

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1000 of 2021

Arising Out of PS. Case No.-165 Year-2019 Thana- KHODAWANDPUR District- Begusarai

Raj Kumar S/O Sri Vijay Mahto R/O Village-Dhamdaha, P.S-Dhamdaha,
District-Purnea.

... .. Petitioner/S

Versus

1. The State Of Bihar Through The Principal Secretary, Deptt. Of Home Affairs, Govt. Of Bihar, Patna
2. The Director General Of Police, Govt. Of Bihar, Patna.
3. The Deputy Inspector General Of Police, Begusarai.
4. The Superintendent Of Police, Begusarai.
5. The Officer Incharge Of Khodawandpur, P.S-Begusarai.
6. Balbhadra Prasad Singh S/O Late Jwala Prasad Singh R/O Village- Pahsara, P.S.- Nawkothe, District- Begusarai

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Y. C. Verma, Sr. Adv. Mr. Braj Bhushan Poddar, Adv.
For the Respondent/s	:	Mr. Md. Nadim Seraj, Gp-5 Mr. Iqbal Asif Niazi, Ac to Gp-5
For the Informant/s	:	Mr. Basant Choudhary, Sr. Adv. Mr. Arvind Kumar Singh, Adv. Mr. Sandip Kumar Gautam, Adv.

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT
Date : 19-04-2023

Learned senior counsel for the petitioner Mr. Y. C. Verma alongwith Mr. Braj Bhushan Poddar, learned counsel for the State and learned senior counsel for the private respondent no. 6 Mr. Basant Choudhary alongwith Mr. Arvind Kumar Singh and Mr. Sandip Kumar Gautam present.

The present criminal writ application has been filed for quashing the order dated 06.07.2021 passed in

Khodawandpur P.S. Case No. 165 of 2019 by S.D.J.M., Manjhaul, Begusarai by which the non-bailable warrant of arrest has been issued against the petitioner who had not passed any order on final report submitted against the petitioner by the police. The another relief which has been sought to restrain the respondent for giving effect to the order mentioned above. It has also been prayed that the said order is without jurisdiction and without sanction by law.

Counsel for the petitioner submits that the petitioner has been made accused in Khodawandpur P.S. Case No. 165 of 2019 dated 16.08.2019 for the offence lodged under Section 302, 201, 120(B) of the I.P.C.

Counsel further submits that the petitioner is a Sub-Inspector of Police and he was posted at Balia O.P. Police Station. His wife is also constable of Bihar Police and posted at Gaya. After filing of said case, the Investigating Officer has submitted Final Form No. 254/20 dated 30.09.2020 finding lack of evidence against the petitioner and two others. Counsel submits that the In-Charge S.D.J.M., Manjhaul, Begusarai has passed order for issuing notice to the informant on 21.12.2020 alongwith the date fixed on 08.01.2021 but surprisingly on 05.04.2021, an application was filed by the I.O. of the case

praying that direction has been given for re-investigation of the case by the D.I.G. (weaker section) which is kept on record and without any fresh material, the I.O. filed an application dated 19.04.2021 praying for issuance of N.B.W. against the petitioner and two others which was issued.

Counsel submits that on the final form dated 30.09.2020 which is pending before the S.D.J.M., Manjhaul, Begusarai, he did not passed any order either to accept or to differ or to take cognizance. But instead of taking any decision on final report, he had issued N.B.W. against the petitioner and two others on 06.07.2021. Counsel submits that according to Section 173(2)(1) of Cr.P.C., the Magistrate has to reach on the conclusion either to accept the report then to drop the proceedings or to disagree with the report and then to take cognizance of the offence and issue process or he may direct for further investigation under Section 156(3) of Cr.P.C. and require the police to make a further report.

Counsel for the petitioner further submits that the action of S.D.J.M. Manjhaul, Begusarai directing the issuance of warrant has been passed by placing the guidelines of the Hon'ble Supreme Court.

Counsel for the State submits that it is well within

the power of the police under Section 173(8) of Cr.P.C. that further investigation may be made when the material comes and it is due to this reason, the high official upon scrutinizing the case had instructed to the I.O. and I.O. thereafter filed a petition before the Court for further investigation and subsequently demanded the non-bailable warrant of arrest which the Court of S.D.J.M. Manjhaul, Begusarai has granted vide order dated 06.07.2021. According to him, it is an order which does not need any interference.

Learned senior counsel for respondent no. 6 submits that it is not a normal situation under which this application has been filed. In his counter affidavit, he has placed his reliance on an order passed by this Court in Miscellaneous Appeal No. 1123 of 2017 with Miscellaneous Appeal No. 1124 of 2017 in which vide order dated 16.10.2019, the Hon'ble Division Bench of this Court has categorically directed that:

“Since the respondents have alleged the involvement of Opposite Party Nos. 5 and 6, namely, Raj Kumar and Henu Kumari (already impleaded as respondent nos. 2 and 3 in the Miscellaneous Appeals. The said Raj Kumar is the petitioner of the

present criminal writ petition). It is expected from the Director General of Police, Bihar to ensure proper and fair investigation with regard to the aforementioned case and the said respondent nos. 2 and 3, in no way, influence the investigation.

Opposite Party Nos. 5 and 6 are present. Their personal appearance is dispensed with for the present.

Let the copy of this order be transmitted to the Director General of Police, Bihar.”

Counsel submits that it is the heinous matter when the parties are before the Court of law and during pendency of appeal, the daughter of private respondent no. 6 was murdered, due to this reason an F.I.R. Khodawandpur P.S. Case No. 165 of 2019 has been lodged in which the present petitioner being the influential Police Inspector have influenced the investigation and obtained final form in his favour as well as in favour of his wife.

Counsel for the private respondent submits that only after the order passed by the Division Bench of this

Hon'ble Court, this matter was minutely scrutinized at the highest level and then only decision for further investigation has taken and a request was demanded from the Magistrate in this regard. Counsel further submits that from the order dated 06.07.2021, it is crystal clear that the Court of S.D.J.M., Manjhaul, Begusarai have considered the application and approved the investigation to be continued under Section 173(8) of Cr.P.C. Counsel submits that once the permission to continue for investigation has been granted, then demanding warrant of arrest is the subsequent action and there is no illegality in the same.

After going through the documents and hearing the parties as well as the State, this Court is of the opinion that it is not the normal situation rather the question of further/ fair investigation has been directed by the Hon'ble Division Bench of this Court and the said direction was given to the Director General of Police, Bihar and after his intervention, the decision has been taken place at the highest level for initiation of investigation under Section 173(8) of Cr.P.C.

Therefore, this Court is of the view that decision of further investigation initiated under Section 173(8) of Cr.P.C., 1973 is not bad in law.

But from the order dated 06.07.2021 passed in Khodawandpur P.S. Case No. 165 of 2019, it transpires further that warrant of arrest has been taken on two reasons assigned. The first is that accused persons are evading due to their arrest and second is that they are selling their immovable property secretly.

In view of the Court, this ground that a person is selling his private properties secretly cannot be the ground for issuance of warrant, particularly, in criminal case and, therefore, the order of issuance of warrant in view of this Court is bad in law and it is set aside only up to that part *i.e.* the issuance of non-bailable warrant of arrest is bad in law.

It is directed to the petitioner that he shall support in the investigation in every manner. It is also a fact that the Investigating Officer had earlier in the investigation deposited final form but subsequently, Investigating Officer wants to continue the investigation, then in this peculiar circumstance, this Court directs that till completion of investigation, no coercive action shall be taken against the petitioner, but petitioner has directed to appear before the I.O. and support in the investigation in every manner.

With this direction, the present criminal writ

application is **allowed**.

At the time of deciding this criminal writ petition,
this Court has not expressed his view on merit of the case.

It is directed to the I.O. that the view expressed by
the Court shall not prejudiced to the investigation in any
manner.

(Dr. Anshuman, J.)

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AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	