

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.764 of 2017

Arising Out of PS. Case No.-92 Year-2017 Thana- RAMKRISHNANAGAR District- Patna

Karu Kumar @ Kari Paswan S/o Late Majnu Paswan, Resident of Village- Chandpura, P.S.- Patori, District- Samastipur and Presently residing at Mohalla- Ram Krishna Nagar, Hulas Market, P.S.- Ram Krishna Nagar, Town and District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar Through The Principal Secretary, Department Of Home, Bihar, Patna
2. The Director General of Police, Bihar, Patna.
3. The Inspector General of Police, Patna Range, Patna.
4. The Senior Superintendent of Police, Patna.
5. The City Superintendent of Police, Patna.
6. The Sub- Divisional Police Officer, Kankarbagh, Patna.
7. The Station House Officer, Ram Krishna Nagar, P.S. Patna.
8. Central Bureau Of Investigation, New Delhi

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Suneil Kumar Thakur, Adv
For the Respondent/s : Mr.Md. Nadim Serajgp, APP

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
CAV JUDGMENT

Date : 05-04-2024

1. The petitioner is the father of a minor child who got missing since 14th April, 2017. On that date, the younger son of the petitioner who was then a student of Class X under Bihar School Examination Board, left his house at about 06:15 A.M for attending private tuition in the coaching centre of one Ajay Kumar situated in the house of Panchanandji of Mohalla Ram Krishna Nagar. After the scheduled time, he did not return to his



house. It was subsequently learnt that the said son of the petitioner also did not attend the coaching class. When the child was untraceable, the petitioner lodged a complaint at Ram Krishan Nagar Police Station, Patna on 15th of April, 2017, on the basis of which FIR, bearing Ram Krishna Nagar P.S. Case No. 92 of 2017, under Sections 363 and 370 of the IPC, was registered.

2. It is alleged by the petitioner that till date the Police Authority failed to find out his son. Therefore, the present application has been filed praying for issuance of writ in the nature of mandamus against the respondents, commanding and directing them to ensure safe recovery of the son of the petitioner in connection with Ram Krishan Nagar P.S. Case No. 92 of 2017.

3. This Court passed one after another orders directing the respondent authority to expand the course of investigation. The superior officers of the police force were directed to appear before the Court and personally explain about the steps taken by the respondent authorities to find out the minor child but at the end of the day the petitioner did not get his minor younger son back till date.

4. On 31st of July, 2017, the City Superintendent of



Police, Respondent No. 5 herein filed an application, stating, inter alia, that counter affidavit had already been filed on behalf of the State-respondents wherein it is stated that the photograph of the victim boy was published in all important newspapers and telecast in Doordarshan. A team was constituted for recovery of the child under the order of Senior Superintendent of Police, Patna. The CCTV footage installed in the bus-stand, railway stations, highways, in and around the area was closely monitored but whereabouts of the victim could not be ascertained. On 12th of September, 2023, the Inspector General of Police, CID submitted a progress report about the investigation of the case. It is found from the progress report that investigation of FIR, bearing Ram Krishan Nagar P.S. Case No. 92 of 2017, dated 15th of April, 2017 was closed and final report was submitted on 23rd of March, 2023, stating, inter alia, that the fact of the case is true but the Investigating Agency could get any clue as to how the victim boy was missing. Subsequent to the filing of the final report, Criminal Investigation Department (CID), Bihar submitted a prayer under Section 173 (8) of the Cr.P.C. before the Court of the learned Magistrate for permission to take up further investigation of the case. During further investigation also, the Investigating Agency



failed to find out the victim.

5. On 11th March, 2024, another progress report was submitted. In the said report, the Inspector General of Police, CID, Bihar has sought for an order, directing Unique Identification Authority of India (UIDAI) Office, Patna to provide information as per the request made by the SIT/CID for the sake of proper direction of the case with regard to whereabouts of the victim by producing the details of the mobile number linked with the Aadhar No. 2354 1043 1615.

6. In the same report, it was stated by the Inspector General of Police, CID that the victim got missing about 6 years ago. Therefore, possibility cannot be ruled out that the facial appearance and other physical features of the victim might have changed over a period of time. So, the Director, National Forensic Science University, Gandhinagar, Gujrat has been requested to develop probable present description of the victim.

7. In short, it is contended on behalf of the respondents that the Police Authority left no stone unturned for recovery of the victim but in vein.

8. The learned Advocate for the petitioner at the time of hearing of the case has placed reliance on an unreported judgement passed by a Coordinate Bench of this Court in



Cr.WJC No. 130 of 2017, delivered on **12th of December, 2022**, in the case of **Usha Sharma Vs. State of Bihar and Ors**. The Court under similar facts and circumstances handed over the investigation of the case relating to the recovery of missing child to C.B.I.

9. It is submitted by the learned Advocate for the respondents, referring to paragraph 42 of the above-mentioned judgement as well as the decision of the Hon'ble Supreme Court in **State of West Bengal & Ors Vs. Committee for Protection of Democratic Rights, West Bengal & Ors.**, reported in **(2010) 3 SCC 571** that the Apex Court has sounded word of execution in paragraph 70 of the aforesaid report, which runs as hereinbelow:-

“70. Before parting with the case, we deem it necessary to emphasise that despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing any order, the Courts must bear in mind certain self-imposed limitations on the exercise of these constitutional powers. The very plenitude of the power under the said articles requires great caution in its exercise. Insofar as the question of issuing a direction to CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extraordinary power



must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Otherwise CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations.”

10. The law on the point of transfer of investigation of case to CBI can be summarized to the effect that the Court can exercise its constitutional power for transferring an investigation from the State Investigating Agency to any other independent Investigating Agency like CBI only in rare and exceptional cases, where high officials of State Authorities are involved or the accusation itself is against top officials of the Investigating Agency thereby allowing them to influence the investigation and further that it is so necessary to do justice and to instill confidence in the investigation or where investigation is prima facie found to be tainted or biased.

11. In the instant case, the petitioner does not come up with a case that the investigation was tainted or biased or that any Police Officer is adversely interested and causing visible obstruction in investigation or that failure on the part of the



State Police has caused loss of confidence upon the State Police Authority.

12. Since the son of the petitioner was not recovered during the last seven years, he has prayed for a direction upon the Police Authorities by issuance of writ in the nature of Mandamus.

13. On due consideration of the materials on record, this Court finds that the respondent-authorities took all possible steps to find out the victim but failed. The investigation was finally taken over by the CID. All possible steps were made by the CID to find out the victim boy but the boy was not recovered.

14. Considering the entire aspects of the matter, this Court is of the view that further direction to the Police Authority in this regard or handing over the investigation to CBI will be a futile exercise.

15. Under such circumstances, this Court disposes of the instant writ petition directing the Unique Identification Authority of India (UIDAI) to pass on the information sought for by the CID in relation to the Aadhar Card of the victim boy. The CID shall continue with the process of investigation for recovery of the victim boy and if the victim boy is recovered, he



shall be handed over to his father.

16. With the above order, the instant writ petition is disposed of.

(Bibek Chaudhuri, J)

uttam/skm-

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