cases. He has submitted that in reply to an application under Right to Information Act, the Information Officer has also stated that the petitioner was arrested on 28.04.2017.

4. On the basis of the aforesaid submissions, the petitioner has prayed that the respondents be directed to initiate disciplinary proceeding against the persons involved in arrest of the petitioner.



5. A counter affidavit has been filed on behalf of the State wherein it has been stated that on 18.03.2019, an information was received in Patna G.R. Police Station on the basis of a written report submitted by one Janeshwar Bhagat on the basis of which G.R. P.S. Case No.138 of 2017 was registered under Sections 363 and 365 of the Indian Penal Code against unknown for the charges of disappearance of the daughter of the informant namely, Manorma Kumari from 10.03.2017. In the written application, it was alleged that his daughter Manorma Kumari had booked a ticket for travelling from Patna to Dhanbad. She had arrived on time at Patna Railway Station for boarding the train no. 13330 (Ganga Damodar Express), but neither did she arrive at Dhanbad on 11.03.2017 nor she returned to her house. Besides this, her mobile number was also found to be switched off. After registration of the case, the police started investigation. In course of investigation and supervision, it was revealed that Manorma Kumari was an unmarried lady who was living with her parents. She was intermediate pass and despite taking admission in B.A., she had dropped her education. In the last 3-4 months, she used to regularly go to Patna and on query from her housemates, she used to reply that she is going to get a job in welfare department at



Patna through a person and some money has been paid to him and that person is the petitioner Ravi Shanker Akela of Gaya Manpur.

6. It has further been stated in the counter affidavit that the petitioner phoned Manorma Kumari on her mobile number and called her at Patna. Manorma Kumari informed her family members and proceeded to Patna. In course of investigation, the investigating officer obtained CDR of the petitioner Ravi Shankar Kumar Akela and the victim Manorma Kumari and found that the petitioner Ravi Shankar Kumar Akela had talked with her. Having found the seriousness of the case, SIT was constituted raids were conducted at residence of the petitioner and he was found absconding. In presence of two independent witnesses, the search was made at his Yarpur residence where photograph of the victim Manorma Kumari, her AIM card, blank cheque book with signature of Manorma Kumari, Passbook, cheque books of many banks, SIM card in the name of Manorman Kumari and many other papers were recovered. In course of investigation. The petitioner was arrested and forwarded to judicial custody.

7. It has further been stated in the counter affidavit that the petitioner is a notorious criminal. A detail of these cases against the petitioner have been given in para 24 of the counter affidavit. In paragraph no. 44, the statement made in para 20 by the



petitioner that he was arrested on 28.04.2017 has been denied. The allegation that the petitioner was assaulted and tortured by the police have also been denied.

8. Learned counsel appearing for the State submitted that the petitioner was arrested on 29.04.2017 and not on 28.04.2017. The date mentioned in reply to the RTI application is wrong. He contended that on the date of search and seizure, the petitioner was not arrested. His arrest was made on 29.04.2017 and he was produced in the court on 30.04.2017 and at the time of production, he had made no complaint before the court that he was detained in custody for more than 24 hours.

9. Having heard learned counsel for the parties, I find that a disputed question of fact has been raised in the instant application in which prayer has been made for initiating disciplinary proceeding against the police officers involved in arrest and production of the petitioner in connection with a criminal case.

10. It has been pointed out by the parties that the case has already been committed to the court of sessions where charges have been framed.

11. As the trial is still pending, I am of the opinion that no finding should be given by this Court with regard to date of



arrest of the petitioner at this stage. The parties would be at liberty to lead evidence in this regard before the trial court and only after the examination and cross-examination of the witnesses on behalf of the parties, the trial court would be in a position to come to any finding with regard to the date of arrest and production of the petitioner. Once the trial is concluded and any adverse finding is given by the court against the action of the police, it would be open to the petitioner to take recourse to the legal remedies available in law. As far as arrest without warrant is concerned, the law does mandate that in a case of murder the police would be first required to obtain warrant of arrest and only thereafter an arrest can be effected. In a cognizable case, the police have discretion to arrest any person even without warrant under Section 41 of the Cr.P.C. against whom complaint has been made or credible information has been received or reasonable suspicion exists to have committed the offence.

12. For the reasons aforesaid, the application is dismissed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	26.06.2019
Transmission Date	26.06.2019

