

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1047 of 2019

Arising Out of PS. Case No.-15 Year-2019 Thana- AMAUR District- Purnia

Raj Kumar Yadav son of Late Nawal Kishore Yadav, Resident of Village -
Simliya, P.S.- Amour, Dist.- Purnia.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Additional Chief Secretary, Deptt. of Home, Govt. of Bihar, Patna.
3. The Director General of Police, Old Secretariat, Patna.
4. The Inspector General of Police, Purnia Region, Purnia.
5. The Deputy Inspector General of Police, Purnia Region, Purnia.
6. The Commissioner, Purnia Region, Purnia.
7. The District Magistrate, Purnia
8. The Senior Superintendent of Police, Purnia.
9. The Dy. Superintendent of Police, Baisi, Purnia.
10. The Officer -in-charge, Amour P.S.- Purnia.
11. The Investigating officer Amour P.S.- Case No.15/2019, Purnia.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Kumar Praveen, Advocate
For the Respondent/s : Mr.Suman Kumar Jha, AC to AAG-3

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 09-07-2019

This application has been filed by the petitioner under Articles 226 and 227 of the Constitution of India for directing the respondent authorities to expedite the investigation of Amour P.S. Case No.15 of 2019 and to arrest the named accused persons and their associates. The petitioner has also prayed that the investigation of the case be handed over to any independent agency like CBI/CID or any other impartial



agency.

2. The facts of the case, in brief, are that the petitioner Raj Kumar Yadav had submitted a written report to the officer-in-charge of the Amour Police Station regarding murder of his father pursuant to which Amour P.S. Case No.15 of 2019 was registered under Section 302 read with 34 of the Indian Penal Code against Kali Yadav, Balas Yadav, Gobind Yadav, Amit Yadav and Prabhakar Yadav and investigation was taken.

3. It is submitted by the learned counsel for the petitioner that about four months have elapsed since the date of institution of the first information report (for short 'FIR'). but till date the police have not arrested any accused named in the FIR. The named accused are threatening the petitioner. They say that they have connection with people in power and have purchased the police. The police have assured them not to worry as steps are being taken to submit final form stating the prosecution case to be false against them. He submitted that the conduct of the police clearly shows that they are in collusion with the accused persons and to spoil the case of the prosecution they may submit false report in favour of the accused persons. He contended that the petitioner has already filed a complaint in the form of protest



in the court below on 7th March, 2019 against the conduct of the police.

4. On the basis of the aforesaid submissions learned counsel for the petitioner pleaded that it is a fit case in which the court should issue direction to the respondents to immediately arrest the accused persons and change the investigating agency.

5. On the other hand, learned counsel for the State submitted that the averments made by the learned counsel for the petitioner in the supplementary affidavit, a copy of which has supplied to him contains postmortem report of the deceased. It would be evident that the death of the deceased happened due to hanging. The cause of death has been opined by the doctor conducting the postmortem examination as asphyxia. He contended that since the investigation of the case is on, it would not be proper to point finger towards the bona fide of the investigating agency. He has further contended that simply because six persons have been made named accused in the FIR, the police cannot arrest them mechanically in absence of cogent evidence of their participation in the offence.

6. I have heard learned counsel for the parties and perused the materials on record.



7. The informant is not an eye witness to the occurrence. In the FIR he has raised suspicion against the named accused persons that they might be involved in the commission of the murder of the deceased. The suspicion is based on account of the fact that a title suit is pending between the parties. Though a copy of the supplementary affidavit has been served to the counsel for the State, the same has not been filed before the registry. Learned counsel for the petitioner undertakes to file the same by tomorrow. I have perused the copy of the affidavit served upon the State. The postmortem report annexed to the supplementary affidavit would reveal that the cause of death in the opinion of the doctor conducting postmortem examination was asphyxia due to hanging. The doctor conducting the postmortem examination did not find any internal or external injury over the body of the deceased. Since investigation of the case is pending, it has rightly been submitted by the learned counsel for the State that it would not be proper for this court to arrive at any conclusion. It is yet to be ascertained whether death of the deceased was suicidal or homicidal. There is no material on the basis of which it can be said that the investigation being conducted by the police is tainted. Simply because the accused persons named in the FIR on the basis of suspicion have not



been arrested, this court would not come to the conclusion that the investigation is negatively biased against the case of prosecution. Moreover, in view of Section 41 of the Cr.P.C., an arrest of an accused in course of investigation is discretionary jurisdiction of the police. In case an arrest of an accused named in the FIR is mechanically made, the same would cause more harm and would be detrimental to the criminal justice system.

8. The court cannot direct the police to arrest a person. It cannot take the role of the police. An arrest has to be made only if it is found necessary under the facts and circumstances of the case.

9. There is also no justification for directing the respondents to hand over the investigation of the case to any other investigating agency.

10. The application lacks merit.

11. It is dismissed, accordingly.

(Ashwani Kumar Singh, J)

Md. S/-

AFR/NAFR	NAFR
CAV DATE	N/A
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