

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1174 of 2022

Arising Out of PS. Case No.-312 Year-2021 Thana- EKANGARSARAI District- Nalanda

CHAMARI PRASAD S/o Late Somar Mahto R/o village- Fagunipar, P.O.-
Madanpur, P.S.- Ekangar Sarai, District- Nalanda (Bihar)

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Home Department, Government of Bihar, Patna Bihar
2. The Director General of Police, Bihar, Patna Bihar
3. The Inspector General of Police, Magadh Division, Patna Bihar
4. The Deputy Inspector General of Police, Gaya Bihar
5. The Superintendent of Police, Biharshariff, Nalanda Bihar
6. The Deputy Superintendent of Police, Hilsa, Nalanda Bihar
7. The Station House Office-cum-in-Charge of Ekangar Sarai Police Station, Nalanda Bihar
8. The Investing Officer of Ekangar Sarai (Nalanda) Police Station Case No. 312/2021 Bihar
9. Rakesh Kumar S/o Late Jagdish Prasad R/o village- Sudibigha, P.S.- Ekangar Sarai, District- Nalanda (Bihar)
10. Kamlesh Kumar S/o Late Ramchandra Garai R/o village- Sudibigha, P.S.- Ekangar Sarai, District- Nalanda (Bihar)
11. Sanju Kumar S/o not known R/o village- Sudibigha, P.S.- Ekangar Sarai, District- Nalanda (Bihar)
12. Raushan Kumar S/o Bhushan Prasad R/o village- Sudibigha, P.S.- Ekangar Sarai, District- Nalanda (Bihar)
13. Guddu Kumar S/o not known S/o in law of Kamlesh Kumar, R/o village- Lodipur, P.S.- Ekangar Sarai, District- Nalanda (Bihar)
14. Sunil Kumar S/o Ram Chandra Garai R/o village- Sudibigha, P.S.- Ekangar Sarai, District- Nalanda (Bihar)
15. Golu Kumar S/o Binda Yadav R/o village- Bhatubigha, P.S.- Ekangar Sarai, District- Nalanda (Bihar)
16. Madan Yadav S/o Late Ramchandra Yadav R/o village- Mosimganj, P.S.- Ekangar Sarai, District- Nalanda (Bihar)
17. Chintu Yadav @ Tengra S/o Madan Yadav R/o village- Mosimganj, P.S.- Ekangar Sarai, District- Nalanda (Bihar)
18. Wife of Kamlesh Kumar W/o Kamlesh Kumar R/o village- Sudibigha, P.S.- Ekangar Sarai, District- Nalanda (Bihar)

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Sujit Kumar
For the Respondent/s : Mr.Prabhat Kumar Verma

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER

3 25-02-2023 This writ application on behalf of the above named



petitioner is being preferred before this Hon'ble Court for the following relief/ reliefs:-

I) To issue an appropriate writ/writs, order/s or direction/s in the nature of mandamus commanding the Respondents 1st Set to conduct prompt and fair investigation of Ekangar Sarai P.S. Case No. 312/2021 by the order specialized other agency of the State or Central in concern of series of irregularities and immediately arrested the accused persons they are moving freely in the locality.

ii) For further issue a directing the respondents to conduct investigation of the case related to the brutal murder of the petitioner's son by Special Investigation agency of the state or the central government because the Respondent 2nd Set are the heavy weightage persons in the locality.

Iii) For further issue a direction to the respondents 1st set to provide appropriate security to the petitioner and his other family members on account of the threats perception created by the respondent 2nd set.

iv) For further issue a direction tot he Respondents 1st set to lodge the FIR against the Respondent No. 16,17 and 18 because they were actively participated in the murder of the petitioner's son on the basis of the petition dated 20.12.2021 also several applications has been submitted by the petitioner before the high officials but the respondent 1st set are working for the interest of them and they are regularly giving threat tot eh petitioner and his family members, they are now a helpless person of the society.

v) For further adjudicate and hold that any miss-happening either with the petitioner or his family members will automatically indict Private Respondent and they should be



made directly responsible for the same.

vi) For further award the cost of litigation and suitable compensation for the loss and damages caused to the petitioner on account of the illegal actions of the Respondent Authorities and the Private Respondent.

Vii) For further Issue a direction to protect the life and liberty of the petitioner and his family members.

Viii) For any other relief or reliefs for which the petitioner is found entitled in the facts and the circumstances of the case.

At the outset, learned counsel for the State submits that similar issue has already been set at rest by a co-ordinate bench of this Court vide order dated 9.9.2022, passed in Cr.W.C.No.153 of 2017 (Surendra Singh vs State of Bihar and others) and other analogous cases. Paragraph 10 of the said judgment reads as follows:-

“10. In the aforementioned background of the facts and circumstances, keeping in view the law on the subject, this Court is issuing the following directions:-

(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 in action 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.”

The relief prayed by the petitioner in this writ application shall be considered by the authorities in the light of direction contained in Paragraph 10 of the case referred herein above.

(Prabhat Kumar Singh, J)

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