

**IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM THE OFFICIAL CHAMBERS VIA VIDEO APPLICATION)
Criminal Writ Jurisdiction Case No.776 of 2022**

Arising Out of PS. Case No.-320 Year-2021 Thana- HARSIDHI District- East Champaran

SANJAY KUMAR SINGH SON OF LATE HANUMANT SINGH Resident
of village- Bandhuaha, P.S.- Paharpur, District- East Champaran

... .. Petitioner

Versus

1. The State of Bihar through the Home Secretary, Government of Bihar, Patna
2. The Director General of Police, Bihar Patna
3. The Superintendent of Police, East Champaran at Motihari
4. The Deputy Superintendent of Police, Areraj, East Champaran at Motihari
5. The S.H.O., Harsidhi Police Station. District- East Champaran at motihari
6. The Investigating officer of Harsidhi P.S.- case No.- 320/2021, District- East Champaran at Motihar

... .. Respondents

Appearance :

For the Petitioner/s : Mr.Ajay Kumar Singh, Advocate
For the Respondent/s : Ms. Dipika Sharma, AC to SC-9

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

2 21-10-2022 Heard learned counsel for the petitioner and Ms.
Dipika Sharma, learned AC to SC-9 for the State.

Petitioner, in the present writ application, is seeking
the following reliefs:-

“(I) For issuance of writ in the nature of Mandamus
or any other appropriate writ/s, order/s, Direction/s to
the respondents to complete the investigation of
Harsidhi P.S. Case No. 320/2021 dated 8.8.2021
registered for the offences under Section 364/120-B
of the I.P.C. later on added 302 of the I.P.C. vide
order dated 11.8.2021 fairly and impartially forthwith
in accordance with law.

(II) For issuance of writ in the nature of Mandamus
or any other appropriate writ/s, order/s, Direction/s to



the respondents to comply the order passed by learned Chief Judicial Magistrate, East Champaran, Motihari vide order dated 29.11.2021 in which order of warrant has been issued against the 12 F.I.R. named persons and the investigating officer received the said order on 19.4.2022. in connection with Harsidhi P.S. Case No. 320/2021 dated 8.8.2021 registered for offences under section 364/120-B of the I.P.C. later on added 302 of the I.P.C. vide order dated 11.8.2021.

(III) For issuance of writ in the nature of Mandamus or any other appropriate writ/s, order/s, Direction/s to the respondents to hand over the case to proper agency like the Central Bureau of Investigation for proper investigation of Harsidhi P.S. Case No. 320/2021 dated 8.8.2021 registered for offences under section 364/120-B of the I.P.C. later on added 302 of the I.P.C. vide order dated 11.8.2021 since no progress has been made since long.

(IV) For issuance of any other appropriate writ(s), order(s), direction(s) for which the petitioner is entitled to in the facts and circumstances of the case.”

Mr. Ajay Kumar Singh, learned counsel for the petitioner has submitted that even though this case has been lodged for the alleged murder of the son of the petitioner and 12 persons are named in the F.I.R., Police has not taken any action to arrest the accused persons.

Referring to Annexure ‘2’ to the writ application, learned counsel points out that earlier the I.O. had applied in the court of learned Chief Judicial Magistrate, East Champaran at



Motihari for issuance of non-bailable warrant against the named accused persons and had obtained the non-bailable warrant but then with the change of supervising authority it has come to the notice of the petitioner that a different view is being taken.

Learned counsel submits that the accused persons had applied for anticipatory bail in the learned court below but their prayer for bail has already been rejected long back, still they are not being arrested and the investigation is not progressing.

It is submitted that for the aforesaid reason the petitioner has lost his faith in the present I.O. and has prayed for transfer of the entire investigation to the Central Bureau of Investigation so that a free and fair investigation may take place.

Learned counsel for the State submits that at this stage only because of some sort of laches on the part of the I.O., it may not be a good case of transfer of entire investigation to the Central Bureau of Investigation.

It is submitted that such transfer need not be done in a routine and mechanical manner unless it is *prima-facie* shown to this Court that the State Police is not able to investigate the case.

It is submitted that at this stage one opportunity may be given in terms of the order dated 09.09.2022 passed in Cr.W.J.C. No. 153/2017 and other analogous matters to the



Superintendent of Police, East Champaran, Motihari (respondent no. 3) to supervise the case and act in terms of the order of this Court. It is stated that if the Superintendent of Police, East Champaran, Motihari shall come to a conclusion that present I.O. has not been acting then he will change the I.O. and may consider taking appropriate action for the laches on the part of the I.O.

Having regard to the entire facts and circumstances of the case, this Court is disposing of the writ application directing the Superintendent of Police, East Champaran, Motihari (respondent no. 3) and the competent court within whose jurisdiction the case is pending to ensure proper investigation and monitoring respectively of the present case. The respondent no. 3 shall look into the grievance of the petitioner as regards the I.O. and in case it is found that the I.O. is sitting over the matter and is favouring the accused persons by not executing the warrant of arrest, respondent no. 3 shall not only ensure that the case proceeds properly and appropriate action be taken against an accused who may be absconding in the case but would also consider the inaction of the I.O. and take appropriate decision thereon. For a ready reference the directions issued by this Court in Cr.W.J.C. No. 153/2017 and other analogous matters



are being reproduced hereunder:-

“(I) In the cases where the investigation of the case is still pending, the concerned writ petitioner/an aggrieved person (hereinafter referred to as the ‘writ petitioner’ or ‘an aggrieved person’) may file an appropriate application before the Senior Superintendent of Police/Superintendent of Police of the concerned district drawing his attention towards the pending investigation. The aggrieved person shall submit his stand by way of an application with all supporting materials in the office of Senior Superintendent of Police/Superintendent of Police or send the same through registered post/speed post/email, as the case may be. A copy of the same shall also be sent to the investigating officer of the case.

(II) On receipt of such application from the aggrieved person, the Senior Superintendent of Police/ Superintendent of Police shall himself supervise the said case within a period of two weeks, wherever necessary he shall give a chance of hearing to the aggrieved person and all endeavours be made to consider the submissions as well as the materials produced before him.

(III) The Senior Superintendent of Police/ Superintendent of Police shall issue necessary instructions to any other supervising authority such as Dy.S.P. and also to the I.Os. of the case to complete the investigation from all angles within a reasonable period. What will be the reasonable period will depend upon the nature of the case and the kind of materials which are required to be dealt with. It is to be kept in mind that only because the Criminal Procedure Code does not provide for maximum limit



within which an investigation is to be completed, it does not mean that the investigation is to be kept pending for decades. There are many judicial pronouncements of the Hon'ble Supreme Court in which the prosecution has been quashed because the investigating agency failed to complete the investigation of the case despite lapse of several years. Undue delay in completion of investigation erodes public faith and confidence in the investigating agency.

(IV) Upon receipt of a request/application /representation from a person connected with the case and aggrieved by and dissatisfied with the investigation alleging improper investigation, complaints of threat to him or his family or the witnesses by his opponents, accused or his associates, it is the Sr. Superintendent of Police/Superintendent of Police of the concerned district and the Station House Officer of the concerned police station as well as the I.O. of the case who would be duty bound to enter or caused to be entered the information in the station diary of the police station and examine or caused to be examined the threat perception of the informant and/or his family members/witnesses and take appropriate steps at the earliest, in the cases where threat perceptions are found to be genuine, they would take immediate measures to protect the life of the person(s) under threat. Delay in examining the request/representation leading to any serious consequences shall in itself be a matter of enquiry and action against the erring police officials.

(V) As regards the grievance that accused persons are not being arrested in cases involving serious and heinous offences the Senior Superintendent of Police/Superintendent of



Police/Investigating Officer shall take appropriate steps keeping in view the law and judgments of the Hon'ble Apex Court on the subject. In the matter of absconding accused the I.O. must take immediate steps to arrest him and exhaust all other procedures in accordance with law with utmost expedition.

(VI) This Court has already reproduced the extracts from judgment of the Hon'ble Supreme Court in the case of **Sakiri Vasu** (supra). In the light of the said judgment, this Court directs that in all these cases the learned Magistrate(s) in whose court the case is pending, shall, without seeking any application from the informant monitor the investigation. They are fully competent to take a view as to whether a proper investigation is taking place or not. Learned Magistrates are expected to exercise their powers under Section 156(3) Cr.P.C. to ensure that investigation of the case pending before the learned Magistrate is duly investigated. If it is found that the Investigating Officer is not proceeding with the investigation expeditiously and is keeping the same pending without rhyme or reason and in the opinion of the learned Magistrate it is found to be a case of inaction on the part of the Investigating Officer, the learned Magistrate would be well within his powers to direct the Senior Superintendent of Police/Superintendent of Police to change the Investigating Officer, to supervise the case himself by the Senior Superintendent of Police/Superintendent of Police and to take appropriate measures in accordance with law. While exercising his power under Section 156(3) Cr.P.C., the learned Magistrate shall definitely monitor the investigation, though he cannot investigate the case himself and will not act as supervisory authority but it is certainly within his



domain to ensure that the investigation is done properly and for this purpose without interfering with the power of the Investigating Officer or the Supervising Authority to conduct an investigation, the learned Magistrate may issue appropriate directions which in his opinion is required for conduct of proper investigation. What would be the nature of such direction(s) in a given case cannot be put in a straight jacket formula and it is for the learned Magistrate to look into this aspect of the matter on case to case basis. An application filed by an aggrieved person with prior service of copy upon the learned Public Prosecutor/A.P.P. seeking directions for proper investigation must be heard expeditiously and the same be disposed of within a period of 30 days from the date on which such application is moved before the learned Magistrate on the first date. If the learned Magistrate fails to exercise his power under Section 156(3) Cr.P.C. either on his own or on filing of the application by the aggrieved person, an appropriate application may be brought before this Court for an order/direction and monitoring as the case may be.

(VII) If any of the directions issued by the learned Magistrate in accordance with the order of this Court as stated above to the Senior Superintendent of Police/Superintendent of Police/investigating officer, unless otherwise interfered with by a competent court of law, is not given effect to by the concerned authorities, it will be taken to be a case of contempt of this Court and the learned Magistrate may inform this Court as regards the willful disobedience or disregard shown to the order/orders, direction/directions issued by him in terms of this judgment. In such circumstance an aggrieved person may also file an application seeking



initiation of contempt.

(VIII) All the stake-holders in the present writ applications shall act accordingly. A copy of this order be sent to the Director General of Police, Bihar to enable him to issue necessary instructions at the earliest.”

Respondent no. 3 and the competent court in whose jurisdiction the case is pending shall act accordingly.

This application stands disposed of accordingly.

Certified copy of this order shall be made available only after removal of the defects.

(Rajeev Ranjan Prasad, J)

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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'.

