

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.816 of 2023

Arising Out of PS. Case No.-797 Year-2022 Thana- SARAIYA District- Muzaffarpur

Mala Devi W/O Raj Kishor Kumar R/O Village- Marwapakar, P.S- Saraiya,
Distt.- Muzaffarpur. Petitioner

Versus

1. The State of Bihar through, Director General of Police, Government of Bihar, Old Secretariat, Patna
2. The Superintendent of Police, Muzaffarpur
3. The Deputy Superintendent of Police, Muzaffarpur.
4. The Station Head Officer (S.H.O), Saraiya, Police Station, Distt.- Muzaffarpur.
5. The Investigating Officer of Saraiya Police Station case no. 797/2022, Saraiya Police Station Muzaffarpur.
6. Parmeshwar Rai S/O Late Yadunandan Rai R/O Village- Marwapakar, P.S- Saraiya, Distt.- Muzaffarpur.
7. Chandan Kumar S/O Prameswar Rai R/O Village- Marwapakar, P.S- Saraiya, Distt.- Muzaffarpur.
8. Jaleshwar Rai S/O Late Yadunandan Rai R/O Village- Marwapakar, P.S- Saraiya, Distt.- Muzaffarpur.
9. Raushan Kumar S/O Jaleshwar Rai R/O Village- Marwapakar, P.S- Saraiya, Distt.- Muzaffarpur.
10. Ram Ekwai Rai @ Jathu Rai S/O Late Yadunandan Rai R/O Village- Marwapakar, P.S- Saraiya, Distt.- Muzaffarpur.
11. Jiyalal Rai S/O Late Yadunandan Rai R/O Village- Marwapakar, P.S- Saraiya, Distt.- Muzaffarpur.
12. Ramdayal Rai S/O Late Yadunandan Rai R/O Village- Marwapakar, P.S- Saraiya, Distt.- Muzaffarpur.
13. Shashi Rai S/O Ram Ekwai Rai @ Jathu Rai R/O Village- Marwapakar, P.S- Saraiya, Distt.- Muzaffarpur.

... .. Respondents

Appearance :

For the Petitioner/s : Mr. Anuj Kumar, Advocate
For the Respondent/s : Mr. Deepak Kumar AC to GP-4

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

4 02-12-2023 Heard learned counsel for the petitioner and learned
counsel for the State.

2. The petitioner in the present case is seeking the

following reliefs:-

- “(i) To investigate the case in a proper, fair, objective and impartial manner and complete the same without unnecessary delay and without being influenced by the accused persons, within reasonable time as mandated by the provisions of Code of Criminal Procedure in connection with Saraiya P.S. Case No. 797 of 2022 registered under Section 341, 323, 307, 302, 504, 506/34 of the I.P.C. on the report of Mala Devi (the petitioner).
- (ii) To discharge the statutory duties conferred on the Respondents No. 1 to 5 under the provisions of Code of Criminal Procedure and to arrest the accused person named in Saraiya P.S. Case No. 797 of 2022.
- (iii) To issue any other order/orders, direction/directions for which the petitioner found entitled to.”

3. Learned counsel for the petitioner submits that the petitioner is the informant of Saraiya P.S. Case No. 797 of 2022. She has alleged that on 24.10.2022 at about 06:30 P.M. on the occasion of Deepawali, her mother-in-law, namely, Poonam Devi had gone to under-construction new house to light lamps. It is alleged that when she was returning, near Chhat Ghat, the eight named accused persons including half dozen unknown persons armed with lathi and danda surrounded her mother-in-law and started assaulting her. It is alleged that on hearing the cry of her mother-in-law when the informant with other family members and village members ran to save her, on reaching there, the accused Parmeshwar Rai and Chandan Rai stated that one has been killed. The accused persons are said to have

threatened that the entire family will be killed. It is also stated that during course of altercation, a motorcycle rider was crossing the way and on seeing the persons armed with lathi and danda, he became unbalanced, fell down and got injured. The local police reached on the spot and seized the motorcycle. Allegedly, the accused persons had earlier also assaulted the family members of the informant due to a land dispute for which Saraiya P.S. Case No. 455 of 2022 was lodged on 29.06.2022.

4. This Court called for a counter affidavit and the Additional S.P., Muzaffarpur has filed the counter affidavit in which a plea has been taken that in course of investigation, it has been found that the named accused persons are not involved in the instant case. It has been revealed in course of investigation that the deceased's husband, namely, Siyaram Rai had lodged FIR bearing Case No. 455 of 2022 against 14 named accused persons including accused of Saraiya P.S. Case No. 797 of 2022 and a counter case was lodged on the same day by the wife of the named accused person, Jaleshwar Rai.

5. The counter affidavit further reveals that from the materials collected in course of investigation, it appears that it is a case of road accident through motorcycle. It is said to be a

case of land dispute and the answering respondent has ordered the I.O. to arrest non-FIR accused person, Abhishek Kumar for committing offences under Sections 279, 337, 338, 304(A) of the Indian Penal Code and Section 184 of the Motor Vehicles Act and record the statement.

6. Learned counsel for the petitioner submits that Abhishek Kumar is an eye witness of the alleged occurrence and the police is in collusion with the named accused persons. It is submitted that in order to put pressure upon the eye witness, he is being falsely implicated.

7. Learned counsel for the State, however, submits that the police has conducted proper investigation of the case and what has transpired in course of investigation has been brought to the notice of this Court.

8. Having heard learned counsel for the parties and on perusal of the records, it appears that police has conducted investigation of the case and at this stage, the investigation is going on for recording the statement of the Doctor, Person and for arresting/statement of non-FIR accused Abhishek Kumar. A statement to this effect is present in paragraph '16' of the counter affidavit.

9. Since the investigation is still going on, this Court

would not form any opinion on the merit of the investigation and it is left open to be argued by the petitioner at appropriate stage in a duly constituted proceeding. This Court would only observe that while recording the statement and for arresting of the non-FIR accused, Abhishek Kumar, the Investigating Agency must abide by the judgment of the Hon’ble Supreme Court in the case of **Arnesh Kumar vs. State of Bihar and Anr.** reported in **(2014) 8 SCC 273** which has been recently reiterated in the case of **Satender Kumar Antil Vs. Central Bureau of Investigation and Anr.** reported in **(2022) 10 SCC 51.**

10. This writ application stands disposed of accordingly.

(Rajeev Ranjan Prasad, J)

SUSHMA2/-

U		T	
---	--	---	--