

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1535 of 2023

Arising Out of PS. Case No.-523 Year-2021 Thana- BARH District- Patna

Mukesh Kumar @ Mukesh Singh Son of Laxmi Singh, Resident of Village - Pandarakh, P.S.- Pandarakh, District - Patna

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Home, Government of Bihar.
2. The Director General of Police, Bihar Police, Patna, Bihar Bihar
3. The Senior Superintendent of Police, Patna, Bihar Bihar
4. The Superintendent of Police, Patna, Bihar Bihar
5. Ranjeet Kumar, Son of unknown to the Petitioner Officer Incharge of Barh Police Station And The Investigating Officer of the case, District - Patna.
6. Lipi Singh Daughter of Sri Ram Chandra Prasad Singh at the relevant time posted as Additional Superintendent of Police, Barh, Patna.
7. Anant Kumar Singh @ Anant Singh Son of Late Chandradeep Singh Ex-MLA of Mokama, Resident of Village - Nadwan, P.S.- Barh, District - Patna at present 1, Mal Road, P.S.- Sachivalaya, District - Patna.
8. Karnvir Singh @ Kanvir Singh @ Lallu Mukhiya Son of Late Ram Vilas Prasad @ Ram Vilas Yadav Resident of Village - Gulabbag, P.S.- Barh, District - Patna.
9. Purushottam Kumar @ Chandan Singh Son of Late Narayan Singh Vill. - Lemuabad Chhaperatar, Rajput Toli, P.S.- Pandarak, District - Patna.
10. Dharam Raj Kumar Son of Krishan Mohan Prashad Resident of village - Gpkita, P.O. and P.S.- Pandarakh, District - Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Akash Shankar, Advocate
For the Respondent/s : Mr. Iqbal Ashif Niazi, AC to GP-5

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

6 04-02-2025 The petitioner is one of the F.I.R. named accused in connection with Barh P.S. Case No.523 of 2021 under Section 307, 302, 120B/34 of the Indian Penal Code.

2. Briefly stated, the incident took place on



11.12.2021 at about 11:00 p.m. when the defacto complainant, his brother, since deceased, who happened to be an elected Panchayat Member, a police officer and others were coming out of a marriage ceremony as soon as they came out of the marriage hall some F.I.R. named accused persons alongwith 2-3 unknown persons opened fired at than causing death of three persons. It is alleged that the entire incident was spearheaded by Mukesh Singh, the petitioner herein, because of the fact that before few days of the incident Mukesh Singh threatened the brother of the elected Panchayat Member to see as to how he could take oath as a newly elected Panchayat.

3. In the instant case, the petitioner has prayed for a direction for investigation by an independent agency, secondly, to quash the F.I.R. and entire investigation of Special Case No.16 of 2022 as well as Trial in connection with Barh P.S. Case No.523 of 2021 and other consequential reliefs.

4. The learned Advocate for the petitioner submits in support of his contention regarding quashment of F.I.R. on the following grounds:-

“There was long standing political dispute between the Ex-M.L.A. of the locality and Mukesh Singh, the F.I.R. in connection with Barh P.S. Case No.523 of 2021 was lodged in



collusion with the said Ex-M.L.A. because he was also implicated in two numbers of cases instituted by the present petitioner. Secondly, in the instant case three persons, namely, the informant one Dhaanraj and one Karamvir Singh Yadav @ Lallu Mukhiya gave statement under Section 164 of the Cr.P.C. on 20.01.2022 and one of the witness, namely, Dhanraj did not say anything implicating the present petitioner. Moreover, from the statement Dharamraj Kumar, the informant it cannot be ascertained that the petitioner opened fired at any of the injured/deceased persons. Thirdly, the local police station is at a distance of about 04 kms. but the F.I.R. was lodged after a lapse of 18.30 hours which clearly shows that it was concocted by the informant and the other interested persons.”

5. Counter affidavit has been filed on behalf of the respondent Nos. 3 & 4 it is stated in the counter affidavit that previously wife of Mukesh Singh filed a Cr.W.J.C. No.1168 of 2023 with the similar prayer to transfer the investigation of the case to an independent agency but the said writ petition was dismissed on contest by a Coordinate Bench of this Court vide order dated 15.12.2023. Therefore, similar prayer made by the petitioner cannot be entertained now.

6. At this stage, it is to be considered as to whether



failure to mention the name of the petitioner by one of the witnesses under Section 164 of the Cr.P.C. or delay in lodging F.I.R. or existence of counter case are the grounds for quashment of F.I.R.

7. In my considered view, the answered would be in the negative, because a statement under Section 164 of the Cr.P.C. by a witness is not a substantive piece of evidence it can only be used for corroboration with the evidence laid by the same witness during trial of the case. Similarly, effect of delay in lodging F.I.R. can also be looked into at the trial on the basis of evidence on record, delay per-se in lodging the F.I.R. does not vitiate a criminal case. The F.I.R. is also not a substantive piece of evidence, it can only be used for the purpose of corroboration and construction. If during trial, the defence can establish that as a result of delay the F.I.R. was concocted and manufactured, the defence may get benefit of doubt. This is not the stage for consideration of the aforesaid ground.

8. Last but not the least, supplementary charge sheet has been filed against the petitioner and others in the instant case, the case is at the stage of trial. The petitioner has not come up with an application challenging the order of cognizance upon charge sheet.



9. Therefore, I do not find any merit in the instant writ petition and accordingly, the instant writ petition is accordingly, dismissed.

10. It is to be noted that the learned Advocate for the petitioner submits that the petitioner has surrendered in connection with Barh P.S. Case No.523 of 2021, let it be on record.

(Bibek Chaudhuri, J)

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