

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1079 of 2019

Arising Out of PS. Case No.-194 Year-2019 Thana- SASARAM MUFFSIL District- Rohtas

Raj Kumar Chaudhary son of Late Dasai Choudhary, Resident of Mohalla -
Khirkighat, P.S.- Sasaram Town, Dist.- Rohtas.

... .. Petitioner/s

Versus

1. The State of Bihar
 2. The Chief Secretary, State of Bihar, Patna.
 3. Director General of Police, State of Bihar, Patna.
 4. Officer Incharge, Sasaram Muffasil Police Station, Dist.- Rohtas.
 5. Investigating Officer of Sasaram Muffasil P.S. Case No.194/19 Sasaram Muffasil Police Station, Dist.- Rohtas.
 6. Jail Superintendent, Sasaram Jail, Rohtas.
 7. Jailer, Sasaram Jail, Rohtas.
 8. Sohail Ahmad
 9. Shakil Ahmad
- Both 8 and 9 are presently lodged in Sasaram Jail, Rohtas

10. Vakil Ahmad
- All 8 to 10 are sons of Rafiq Ahmad and are resident of Mohalla -
Kajipura, P.S.- Sasaram Nagar, Dist.- Rohtas.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. D.K.Sinha, Sr. Advocate
	:	Mr. Abhinay Raj, Advocate
	:	Mr. Alexander Ashok, Advocate
For the State	:	Mr. Iqbal Asif Niazi, AC to GP-5

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 17-07-2019

Heard Mr. D.K.Sinha, learned senior counsel
appearing for the petitioner and Mr. Iqbal Asif Niazi Assistant
Counsel to learned Government Pleader No.5.

2. This application under Articles 226 and 227
of the Constitution of India has been filed by the petitioner for



directing respondent nos. 1 to 3 to hand over investigation of Sasaram Mufassil P.S. Case No.194 of 2019 dated 15.06.2019 to an independent agency like Central Bureau of Investigation (for short 'CBI') or Vigilance.

3. Mr. D.K.Sinha, learned senior counsel appearing for the petitioner submitted that the first information report (for short 'FIR') was registered under Section 302/34, 328 and 120A of the Indian Penal Code with allegation that the informant's son Nanhak, aged about 25 years, who was in judicial custody in Sasaram Divisional Jail was taken to Sasaram Sadar Hospital for treatment from where he was referred by the doctors to Narayni Hospital, Jamuhar. In the Narayni Hospital he was declared dead. He contended that the informant suspected that his son might have been administered poison under conspiracy by some others who was also confined in jail. According to him, after institution of the case there is no further progress in the matter. Instead of taking any action against the persons, who are named in the FIR, the petitioner, who is informant of the case, is himself being harassed by the police. On the basis of the aforesaid submissions, he submitted that a fair and impartial investigation is not expected from the local police. Hence, the investigation may be handed over to the CBI



or Vigilance Investigation Bureau (for short 'Vigilance') for arriving at the truth.

4. Per contra, learned counsel for the State submitted that the application filed by the petitioner is misconceived. The admitted case of the informant of Sasaram Mufassil P.S. Case No.194 of 2019 is that the informant's son while being in judicial custody was taken to Sasaram Sadar Hospital from where he was referred to Narayni Hospital, Jamuhar for better treatment where he died. There is nothing on the basis of which it can be said that the death of the son of the petitioner was caused due to poison.

5. He contended that the FIR in question was instituted on 5.06.2019 and only after one month and ten days the instant case has been instituted before this Court on 16.07.2019 alleging that the investigation is tainted. He contended that not only that, the case has been filed on 16.07.2019, the affidavit for filing the case has been sworn by the petitioner on 26.06.2019, which would mean that within eleven days of the institution of the FIR, the petitioner has rushed to this Court for change of the investigating agency without there being any cogent material to show that the investigation is unfair.



6. I have heard learned senior counsel for the petitioner and learned counsel for the State.

7. To hold investigation into a cognizable offence is the statutory right of the police. At this stage, neither the informant nor the accused nor the court has any say. It is true that in appropriate case a constitutional court may issue direction for handing over institution of the case to the CBI. However, such extraordinary power should be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instill confidence in investigations or where the incident may have under ramifications. Transfer of a case from one investigating agency to another investigating agency is not to be done in a mechanical or casual manner.

8. Apparently, within eleven days of institution of the FIR, the petitioner has rushed to this Court for change of investigating agency. There was no material on the basis of which the petitioner can say that investigation is not being done in a fair and impartial manner. Since the investigation is going on, it would not be proper for this Court to make any observation with regard to merit of the allegation made in the FIR. However, it is suffice to note that there is nothing on record



to erode the credibility of the investigating agency handling the matter.

9. In that view of the matter, I see not merit in the application. It is dismissed, accordingly.

Md. S/-

(Ashwani Kumar Singh, J)

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	26.07.2019
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