

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4249 of 2023

=====

Kishore Kunal, Advocate in Person, Son of Shri Ram Narayan Brahmachari,
Resident of H/N 102, Mainpura, Siddheshwara Nagar, PS Paraliputra District-
Patna, Bihar, 800001

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary Government of Bihar Patna.
2. The Director General of Police, Bihar, Patna.
3. The Director General of Vigilance Investigation Bureau, Bihar, Patna.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr.Kishore Kunal (In Person)
For the Respondent/s : Md. Nadim Seraj, GP 5

=====

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 18-04-2023

The writ petitioner seeks introduction and implementation of specific guidelines to be generally and systematically followed in trap cases. The petitioner, a practicing advocate, takes cue from Annexure-1, judgment of a learned Single Judge of this Court, which highlighted the need to have a specific guideline in trap cases so as to serve the dual purpose of (a) effective and meaningful investigation and trial and (b) lessening the chance of false implication of public servant.

2. At the outset, it is stated that Annexure- 1 is a



judgment passed in a criminal appeal against the order of conviction passed by the Special Judge, Vigilance (Trap), Patna. There was discrepancy in the evidence of the witnesses and there was delay in apprehending the accused and also searching him, which were serious lapses found. It was also noticed that there was no enquiry conducted into the *bona fides* of the complainant and the independent witness arrayed was not the eye witness to the occurrence. There was also no clarity as to the place of occurrence and in such circumstances, the learned counsel appearing for the Vigilance Bureau was requested to make available the procedure followed by the Bureau in such cases. A communication dated 16.10.2017 revealed that there was no structured guideline laid down for handling such trap cases. It was in that circumstance that the observations, relied on by the petitioner, was made in the judgment.

3. A counter affidavit has been filed by the Dy.S.P. Vigilance Investigation Bureau, Patna producing a guideline introduced as standard operating procedure for trap cases, produced as Annexure-. R3/1. The petitioner has filed a reply to the counter affidavit and objected to the guideline specially since it has not been notified. The petitioner's reliance is on Section 65 of the Bihar Police Act, 2007, which confers



power on the Government to make rules and regulations for the control and discipline of the police which, however, has effect only if it is properly notified. In the present case, the very requirement projected in the writ petition was the need for a guideline in the form of standard operating procedure and not the implementation of a rule or regulation; which rule or regulation has to be introduced by the executive Government. It is not for us to coerce the Government into bringing out a rule or regulation in the matter. Nonetheless, a guideline issued from the police headquarters would be binding on the hierarchical officers in the Department. We have looked at the translated copy of the guideline, marked *suo motu* in this case as Court Exhibit-1 and are satisfied that it would suffice for the present. Taking the above standard operating procedure on record, we close the writ petition.

(K. Vinod Chandran, CJ)

(Madhuresh Prasad, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	24.04.2023
Transmission Date	

