

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.358 of 2019

Arising Out of PS. Case No.-88 Year-2017 Thana- TIKAPATTI District- Purnia

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Pahari Mandal aged about 28 years (Male) son of Gyanchand Mandal,
resident of village-Sapaha, P.S-Tikapatti, District-Purnea

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary (Home), Police Department, Bihar, Patna
2. The Director General of Police-cum-Inspector General of Police, Bihar, Patna.
3. The Deputy Inspector General of Police, Purnea.
4. The District Magistrate, Purnea.
5. The Superintendent of Police, Purnea.
6. The Sub Divisional Police Officer, Dhamdaha, Purnea.
7. The Officer-in-charge, Tikapatti Police Station, Purnea.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Praveen Kumar, Advocate

For the Respondent/s : Mr.Prabhat Kumar Verma, AAG-3

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 13-02-2019

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

2. In the instant writ petition, the petitioner has
prayed for issuance of direction to the respondents to arrest the
sixteen accused persons named in the FIR in connection with
Tikapatti P.S. Case No. 88 of 2017 registered under Sections
302 read with 34 and 201 of the Indian Penal Code.

3. Learned counsel for the petitioner submitted
that the petitioner is informant of the case. His father was
contesting for the post of Secretary of a Co-Operative Society.
Since there was all possibility that he would have won the
election, in the night intervening between 16 and 17.06.2017, he



was killed by some unknown criminals. The petitioner suspected involvement of sixteen accused persons in the commission of the alleged murder. He submitted a written report on 17.06.2017 on the basis of which the Station House Officer, Tikapatti has instituted P.S. Case No.88 of 2017 against those sixteen persons. He contended that since the date of institution of the FIR, investigation of the case is not proceeding in an impartial manner as a result of which the accused persons have not been arrested so far.

4. Per contra, learned counsel for the State submitted that he has instruction that one of the named accused, namely, Vidya Nand Singh was apprehended by the police in connection with Tikapatti P.S. Case No. 88 of 2017 and has been granted bail by this Court vide order dated 19.12.2018 passed in Cr. Misc. No. 70439 of 2018. He further contended that it is not known as to whether other accused persons have also been granted bail either by this court or by the court below. He also contended that the FIR has been instituted merely on suspicion against the accused persons. Thus, it would not be proper for this court to issue any direction to the police to arrest the named accused persons.

5. I have heard learned counsel for the parties



and carefully perused the record.

6. On query, learned counsel for the petitioner admitted that he is not aware as to how many accused persons have been arrested by the police or as to how many of them have already been granted bail either by this Court or by the court below.

7. Be that as it may, as the investigation of the case is going on, I am of the considered opinion that no mandamus can be issued to the respondents by this Court for arrest of the accused persons named in the FIR.

8. Under Section 41 of the Code of Criminal Procedure powers are conferred on police to arrest, mainly in cognizable offences, without having to go to Magistrate for obtaining arrest. The burden is on police officer to justify the arrest before the court.

9. It is well settled position in law that the judiciary should not interfere with the police in matters which are within the domain of police specially when the case is under investigation as there is statutory right of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities.

10. Moreover, a perusal of the FIR itself would



demonstrate that the informant of the case is not an eyewitness to the occurrence. The names given by him in his written report are based on hypothetical presumption and suspicion.

11. Though, the police have got power to arrest a person suspected to be involved in a cognizable offence, such power is not to be used mechanically in every case. The police must themselves form an opinion regarding involvement of accused named in the FIR and desirability of their arrest. The arrest has to be made only if, it is required, looking at the gravity of the offence and the materials available on record against a person.

12. A person may be named in the FIR, but investigation may show his false implication in the case. Hence, at the stage of investigation, no interference by the court is warranted.

13. It would be highly improper for this Court to issue any direction for arrest of any accused person.

14. The writ petition lacks merit. It is dismissed, accordingly.

(Ashwani Kumar Singh, J)

Md. S/SKSuman.

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.02.2019
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