

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.29 of 2022

Arising Out of PS. Case No.-110 Year-2021 Thana- KONCH District- Gaya

VIKASH KUMAR Son of Sri Anil Yadav Resident of Village- Sinduari, P.S.-
Konch, District- Gaya.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Home, Bihar, Patna. Bihar
2. The Principal Secretary of the Department of Home, Bihar, Patna. Bihar
3. The Director General of Police, Bihar, Patna Bihar
4. The Inspector General of Police, Magadh Range, Gaya. Bihar
5. The Senior Superintendent of Police, Gaya, District- Gaya. Bihar
6. The Deputy Superintendent of Police, Sub- Division- Tekari, District- Gaya Bihar
7. The Officer - In- Charge of Konch, Police Station, P.S.- Konch, District- Gaya. Bihar
8. Mr. Patiram Sharma Son of Basant Sharma Resident of Village- Sinduari, P.S.- Konch, District- Gaya.
9. Mr. Abhiram Sharma Son of Basant Sharma Resident of Village- Sinduari, P.S.- Konch, District- Gaya.
10. Mr. Chandan Sharma Son of Sri Patiram Sharma Resident of Village- Sinduari, P.S.- Konch, District- Gaya.
11. Mukesh Sharma Son of Ram Tawakya Sharma Resident of Village- Sinduari, P.S.- Konch, District- Gaya.
12. Hridaya Sharma Son of Baikunth Sharma Resident of Village- Sinduari, P.S.- Konch, District- Gaya.
13. Ajit Sharma Son of Sudama Sharma Resident of Village- Sinduari, P.S.- Konch, District- Gaya.
14. Tuntun Sharma S/o Vijay Sharma Resident of Village- Sinduari, P.S.- Konch, District- Gaya.
15. Kamlesh Sharma Son of Bamdeo Sharma Resident of Village- Sinduari, P.S.- Konch, District- Gaya.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Rama Kant Singh, Adv.
For the Respondent/s : Mr.Iqbal Asif Niyazi, AC to GP-5

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER



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

Learned counsel submits that in this regard, the petitioner has submitted a representation, as contained in Annexure-2 to the writ application, to the Senior Superintendent of Police (respondent no.5) on 05.04.2021 for providing justice to the downtrodden, but till date no action has been taken.

Learned counsel for the petitioner submits that the only reason for seeking transfer is the fact that the investigation has been delayed and is not proceeding with proper pace.



has filed a counter affidavit. It is stated that Report-II has already been issued in this case and the directions have been given to the investigation officer to take evidence and statement of independent witnesses and submit updated case diary. As regards Konch P.S. Case No.137/2020 the investigating officer has recorded that the said case is pending before the learned Additional District and Sessions Judge-XV, Gaya against the accused persons. The investigating officer had conducted raid for arrest of the accused persons and he is investigating the case in legal, proper and fair manner.

In the given facts and circumstances of the case, considering that the reliefs prayed in the writ application may be considered by the Senior Superintendent of Police (respondent no.5) as also the competent court in whose jurisdiction the case is pending, in the light of the common order dated 09.09.2022 passed in Cr.WJC No.153 of 2017 and other analogous matters, this Court deems it just and proper to direct them to redress the grievance of the petitioner acting in terms of the directions of this Court.

For a ready reference, the common order dated 09.09.2022 passed in Cr.WJC No.153 of 2017 and other analogous matters is being reproduced hereinbelow:-

“(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.”

This writ application stands disposed of accordingly.

The certified copy of the order will 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'.

