

**IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM RESIDENTIAL OFFICE VIA VIDEO APPLICATION)
Criminal Writ Jurisdiction Case No.2783 of 2018**

Arising Out of PS. Case No.-251 Year-2014 Thana- MASAUDHI District- Patna

Dr. Sidharth Sharma S/o Late Dinesh Prasad Sharma, R/o Village- Chapaur, P.S.- Masaurhi, District- Patna. Presently residing at Road No.1, Rajendra Nagar House, More House Opposite near Water Tower, Rajendra Nagar, P.S. Kadamkuan, District- Patna.

... .. Petitioner

Versus

1. The State Of Bihar, Through Chief Secretary, Bihar, Patna
2. The Director General of Police, Bihar.
3. The Deputy Inspector General of Police, Central Range, Patna Division.
4. The Senior Superintendent of Police, Patna.
5. The City S.P. East, Mr Sayali Dhurat Ram, S.P. Araria, District- Araria.
6. The Dy. Superintendent of Police, Masaurhi Mr. Surendra Panjiyar, Presently posted at Muzaffarpur,
7. The Circle Inspector Masaurhi Mr. Shaligram Kumar, Patna Bihar.
8. The Ex. SHO Masaurhi, Mr. Ravindra Yadav, Presently posted at Head Quarter, Patna.
9. The S.H.O. Masaurhi, Mr. Lal Jeet Saran, I.O., Patna, Bihar.
10. The Ex. S.H.O., Mr. Santosh Kumar, Gaurichak, P.S. Presently posted at Bye Pass P.S.- Patna, District – Patna.
11. The Ex. Dy. Superintendent of Police, Sadar Patna Mr. Pramod Kumar Mandal, Presently posted not known through Head Office, Patna.
12. The then SHO Masaurhi, Mr. Arun Kumar Akela at present O.S.D. Senior S.P. Chapra, District Chapra at Saran.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr.Dr. Sidharth Sharma, In Person, Advocate
For the Respondent/s	:	Mr.Suman Kumar Jha, AC to AAG-III

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER**

7 16-08-2021 Heard the petitioner in-person and Mr. Suman
Kumar Jha, learned A.C. to learned A.A.G.-III.

With consent of the parties, the writ application is being taken up for final disposal.

Petitioner, in the present case, is seeking a writ in the nature of writ of mandamus commanding the respondent police authorities to complete the investigation of the Masaurhi P.S. Case No. 251/2014 being G.R. No. 624/14 dated 18.06.2014.

The grievance of the petitioner is that the police case which was lodged in connection with the death of his father has not been properly investigated. At the time of filing of the writ application an apprehension was expressed that the police authorities have connived with the informant and other interested persons to demolish the case and divert the investigation in a different way.

Petitioner has, further requested this Court to transfer the investigation to the Central Bureau of Investigation (in short the 'C.B.I.').

The petitioner is himself an Advocate practicing in this Court as an Advocate On Record since 1983. He has come out with a statement in the writ application that his brother Anil Singh had not given him his share in the village property. Further statements have been made which are giving

an impression to this Court that both the brothers are at logger head and several allegations have been made by this petitioner against his brother with regard to the property disputes.

So far as Masaurhi P.S. Case No. 251/2014 is concerned, the same was lodged by his brother when the father of this petitioner and the informant was found dead on 18.06.2014. He had been found fallen down in the field, a mark of injury was present on the chest. In the post mortem report the Doctor opined that he died of Asphyxia and that may be result of injury suffered by him on the chest. He was 85 years old.

It appears that the writ application was taken up for the first time on 02.02.2021. This Court adjourned the matter for some time whereafter a counter affidavit was filed on behalf of respondent no. 4 – 6. On 10.03.2021 the Court was informed that the investigation is still pending in want of Viscera examination report. This Court directed the S.D.P.O. Masaurhi, Patna to get in touch with the authorities of the Forensic Science Laboratory, Patna, obtain the viscera report and appear before this court with the record of this case to show as to what progress has been made so far in course of investigation.

On 05.04.2021, the S.D.P.O., Masaurhi, Patna appeared in court and informed that a final form has been submitted in this case vide final form no. 113/2021 dated 03.04.2021 saying that the death of the father of the petitioner was in the nature of an unnatural death. On the said date once again learned counsel for the petitioner made a prayer that the investigation of the case has not been done properly, therefore it should be transferred to C.B.I.

This Court, therefore, gave an opportunity to the respondents to file an additional counter affidavit with all the materials on the record with their stand as to why further investigation be not conducted through C.B.I.

The S.D.P.O., Masaurhi has filed a supplementary counter affidavit. In his supplementary/additional counter affidavit he has explained the efforts taken by him in course of investigation. The outcome of the investigation has been shown as 'mistake of fact and a case of unnatural death'. According to him, now the learned Magistrate has to take a view in the matter after perusing the police final report. He has referred to the Forensic Science Laboratory report and the consultation with the doctor in this regard.

The petitioner has filed a rejoinder to the

supplementary counter affidavit in which he has raised a number of issues questioning the investigation conducted by the Masaurhi Police. According to him, the police did not record his statement in course of investigation and the final form has been submitted in haste. Petitioner submits that the manner in which the police final report has been submitted after seven long years, the investigation has remained a mere paper transaction and nothing else. He submits that the post mortem report is showing burning mark on the chest of the victim and also peeling of the skin. Number of issues have been raised on the post mortem report as well.

Mr. Suman Kumar Jha, learned A.C. to learned AAG-III submits that in the present case police has submitted the final investigation report and it is open to the petitioner to request the learned Magistrate before whom the final report has been submitted to pass an order for further investigation. It is submitted that a regular court constituted under the Code of Criminal Procedure is empowered to take a view on the issue of further investigation and as such this Court need not exercise it's power under Article 226 of the Constitution of India to issue any direction in this regard.

On the question of handing over the investigation to

the C.B.I., learned counsel submits that it is not one of those glaring cases in which such investigation is required to be ordered. The judgment of the Hon'ble Supreme Court in the case of **Bimal Gurung Vs. Union of India** reported in (2018) 15 SCC 480 has been relied upon to submit that the C.B.I. inquiry need not be ordered on mere assertion of the petitioner.

Having heard the petitioner in-person and learned A.C. to learned AAG-III and upon perusal of the records, this Court is of the considered opinion that at this stage this Court need not exercise its extraordinary writ jurisdiction under Article 226 of the Constitution of India. The final report has been submitted before the learned Magistrate. If the petitioner is aggrieved by the final report and is looking for further investigation, he has an opportunity to file an appropriate application before the learned Magistrate seeking appropriate relief. This Court would not usurp the power of the learned Magistrate in this regard.

Liberty is granted to the petitioner to approach the court of learned Magistrate where the case is pending with an appropriate application. If such an application is filed within a period of 30 days from today, the same will be considered by

the learned Magistrate in accordance with law.

Let it be recorded that this Court has not taken any
view on the merit of the case.

This application stands disposed off accordingly.

(Rajeev Ranjan Prasad, J)

Rajeev/-

U			
---	--	--	--

Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.