

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.379 of 2020

Arising Out of PS. Case No.- Year-0 Thana- District- Muzaffarpur

Hemant Kumar, aged about 45 years (Male), Son of Sri Mahesh Prasad Singh Resident of Village-Jarang Rampur, P.S.-Vaishali, District-Vaishali.

... .. Petitioner

Versus

1. The State of Bihar through Principal Secretary, Department of Home (Police) Government of Bihar, Patna.
2. The Principal Secretary, Department of Home (Police), Government of Bihar, Patna.
3. The Director General of Police, Bihar, Patna.
4. The Inspector General of Police, Tirhut Zone, Muzaffarpur.
5. The Superintendent of Police, Muzaffarpur. Muzaffarpur.
6. The Superintendent of Police, Vaishali. Vaishali.
7. The Superintendent of Police, Sheohar. Sheohar.

....Respondent 1st Set

8. Union of India through Principal Secretary, Department of Education, Ministry of Home Affairs, Govt. of India New Delhi.
9. The Central Bureau of Investigation, Govt. of India, New Delhi. New Delhi.

....Respondent 2nd Set

10. Gupteshwar Pandey S/o Late Jagdish Pandey presently holding the post of Director General of Police cum Inspector General of Police, Bihar, Patna, permanent address-resident of village Gerwa Bandh, P.O.-Basantpur, District-Buxar.

....Respondent 3rd Set

11. Ajay Kumar S/o Prabhu Paswan Resident of Village-Kanhauli, P.S.-Mahua, District-Vaishali.
12. Sudhi Priya W/o Ajay Kumar Resident of Village-Sherpur Gandak Colony Quarter No. D/37, P.S.-Sadar, District-Muzaffarpur.
13. Deep Shikha W/o Vaibhav Mishra Resident of Village-Saketpuri, P.S.-Sadar, District-Muzaffarpur.
14. Madan Mohan Singh S/o Late Madhusudan Prasad Singh Resident of Village-Jarang Rampur, P.S.-Belsar O.P., District-Vaishali.
15. Suresh Kumar S/o Late Kokhan Ram Resident of Village-Bishunpur Mansingh, Chamanpur, Ward No.13, Sheohar, P.S.-Sheohar, District-Sheohar.
16. Vaibhav Mishra S/o Mukesh Mishra Resident of Village-Saketpuri, P.S.-Sadar, District-Muzaffarpur.



... .. Respondent 4th Set

Appearance :

For the Petitioner	:	Mr. Ajay Kumar Thakur, Advocate Mr. Shashank Shekhar, Advocate
For the Union of India	:	Mr. K.N. Singh, Addl. S.G. Mr. Abhijeet Gautam, J.C. to Addl. S.G.
For the C.B.I.	:	Mr. Bipin Kumar Sinha, Advocate
For the State	:	Mr. Prabhu Narayan Sharma, A.C. to A.G.

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

4 29-01-2021 **I.A. No. 02 of 2021**

Learned counsel for the petitioner submits that this Interlocutory Application has become infructuous.

I.A. No. 01 of 2021

This Interlocutory Application has been filed during pendency of this case seeking to add further reliefs in the present criminal writ application.

The petitioner claims that he is a Right to Information Act (in short “R.T.I.”) Activist and has been implicated in criminal cases by the then Director General of Police, Government of Bihar (Respondent No.10), since retired, because of some personal animosity. Petitioner has given the description of the cases in which his bail application has been rejected either from the court of learned Chief Judicial Magistrate or from the court of learned Sessions Judge, however, the order passed in those cases have not been brought on the record.

Submission of Mr. Ajay Kumar Thakur, learned counsel representing the petitioner is that there are two more cases in



which the petitioner has yet not been taken on remand and he is lying in custody since 06.03.2020.

Prayer has been made in this application to quash all the F.I.Rs. which have been lodged against the petitioner and during pendency of the criminal writ application, the petitioner be enlarged on bail in the cases which are mentioned in paragraph '5' of the Interlocutory Application.

In paragraph '8' of the Interlocutory Application, a submission has been made that the petitioner be ordered to be released on bail in the light of the judgment of the Hon'ble Apex Court in the case of *Arnav Manoranjan Goswami Vs. State of Maharastra passed in Cr. Misc. No. 742/2020 arising out of SLP (Cri.) No. 5598/2020* along with analogous appeals disposed off on 27th November, 2020.

After some argument, learned counsel for the petitioner has understood the difficulty in pursuing the present Interlocutory Application.

The Criminal Writ Application was initially filed for issuance of a writ in the nature of mandamus directing the respondents second set to investigate all the cases which have been lodged against the petitioner during the period respondent third set assumed the charge of Director General of Police, Government of Bihar, Patna. This direction has been sought for on a premise that



the petitioner has been deprived of proper investigation in all the cases. The petitioner has given justification citing that a proper investigation of all the cases would be possible only if the respondent second set i.e. the Central Bureau of Investigation is directed to investigate the matters.

The prayer made in the Interlocutory Application now is completely different and distinct. The prayers made in the Interlocutory Application have neither any foundation of facts either in the writ application or in the Interlocutory Application nor the documents such as the F.I.Rs. of which quashings are being prayed for have been enclosed with the application. In fact the prayers made in the Interlocutory Application are in complete contrast with the prayers in the writ application, the prayer for quashing of F.I.Rs. are in the nature of a totally different and totally independent kind of prayer of which cause of action cannot be said to have arisen to the petitioner during the pendency of the writ application so as to necessitate filing of an Interlocutory Application to amend the writ application.

This Court also finds that the prayer for bail of the petitioner has been rejected and this fact is admitted in paragraph '5' of the I.A. but even those orders passed by the learned court below have not been brought on record. The reasons and rationale behind rejection of bail petition of the petitioner, therefore, are not



before this Court. In totality, it seems that the application lacks proper pleading and it is only a half-hearted application.

So far as the judgment of the Hon'ble Apex Court in the case of Arnav Manoranjan Goswami (supra) is concerned, the facts and circumstances of the said case were completely different and distinct from that of the facts of the present case.

In the present case, the petitioner is lying in judicial custody after he was arrested and then the competent court of law which is also known as regular courts under the Code of Criminal Procedure have rejected his prayer for bail. Petitioner has remedy available for moving appropriate court of law for grant of bail.

This Court would remind itself of the judgment of the Hon'ble Apex Court in the case of **Bharat Petroleum Limited Vs. N.R. Vairamani (2004) 8 SCC 579** wherein the Hon'ble Apex Court has observed that the judgment of the Hon'ble Apex Court should not be cited like Euclid's theorem as the slightest change in the facts of the case would make a sea difference in the opinion of the Court.

In the present case, where the petitioner has not even enclosed the various orders passed by the learned court below while rejecting his prayer for bail, it is not expected that this Court would be able to appreciate this case on the same line on which the Hon'ble Apex Court had been pleased to entertain the application



of Arnav Manoranjan Goswami.

The Interlocutory Application is thus not fit to be allowed. It is dismissed accordingly.

Cr.W.J.C. No. 379 of 2020

Heard Mr. Ajay Kumar Thakur assisted by Mr. Shashank Shekhar, learned Advocate on behalf of the petitioner, Mr. Prabhu Narayan Sharma, learned A.C. to Learned Advocate General for the State, Dr. K.N. Singh, learned Additional Solicitor General for the Union of India and Mr. Bipin Kumar Sinha, learned Standing Counsel for the Central Bureau of Investigation, who are present in court.

This Court has already noticed the prayer made in the writ application, hereinabove.

In course of argument, this Court raised a query as to whether prior to moving this court for issuance of a writ in the nature of mandamus, the petitioner had approached the competent authority for the reliefs which he is praying in this writ application. Mr. Thakur, learned counsel for the petitioner has, though, drawn the attention of this Court towards Annexure '58' to the writ application saying that a representation was made by the petitioner in this regard to the Chief Minister of Bihar, but at the same time, after going through the same learned counsel agrees that in the said representation there was no request for transfer of



the cases to the respondent second set. Mr. Thakur has thereafter realised the difficulties in pursuing the writ application, because learned counsel understands that prior to moving this Court the petitioner should have made request to the competent authority. In view of this difficulty, learned counsel for the petitioner submits that petitioner may still file a representation before the present Director General of Police, State of Bihar and the Principal Secretary, Department of Home, Government of Bihar, Patna. Learned counsel submits that the petitioner will do so within a period of four weeks from today.

Mr. Prabhu Narayan Sharma, learned A.C. to learned Advocate General has opposed the writ application, however, in view of the stand now being taken on behalf of the petitioner, learned counsel submits that if such representation is filed, the competent authority will look into the same and take an appropriate view of the matter.

At this stage, learned Additional Solicitor General and learned counsel for the Central Bureau of Investigation do not have much to argue and they have rightly not taken any stand in the case.

In the aforesaid view of the matter, the writ application is being disposed off.

If so advised, petitioner may seek his remedy before the competent authority in accordance with law within a period of four



weeks from today and if such representation is made before the competent authorities, it is expected that the same will be looked into and an appropriate decision would be taken thereon within a reasonable time.

This Court would make it very clear that although many facts are pleaded in this writ application, this Court has not at all gone into the merit of the writ application and no part of this order shall be construed as any opinion of this Court.

The writ application stands disposed off accordingly.

(Rajeev Ranjan Prasad, J)

Rajeev/-

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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'.

