

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.936 of 2021

Arising Out of PS. Case No.-58 Year-2021 Thana- BRAHMPURA District- Muzaffarpur

Rajan Sah @ Rajan Kumar Son of Suresh Sah Resident of Village -
Brahampura Parmariyh Tola, North of Mahapaur , Resident , P.O. M.I.T., P.S.-
Brahampura, Distt.- Muzaffarpur.

... .. Petitioner

Versus

1. The State of Bihar through the D.G.P., Bihar, Patna.
2. The I.G. Tirhut Range, Muzaffarpur.
3. The D.I.G Tirhut Range, Muzaffarpur.
4. The S.P. Muzaffarpur.
5. The O/c Brahampura P.S., Distt. Muzaffarpur. Bihar
6. The Superintendent of Police, C.B.I., Bihar, Patna
7. The Director, CFSL, Lodhi Road, New Delhi

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr.Hans Lal Kumar, Advocate
For the Respondent/s	:	Mr.Md. Nadim Seraj, GP 5
For C.B.I.	:	Ms. Nivedita Nirvikar, Sr. Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

CAV JUDGMENT

Date : 05-12-2022

Heard learned counsel for the petitioner, learned Government Pleader No. 5 for the State and learned Senior Counsel for the Central Bureau of Investigation.

Brief Facts of the case.

2. This criminal writ application has been filed by the father of a victim minor girl for a direction to the investigating agency to locate his daughter aged about 6 years who has gone missing since 16.02.2021 from Saraswati Puja Pandal built up in front of the house of the petitioner. It is stated that the victim girl was playing there when all of a sudden she went



missing. In this connection, the petitioner has lodged a first information report giving rise to Brahmpura P.S. Case No. 58 of 2021 dated 17.02.2021 registered under Section 363 of the Indian Penal Code. He provided a photograph of the victim girl to the investigating agency.

3. The grievance of the petitioner is that the local police has not taken appropriate action towards recovery of the victim girl. He has expressed his agony saying that he has been running from pillar to post for recovery of his minor daughter but nobody is taking care of his request. In this connection, he has submitted a representation to the Senior Superintendent of Police, Muzaffarpur vide Annexure '2' to the writ application and further to the Inspector General of Police, Tirhut Region, Muzaffarpur and then to the Director General of Police, Bihar through Annexures '3' and '4' to the writ application.

4. The petitioner had disclosed that when the petitioner was trying to find out his minor daughter, in that course one lady appeared before the petitioner on 22.03.2021 and disclosed that his daughter was at Bairiya after her abduction. Another person namely Rahul Sah a fruit dealer at Bairiya Golambar told the petitioner that his daughter was at Danapur but this must not be disclosed to the administration and for release of his daughter the petitioner will have to spend a sum of Rs.2 lakhs. The petitioner made a representation before the Sr. S.P., Muzaffarpur in this regard (Annexure '2'). It is further submitted that during the investigation, police arrested one



person namely Aman Kumar who was sent to judicial custody on 08.03.2021. Subsequently, on 07.06.2021, four persons namely Pankaj Sah, Rita Devi, Munni Devi and mother of Rita Devi started abusing and assaulting the family members of the petitioner. It is stated that one Rita Devi wife of Baiju Mahto was threatening the petitioner and his family members for dire consequences. The matter was reported to the I.O. of Brahmpura Police Station P.S. case No. 58 of 2021 and in this connection, an application was also submitted with the Inspector General, Tirhut Range, Muzaffapur (Annexure '3').

5. This writ application came to be filed in this Court on 26.08.2021. It was taken up for consideration for the first time on 05.05.2022. A learned Co-ordinate Bench of this Court, taking note of the fact that it was a case of kidnapping of 6 years old daughter of the petitioner directed the respondent nos. 4 and 5 to file their counter affidavits and also called for the case diary.

6. The matter was taken up on 21.06.2022. Considering the gravity of the matter, this Court directed that the Dy.S.P. Town Muzaffarpur shall be personally present in Court for interaction in course of hearing of the case. Till that time, no counter had been filed on behalf of respondent nos. 4 and 5. After the order dated 21.06.2022 calling upon the Dy.S.P., (HQ) Muzaffarpur to appear, a counter affidavit came to be filed. This Court was informed that during the investigation name of one non-F.I.R. person (a



juvenile) came in light, he was apprehended and produced before the Juvenile Justice Board, Sikandarpur, Muzaffarpur on 08.03.2021. A chargesheet has been filed against him. It is stated that the petitioner had taken name of one person namely Rahul Kumar who was arrested and after necessary enquiry, he had been released on Personal Bond on 04.04.2022. It is further disclosed that the Investigating Officer has searched the CCTV footage of Pooja Pandal, contacted other persons with photographs of the victim girl but no reliable information could be extracted from those sources. During the pendency of this writ as many as five supplementary counter affidavits have been filed.

7. It is further stated that the direction was issued to Town Dy.S.P., Muzaffarpur to collect the list of orchestra players. Subsequently, The Dy.S.P. collected the list of 30 orchestra players but nobody identified the picture of the victim girl. Thereafter direction was issued to conduct polygraphy test of the suspects. The deponent of the affidavit made a statement that the Investigating Agency is very serious in this case and will do best to recover the victim girl. On 28.06.2022 after hearing learned counsel and GP-5 and the Dy.S.P., Muzaffarpur Town this Court passed the following order:-

“Mr. Ram Naresh Paswan, the Dy.S.P., Muzaffarpur Town is present in person with Mr. Nadim Seraj, learned Government Pleader No. 5. This Court has heard him in presence of learned counsel for the State and also perused the case diary. A bare perusal of the case diary would show that initially the first I.O. and thereafter the second I.O. have



only done the paper work and they have repeatedly recorded ornamental observations that despite all efforts no information could be gathered about the missing girl. In some of the paragraphs of the case diary (paragraphs 60, 61, 62, 63, 64 and 68), the name of the persons against whom there were suspicions are mentioned. One startling revelation has been made by a suspect, namely, Akash Kumar. He has stated inter alia that his brother Manish had sold one of his three daughters who was aged about 3 years to a gang involved in human trafficking. It seems that the statement of Akash Kumar did not work as an eye-opener for the Investigating Officer and the Dy.S.P. No effort was made to find out the gang to whom the brother of the suspect Akash Kumar had sold his one of the daughters. One of the suspect, namely, Akash Kumar in a telephonic talk with the informant had claimed that he can furnish the whereabouts of the missing girl provided he is paid a sum of Rs.1 lakh. The said Akash Kumar was allowed to go on P.R. bond at the instance of the Dy.S.P. and no further step has been taken to verify the claim of the said suspect Akash Kumar.

Even the supervisions made by the Dy.S.P. has been made at long intervals and without taking care to verify as to whether his previous directions have been complied with by the I.O. or not.

To this Court, prima-facie, it appears that the I.O. as well as the Dy.S.P. have not given much attention to this Court and the fact that a 6 years old girl has been kidnapped has not sensitized these police officers to act swiftly to recover the girl.

This Court called upon the Dy.S.P. to say as to whether he has prepared the list of the orchestra players in the locality, the Dy.S.P. has no answer to that. This becomes relevant because one of the suspects had claimed that the victim girl was seen in the company of a orchestra party.

At this stage, this Court has been informed by Mr. Nadim Seraj, learned GP-5 that on 21.06.2022, the Dy.S.P. has constituted a Special Investigating Team (SIT) in this matter.

In the opinion of this Court, the Dy.S.P. seems to have neglected this case so far and the delay on the part of the Dy.S.P. in



constituting the SIT in itself would be a matter to be considered later on to find out whether the Dy.S.P. or any other officer dealing with this matter has acted negligently in not paying attention to the present case.

For the present, this Court directs the Senior Superintendent of Police, Muzaffarpur to review the matter immediately and constitute a fresh SIT as per his own wisdom and personally supervise the investigation of the case with some professional kind of investigation to find out the whereabouts of the victim girl.

This Court expects that the Senior Superintendent of Police, Muzaffarpur shall come out with a successful trace of the victim girl at the earliest opportunity. In the given facts of this case, considering that it relates to recovery of a 5-6 years old girl and the investigation has already been delayed, this Court directs the Senior Superintendent of Police, Muzaffarpur to appear before this Court and apprise the court with the latest developments and the efforts taken by him towards recovery of the victim girl on the next date.

List this matter after two weeks i.e. on 14th July, 2022 under the same heading maintaining its position.

The Dy.S.P., Muzaffarpur Town shall also be present with the Senior Superintendent of Police, Muzaffarpur on the said date.

Let a copy of this order be handed over to Mr. Nadim Seraj, learned GP-5 today itself for communication with Senior Superintendent of Police, Muzaffarpur.”

8. Again on 14.07.2022, 16.08.2022 and 01.09.2022, this Court continued interaction with the Dy.S.P Town Muzaffarpur and the Senior Superintendent of Police, Muzaffarpur. A fresh SIT was constituted at the instance of this Court and the Sr.S.P., Muzaffarpur made a statement to this Court that certain plans have been made with the SIT to take efforts



towards the recovery of the victim girl. He prayed for some time and this Court granted the same.

9. In the hearing which took place on 16.08.2022, this Court called upon the Senior Superintendent of Police, Muzaffarpur to personally swear the affidavit giving the details of the action taken at his end towards the recovery of the victim girl and further if he is of the opinion that the Investigation Agency is not able to make a headway towards the recovery of the victim girl then why this case be not referred to the Central Bureau of Investigation.

10. On 30.09.2022, having taken a view that despite pursuing the matter by this Court for last three months since no fruitful result is coming and it seems that the State machinery is not able to lay it's hand upon the accused and recover the minor victim girl, this Court in order to consider handing over the investigation to another independent agency directed for adding CBI as party respondent no. 6. This is how the CBI has been made party in this case. On 17.10.2022, the case was finally heard. By filing 5th Supplementary affidavit on 17.10.2022, this Court was informed that a polygraphy test of the suspects and arrested persons has been conducted but the report was still awaiting. On 01.12.2022, learned G.P.-5 has informed that polygraphy test of the two suspects did not reveal any significant thing and the informant has refused to undergo the polygraphy test.



11. Learned counsel for the petitioner submits that in this case the local police did not act in time which would be evident from a bare perusal of the case diary. In the name of the investigation, the I.O. has only done paper transactions and has written 14 paragraphs in the case diary wherein the re-statement of the informant and some witnesses have been recorded. The I.O. did not proceed scientifically. The CCTV cameras which were installed there were not seized and no scientific analysis of the same could be made. The only thing which has been reported by the I.O. in several paragraphs of the case diary is that he could not get any information about the victim girl. No immediate wireless message was sent to the nearby police station in the local areas. On the information of the informant, the I.O. went to one of the suspects after a long time, who admitted to have/had taken away the victim girl on his motorcycle on a ride without the consent of the family members who claims that he had returned with the victim girl and had left her near the house at 06:30 P.M. The I.O. says that this has been confirmed by the family members.

12. Learned counsel submits that the I.O. did not think it just and proper to take up the investigation further with the suspect and find out the truth from him. It is only after the order of this Court, it has been thought just and proper to subject the said suspect to polygraphy test. After about ten days of the report of the occurrence, the I.O. had not gone there.



13. Learned counsel submits that the case diary produced before this Court was written only up to 30.04.2021, therefore, it is evident that the I.O. had stopped proceeding with investigation of the case and for last more than one year prior to the date on which the case was taken up for consideration, there was no progress in the investigation. It is pointed out that as back as on 08.04.2021 in paragraph '114' of the case diary, I.O. has recorded that the informant had given some mobile numbers and the I.O. had written for the CDR of those mobile numbers for the period 21.03.2021 to 08.04.2021 to the Senior Superintendent of Police, Muzaffarpur through technical cell but thereafter what has happened and why the investigation did not progress and no effort was taken to obtain the CDR within a reasonable period are unknown. Relying upon the judgment of the Hon'ble Supreme Court in the case of **State of West Bengal and Ors. versus Committee for Protection of Democratic Rights and Ors.** reported in **(2010) 3 SCC 571** learned counsel submits that the Hon'ble Supreme Court has reiterated in paragraph '37' of the said judgment that the high court has got wide powers to reach injustice wherever it is found. This article enables the High Courts to mould the reliefs to meet the peculiar and extraordinary circumstances of the case. Reference in this regard has been made to the judgment in the case of **Dwarka Nath v. ITO** reported in **AIR 1966 SC 81**. It is submitted that being the protector of civil liberties of the citizens, this Court in the given facts of the present case may exercise its power and jurisdiction to



transfer the investigation of the present case to the Central Bureau of Investigation.

14. Learned counsel further relied upon the judgment of the Hon'ble Supreme Court in the case of **K.V. Rajendran v. Superintendent of Police, CBCID** reported in **(2013) 12 SCC 480**. The judgment of this Court in the case of **Amar Nath Poddar Vs. The State of Bihar & Ors.** reported in **2021(2) PIJR 571** has been cited to submit that in this case, this Court has taken a glance over the judicial pronouncements in which the investigation of the case has been handed over to the C.B.I. keeping in view the ultimate aim of the investigation. Attention of this Court has been drawn towards the judgment in the case of **Vinay Tyagi v. Irshad Ali** reported in **(2013) 5 SCC 762**.

15. On the other hand, Mr. Nadim Seraj, learned GP-5 and the police officers who interacted with this Court in course of hearing have submitted that in this case the local police has taken proper steps in course of investigation and even though the recovery of the victim girl could not be made but a fresh SIT has been formed and efforts are being made to find out the truth. Recently, polygraphy test report of the two suspects have been received. It is, thus, their submission that there is no need to transfer the case to the Central Bureau of Investigation.



Consideration

16. Having regard to the facts and circumstances of the case, the victim who is six years old daughter of the informant has been kidnapped and she has gone missing from the place of Saraswati Puja pandal made in front of the house of the informant since 16.02.2021 (8:00 pm). Finding that the local police is not investigating the case with desired speed and scientifically, the petitioner moved this Court on or about 09.08.2021. Unfortunately, the writ application could not be taken up immediately, those were Covid-19 time and the Court was working in a limited manner with the help of technology. After the Court resumed physically, this Court has taken up this case on regular intervals which would be evident from the various orders passed by this Court. In its order dated 28.06.2022, this Court has recorded that there were some names who were the suspects but the I.O. of the case and the Dy.S.P. made no effort to find out the gang to whom the brother of one of the suspects had allegedly sold one of his three daughters. The I.O. did not examine the telephonic talks with the alleged suspects had with the informant. The Dy.S.P. has made supervision at long intervals without taking care to verify as to whether the previous directions have been complied with by the I.O. or not. When this Court called upon the Dy.S.P. to say as to whether he has prepared list of orchestra players in the locality, the Dy.S.P. had no answer to that. This Court has noticed



hereinabove that in course of investigation, several directions were issued to the I.O. but thereafter no care was taken to see whether those directions were actually carried out. The I.O. had not immediately sent even the photograph of the minor victim girl for uploading the same on the web portal trackthemissingchild.gov.in prepared by the Ministry of Women and Child Development, Government of India. No step was taken to send the information for publication to the concerned department and in the local newspapers. In report 2, these directions were issued only after about 15 days. Apparently, there is a serious miss and gap in carrying out the investigation.

17. The case diary does not show that any Special Investigation Team (SIT) was constituted in this matter. The sensitization expected on the part of the investigating agency is apparently missing in this case. It is only after this Court passed an order for constitution of SIT, the Sr.S.P., Muzaffarpur submitted before this Court that he had constituted a fresh SIT. This Court finds that in fact in the case diary there is no information available showing that any SIT was constituted earlier. In the case of **Committee for Protection of Democratic Rights** (Supra), the Hon'ble Supreme Court has held that this Court being the protectors of civil liberties of the citizens, has not only the power and jurisdiction but also an obligation to protect the fundamental rights, guaranteed by Part III in



general and under Article 21 of the Constitution in particular, zealously and vigilantly.

18. Right to speedy and proper investigation of a case has been formed part of the fundamental rights embodied under Article 21 of the Constitution of India. In the matter of a decision to transfer the investigation from local police to CBI, the Hon'ble Supreme Court in the case of **Committee for Protection of Democratic Rights (supra)** has held in paragraph '70' and '71' as under:-

“**70.** Before parting with the case, we deem it necessary to emphasise that despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing any order, the Courts must bear in mind certain self-imposed limitations on the exercise of these constitutional powers. The very plenitude of the power under the said articles requires great caution in its exercise. Insofar as the question of issuing a direction to CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Otherwise CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations.

71. In *Minor Irrigation & Rural Engg. Services, U.P. v. Sahngoo Ram Arya*³¹ this Court had said that an order directing an enquiry by CBI should be passed only when the High Court, after considering the material on record, comes to a conclusion that such material does disclose a prima facie case calling for an investigation by CBI or any other similar agency. We respectfully concur with these observations.”

31 [(2002) 5 SCC 521 : 2002 SCC (L&S) 775]



19. In the case of K. V. Rajendranan (Supra), The Hon'ble Supreme Court has reiterated the views expressed in **Committee for Protection of Democratic Rights** (Supra).

20. In the case of **Vinay Tyagi** (Supra), the Hon'ble Supreme Court has observed in paragraph '48' of the judgment which reads as under:-

“**48.** What ultimately is the aim or significance of the expression “fair and proper investigation” in criminal jurisprudence? It has a twin purpose: Firstly, the investigation must be unbiased, honest, just and in accordance with law; secondly, the entire emphasis on a fair investigation has to be to bring out the truth of the case before the court of competent jurisdiction.....”

21. This Court is alive to the propositions laid down by the Hon'ble Supreme Court that exercise of power under Article 226 of the Constitution of India requires great caution and in the matter of issuing a direction to the CBI to conduct the investigation in a case even as there is no flexible guidelines to decide whether or not such power should be exercised, this Court must not pass such order in a routine and mechanical manner.

22. This case poses a significant question as to what should be done in a case of this nature. In this State, there is no special investigating agency to deal with the case of kidnapping of minor girl/child. Local police takes even these matters in a routine manner, they show no urgency, they are also not well equipped with scientific tools and most of the investigating officers with whom this Court has interacted are completely untrained and insensitive, in fact by no stretch of imagination this Court can pose confidence in them. What remains then? Justice from victim's point of view remains a



hollow and shallow concept. Crime against women and children is required to be dealt by trained police personnel. The State has a bounden duty under Article 15(3) read with Article 39(f) of the Constitution of India to make laws to protect the women and children. Laws have been enacted like Juvenile Justice (Care and Protection of Children) Act, 2015, Protection of Children from Sexual Offences Act, Suppression of Immoral Traffic in Women and Girls Act etc., but the implementation is so poor for various reasons that the goal set to be achieved by these laws are still far from being accomplished.

23. The only another agency which is most sought for is the Central Bureau of Investigation (C.B.I.). The only hope of the father of the victim girl child is the Central Agency. Thinking from the victim's point of view, in order to keep the ray of hope alive, the prayer of the petitioner to transfer the investigation to C.B.I. is fit to be considered.

24. The Hon'ble Apex Court has, held that where it becomes necessary to provide credibility and instil confidence in investigation or where such an order is necessary for doing complete justice, this Court may exercise its constitutional power.

25. This Court finds that there are ample materials that the victim has been taken away while playing in front of her house near a Puja Pandal. She is missing but when this information is furnished to the Police Station, the Investigating Agency did not see any urgency in the matter. This Court kept on granting adjournments after adjournments at the instance of Senior Police



Officers expecting some significant step but that has not yielded any result. The case diary produced before this Court was written only up to 08.04.2021 which is a pointer to the fact that the Investigating Agency was in fact sleeping over the matter for more than one year prior to the hearing of the present case which took place for the first time on 05.05.2022 and an unfortunate father, as the petitioner claims himself, kept running from pillar to post for conduct of speedy investigation, the directions of the supervising authority were not carried out properly and in time. To this Court, thus, this appears to be a case where the right to get proper, fair and speedy investigation which forms part of the fundamental right under Article 21 of the Constitution of India has been denied to the petitioner.

26. The petitioner has lost his faith and this Court agrees with the views of the learned counsel for the petitioner that to instill confidence in the investigation and to find out the victim girl, it has become necessary to transfer the investigation of this case to the Central Bureau of Investigation. The Superintendent of Police, Central Bureau of Investigation (respondent no. 6) is hereby directed to take over the charge of investigation of this case forthwith.

27. The Sr. S.P., Muzaffarpur shall hand over the entire materials collected in course of investigation of this case by local police to respondent no. 6. Respondent no. 6 is expected to proceed with some expeditious action considering that in this case the victim is a minor girl and her rescue



from the clutches of the kidnappers must be given top priority. The investigation of the case be taken to a logical end within a reasonable time.

28. The Sr.S.P., Muzaffarpur is directed to examine the role of the Investigating Officer(s) and the supervising authority of the case, those who are responsible for not conducting the investigation of this case with urgency, the reasons for delay in supervision and ensuring that the directions issued in course of supervision are carried out in its terms and spirit, upon examining these aspects of the matter within a reasonable time, appropriate action in administrative side shall be taken against the erring officials.

29. This writ application stands allowed.

(Rajeev Ranjan Prasad, J)

avin/-

AFR/NAFR	AFR
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