

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1202 of 2022

Arising Out of PS. Case No.-263 Year-2021 Thana- MAHARAJGANJ District- Siwan

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Keshav Raj @ Avinash Tiwary S/O- Raj Shwami @ Kaushal Kishore Tiwari
R/V- Kishori Kunj Ashram, Yamuna Nagar, Panni Ghat Chauraha, Parikrama
Marg P.S. - Mathura, U.P

... .. Petitioner/s

Versus

1. The state of Bihar through the Chief Secretary, Government of Bihar, Patna
2. The D.G.P., Bihar, Patna
3. The Superintendent of Police, Siwan
4. The S.D.P.O. Siwan
5. The S.H.O. Maharajganj P.S.- Maharajganj, Dist- Siwan
6. Dewata Devi W/O- Kaushal Kishore Tiwari R/V- Pasnauli Thana Road P.S.-
Maharajganj Dist- Siwan

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Chandra Mohan Jha, Adv.
For the State	:	Mr. Sanjay Paras, Ac to Gp4
For the O.P. No. 6	:	Mrs. Archana Sinha Shahi, Adv.

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT

Date : 28-03-2023

Heard learned counsel for the petitioner, learned
counsel for the O.P. No. 6 and learned counsel for the State.

The petitioner seeks further investigation in this
matter on the ground for response on the application for
production of C.C.T.V. footage vide order dated 14.12.2021 on
which, no action has been taken by the concerned I.O. He fairly
submits further that ignoring the said direction, the case
proceeded and chargesheet has been filed in this case. The
petitioner has filed discharge petition which has been rejected,

against which quashing is pending before the Hon'ble High Court. By way of this criminal writ petition, petitioner wants to secure the compliance of order dated 14.12.2021.

This Court is of the view that such compliance is not possible at this stage but in the light of recent decision of Hon'ble Supreme Court of India, in the case of *Anant Thanur Karmuse Vs. The State of Maharashtra & Ors. Reported in 2023 LiveLaw (SC) 136 Criminal Appeal No. 13 of 2023, February 24, 2023*, Hon'ble Supreme Court has pleased to hold in paragraph nos. 12.1, 12.2 and 12.3 and paragraph 13, which are as follows:

“12.1 It is required to be noted that in the present case, the allegations in the FIR, right from very beginning, were against the accused No. 13, who at the relevant time was the sitting Cabinet Minister occupying the high position. Even at the relevant time, when the State Police investigated the FIR bearing No. 120 of 2020, in the first chargesheet and the second chargesheet did not name the accused No. 13. Even the investigation was also conducted in a perfunctory manner. The real investigation

started only after the intervention of the High Court and after passing various orders in the present proceedings by the High Court. The allegations in the FIR were very serious including the misuse of powers by the sitting Cabinet Minister and of abducting, kidnapping and beating the complainant. The appellant – original writ petitioner filed the Criminal Writ Petition before the Bombay High Court on 17.04.2020 praying the investigation in FIR Nos. 119 of 2020 and 120 of 2020 to be transferred to 12 an independent investigating agency and for sanction under Section 197 Cr.P.C. for investigation and prosecution of public servants. On 23.04.2020, the High Court passed interim order that the CCTV footage and other evidences collected shall be protected and kept in the safe custody of the Chief Judicial Magistrate, Thane. During the period 06.04.2020 to 29.05.2020, the State police recorded the statement of 23 witnesses including the accused No. 13. The statement of

the main accused was taken as a witness. The real investigation started thereafter. The first chargesheet came to be filed against accused Nos. 1 to 10 on 07.12.2020. The accused No. 13 – the then sitting Minister against whom the serious allegations were made, even named in the FIR, was not chargesheeted. Even the relevant material evidences were collected in the form of CDR, mobile phones etc. after the High Court intervened and passed various interim orders. The supplementary chargesheet came to be filed against accused Nos. 11 and 12 on 28.07.2021. The accused No. 13 was not even chargesheeted in the supplementary chargesheet. The charges came to be framed against accused Nos. 1 to 12 on 28.08.2021. Only thereafter the supplementary chargesheet came to be filed against the accused No. 13 on 05.03.2022.

12.2 *It can be seen from the aforesaid that there was no proper investigation by the State investigating agency at the relevant time and*

even the material evidences were also not collected. At the cost of repetition, it is observed that during the pendency of the writ petition before the High Court and pursuant to the various orders passed by the High Court, the State investigating agency were compelled to investigate in the matter and belatedly the accused No. 13 was chargesheeted in the month of March, 2022. Even according to the State investigating agency, still the further investigation is required on certain aspects. Some of the illustrations/ instances which required further investigation are narrated in paragraph 4 of the counter affidavit filed on behalf of the respondent Nos. 1 to 3. Elaborate reasons and on what further investigation is required has not been stated on the apprehension that if the same is disclosed at this stage, it may frustrate the very purpose of the investigation/ further investigation.

12.3 *Be that as it may, even according to the State investigating agency, the further*

investigation is required. As observed and held by this Court in the aforesaid decisions, the victim has a fundamental right of fair investigation and fair trial. Therefore, mere filing of the chargesheet and framing of the charges cannot be an impediment in ordering further investigation/ re-investigation/ de novo investigation, if the facts so warrant.

13. *Now, so far as the submission on behalf of the accused that earlier the State through learned AG opposed the writ petition and submitted that there was a fair investigation and now with the change in power, the State agency has changed its stand is concerned, the Courts are not concerned with the stand taken by the State at the relevant time and now. Suffice it to say that at the relevant time when the State police agency took a particular stand, accused No. 13 was in power and sitting Minister. The facts narrated hereinabove would suggest the manner in which the earlier investigation was carried out and that the*

accused No. 13 was only chargesheeted in the second supplementary charge sheet in the month of March, 2022 and not prior to that when the first charge sheet was filed, the supplementary chargesheet was filed and even when the charges against the other accused were framed. The endeavor of the Court should be to have the fair investigation and fair trial only. Therefore, in the facts and circumstances of the case narrated hereinabove, we are of the opinion that a case is made out for further investigation and the State 13 agency may be permitted to conduct a further investigation and to bring on record the further material, which may be in the furtherance of fair investigation and fair trial. The High Court has committed a very serious error in not ordering and/or permitting the State police agency to further investigate into the FIR bearing Nos. 119 and 120 of 2020. The High Court has not considered the relevant aspects narrated hereinabove and therefore interference of this

Court is warranted.”

Counsel for the State submits that no interference is possible in the investigation when chargesheet has already been filed and charge has been framed.

Counsel for the O.P. No. 6 vehemently opposes the prayer of the petitioner.

Upon hearing the parties, this Court is of the opinion that the petitioner may file his representation before the Superintendent of Police, Siwan in the light of order passed in ***Surendra Singh Vs. The State of Bihar & Ors.*** in ***Cr. WJC. No. 153 of 2017*** and analogous cases decided on 09.09.2022 directly or through his counsel within four weeks’. The Superintendent of Police, Siwan shall decide the representation in the light of the judgment made in ***Surendra Singh Vs. The State of Bihar & Ors.*** in ***Cr. WJC. No. 153 of 2017*** and analogous cases decided on 09.09.2022.

At the time of deciding the said representation, the Hon’ble Supreme Court’s order may be considered by the Superintendent of Police, Siwan that mere filing of the chargesheet and framing of the charges cannot be an impediment in ordering further investigation/ re-investigation/ de novo investigation, if the facts so warrant, as the victim has a

fundamental right of fair investigation and fair trial.

This Court aspects from the high officials of police (Superintendent of Police, Siwan) that he shall look into this matter seriously and do the needful within a fixed period of time.

With the aforesaid direction, the present criminal writ application stands **disposed off**.

(Dr. Anshuman, J.)

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CAV DATE	
Uploading Date	
Transmission Date	