

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1048 of 2019

Arising Out of PS. Case No.-178 Year-2019 Thana- AMARPUR District- Banka

Sanjay Kumar Sah son of Ram Lakhan Sah, Resident of Village- Bidanchak,
P.O. and P.S.- Amarpur, District- Banka.

... .. Petitioner/s

Versus

1. The State of Bihar through the Director General of Police, Govt. of Bihar, Patna
2. Inspector General of Police, Eastern Region, Bhagalpur.
3. Superintendent of Police, Banka
4. S.H.O., Amarpur Police Station, District- Banka.
5. The I.O. of Amarpur P.S.- Case No. 178/ 2019, P.S.- Amarpur, District- Banka. Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Dharendra Nath Jha, Advocate
	:	Mr. Chandra Shekhar Sharma, Advocate
For the State	:	Mr. Sheo Shankar Prasad, SC-8

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 09-07-2019

This application under Articles 226 and 227 of the Constitution of India has been filed by the petitioner for directing the respondents specially respondent nos. 4 and 5 to investigate Amarpur P.S. Case No.178 of 2019 properly, legally and arrest the accused persons named in the FIR.

2. The petitioner is the informant of the aforesaid Amarpur P.S. Case No.178 of 2019 registered under Sections 384 and 386 read with 34 of the Indian Penal Code.

3. Learned counsel for the petitioner submitted that though more than three months have elapsed since the date



of institution of the FIR, the accused persons named in the FIR have not been arrested. He submitted that the inaction on the part of the police in arresting the accused goes to suggest that investigation is not being carried out in a fair, impartial and legal manner.

4. On the other hand, learned counsel for the State submitted that the application filed by the petitioner lacks merit. He submitted that only because a person is named in the FIR, the police are not expected to mechanically arrest him. The arrest of an accused would be dependent on several factors. The Code of Criminal Procedure confers discretion in this regard to the police. The said discretion has to be exercised taking into account several factors as mentioned under Section 41 of the Code of Criminal Procedure.

5. I find substance in the submissions made by the learned counsel for the State.

6. If an information relating to a cognizable offence is given to the police officer, though he has power to arrest, he has discretion not to arrest the accused person. The discretion to arrest or not to arrest an accused would depend on the nature of the offence and the circumstances disclosed not only in the FIR but also during course of investigation. Though



Section 41 of the Code of Criminal Procedure gives wide powers to the police officer to make an arrest, it is necessary while exercising such powers to be cautious and circumspect. The police officer is not obliged to act mechanically in all cases and arrest the accused as soon as the FIR is registered. Since arrest involves an encroachment on the liberty of a person, the power to arrest must be exercised cautiously.

7. At the stage of investigation, the court has no role to play. There is nothing on record to suggest that the investigation is not being conducted in a fair and impartial manner.

8. In that view of the matter, I find no merit in this application. It is dismissed, accordingly.

(Ashwani Kumar Singh, J)

Md. S/-

AFR/NAFR	NAFR
CAV DATE	N/A
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