

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.539 of 2024

Arising Out of PS. Case No.-454 Year-2013 Thana- LAKHISARAI District- Lakhisarai

1. Gopal Kumar Goyal S/o Chhabhi Nath Sah R/o vill - Purani Bazar, Loharpatti, Lakhisarai, P.S. and Distt. - Lakhisarai
2. Ganesh Prasad S/o Late Laxmi Narayan Prasad Resident at Laxmi Complex, near Bhu Kailash Temple, Surajgarh, P.s. - Surajgarha, Distt. - Lakhisarai
3. Pawan Kumar S/o Parmanand Gupta Resident at Purani Bazar, Near Block Lakhisarai, P.s and Distt. - Lakhisarai
4. Vikash Kumar @ Ravi Raj S/o Binay Shankar Gupta @ Binay Sao R/o vill - Nista, P.S. - Surajgarha, Distt. - Lakhisarai

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Home Department, Government of Bihar, Patna
2. The Director General of Police, Bihar, Patna
3. The District Magistrate, Lakhisarai
4. The Superintendent of Police, Lakhisarai
5. The Sub-Divisional Police Officer-cum-Investigating Officer, Lakhisarai
6. The Station House Officer (SHO), Lakhisarai P.S.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Manohar Prasad Singh, Advocate Ms. Kumari Kalpana Mishra, Advocate
For the Respondent/s	:	Mr.Sarvesh Kumar Singh, A.A.G. 13 Mr. Anjaneya Singh, AC to AAG-13

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE JUSTICE SMT. SONI SHRIVASTAVA
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

7 11-03-2026 Heard learned counsel for the petitioners and learned
AAG-13 for the State of Bihar.

2. The present writ application has been preferred
seeking the following reliefs:-

(I) For issuance of appropriate writ in the
nature of CERTIORARI to quash the



order dated 18.10.2023 (Annexure-P/9) passed by the Addl. District and Sessions Judge-II, Lakhisarai in Sessions Trial No. 236/2023 by which he has framed charges against the petitioners and other for the offence u/s 420/34, 467/34, 468/34, 471/34, 120B IPC and 17, 18, 18 (C), 21, 38,40 of the Unlawful Activities Prevention Act (U.A.P.A) and proceeded for evidence on the basis of order taking cognizance of the offence by the learned District and Sessions Judge, Lakhisarai, on 24.11.2014 (Annexure-P/4) against the settled principle of law laid down by a Full Bench of this Hon'ble Court by an order dated 27.03.2015 (Annexure-P/5) in Cr. App. (F.B.) 149 of 2015 Bahadur Kora Versus The State of Bihar.

- (II) Further to issue an appropriate writ by quashing the erroneous order taking cognizance dated 24.11.2014 (Annexure-P/4) passed by the learned Court below for the offence u/s 420, 467, 471, 120B of the IPC and 17,18,18(c), 21, 38, 40 of the U.A.P. Act without taking any step of special Act of Schedule cases, against the principle laid down by a Full Bench of this Hon'ble Court, by an order dated 27.03.2015 passed in Cr.App. (F.B.) No.149 of 2015 (Annexure-P/5) having no Jurisdiction rather invalid and unlawful. and proceeded for trial after framing Charges by an order dated 18.10.2023 (Annexure-P/9) u/s 420/34; 467/34; 468/34; 471/34, 120B of the IPC and 17,18,18B,21,38,40 of the U.A.P. Act, 1967 against the petitioners and others,
- (III) For issuance of an appropriate writ in the nature of MANDAMUS to command the learned Judicial Officer, Civil Courts Lakhisari to not to go beyond the settled principle of law decided by the Higher



Courts and to pass the orders in accordance with law,

(IV) Further for issuance of an appropriate writ by commanding the Respondent authorities to do their duties in accordance with law which has not followed in the instant case and submitted charge sheet No.11/2014 dated 03.02.2014 (Annexure-P/2) with vitiated investigation against the petitioners upon which Cognizance of the offences u/s 420,467,468,471,120B of the IPC and 17, 18, 18B, 21, 38, 40 of UAP Act had taken earlier and the same has already been set aside by this Hon'ble Court by an order dated 04.08.2014 passed in Cr.W.J.C. No. 487/2014 (Annexure-P/3).

(V) For issuance of writ(s), order(s) and direction(s) for that the petitioners are entitled to get relief by this Hon'ble Court as provided under the law.

Brief facts of the case

3. The informant who was a police officer in Kabaiya police station got a secret information that some miscreants had gathered near the ATM of HDFC bank and they were trying to withdraw the money or to deposit the same with a view to monetarily help the terrorists. There were information that these people were indulged in making of fake ATMs or opening bank accounts in fake names or in the name of innocent people according to the direction of the Pakistani miscreants. The SHO along with some police personnel went to verify the same, he



found two vehicles standing near the ATM of HDFC bank and the persons were on look out for either withdrawing or depositing the money in the bank. The informant of the case having verified the information requested the SHO, Lakhisarai to reach the ATM of HDFC bank for cooperation and then the informant along with other officers reached Chaiti Durgasthan near Bazar Samiti where they carried out the operation. Some persons were arrested with the mobiles and ATM cards descriptions of which have been provided in the written report giving rise to the present FIR registered for the offences punishable under Section 420, 467, 468, 471 and 120B of the Indian Penal Code (in short 'IPC') and Sections 17, 18, 18B, 21, 38 and 40 of the Unlawful Activities (Prevention) Act (in short hereinafter referred to as the 'UAP Act'). The investigation begun by recording the statement of the witnesses under Section 161 Cr.P.C.

4. It is the case of the petitioners that no report was sent to the State of Bihar under UAP Act and under Section 6 and 7 of the National Investigation Agency Act, 2008 (in short 'N.I.A. Act'). A charge-sheet bearing No.11/2014 dated 03.02.2014 was submitted, it is submitted that no previous sanction was obtained. On 22.05.2014, the learned Chief



Judicial Magistrate took cognizance of the offences under Sections 420, 467, 468, 471 and 120B IPC. The said order taking cognizance was challenged before this Court in Cr.W.J.C. No.487 of 2014 (Aasif P.K. @ Md. Aaripha @ Aasif @ Md. Aasipha @ Md. Aasif @ Aarif Vs. The State of Bihar & Ors.) and this Court was pleased to set aside the said order vide order dated 04.08.2014 passed in Cr.W.J.C. No.487 of 2014 (Annexure-P/3). The Hon'ble Division Bench having found that no special court has been constituted under the NIA Act, hence power of the N.I.A. court is to be exercised by the Sessions Judge of the Division where scheduled offence has been committed.

Thereafter, the learned Sessions Judge, Lakhisarai by an order dated 24.11.2014 took cognizance of the offences under Sections 420, 467, 471 and 120B IPC and also under Sections 17, 18, 18C, 21, 38 and 40 of the UAP Act. This time the order taking cognizance was taken in the light of the order dated 04.08.2014 passed in Cr.W.J.C. No.487 of 2014.

5. It is a matter of record that the decision rendered by the Hon'ble Division Bench in Cr.W.J.C. No.487 of 2014 came to be considered by a Full Bench of this Court in a batch of Cr.Appeal (F.B.) No.149 of 2015 (Bahadur Kora Vs. The State



of Bihar) with analogous matters filed under Section 21(4) of the N.I.A. Act. The Full Bench did not approve the views of the Hon'ble Division Bench taken in Cr.W.J.C. No.487 of 2014 (in short referred to as 'Aasif's case'). The judgment of the Hon'ble Full Bench of this Court has been brought on record as Annexure-P/5 to this writ application, the operative part of the same will be reproduced hereinafter at an appropriate stage.

6. It appears from the record that in view of the decision of the Hon'ble Full Bench, the petitioners filed an application before the learned District and Sessions Judge, Lakhisarai on 18.05.2015 with a prayer to transfer the case to the court of learned A.C.J.M., Lakhisarai as it was contended on behalf of the petitioners that none of the steps has been taken under the N.I.A. Act as provided for the offences so alleged and the case has been investigated by the State agency under Cr.P.C. and as such trial of the case under the UAP Act is vitiated, invalid and unlawful. It is stated that on the same day, the learned court transferred the case to the court of learned Additional Chief Judicial Magistrate, Lakhisarai for its trial and disposal.

7. After eight years, vide order dated 05.08.2023, the learned Judicial Magistrate, 1st Class, Lakhisarai committed the



records and sent it to the court of Sessions for trial. The contention of the petitioners is that the learned Judicial Magistrate did not follow the direction of the learned District and Sessions Judge, Lakhisarai and had wrongly transferred the records to the court of Sessions. Annexure-P/7 is the order passed by the learned Judicial Magistrate in which the operative part records that the cognizance has been taken under the various provisions of the IPC and the provisions of the UAP Act against the accused which are exclusively triable by the court of Sessions, therefore the case is to be committed.

8. It is stated that on 13.09.2023, the petitioners filed an application under Section 227 of the Cr.P.C. before the learned Additional District and Sessions Judge-II, Lakhisarai with a prayer to send the records of the case to the court of learned A.C.J.M., Lakhisarai but the learned Additional District and Sessions Judge-II, Lakhisarai after receiving the records passed the order dated 16.10.2023 rejecting the application of the petitioners for their discharge.

Submissions on behalf of the petitioners

9. Learned counsel for the petitioners has submitted that the orders dated 13.09.2023 as well as the order dated 16.10.2023 (Annexure-P/8 series) passed by the learned



Additional District and Sessions Judge-II, Lakhisarai are bad in law. One of the contentions is that the order dated 16.10.2023 has been passed in absence of the petitioners. It is also submitted that the case was fixed for framing of charges on 15.01.2024 but the learned Additional District and Sessions Judge-II, Lakhisarai framed the charges on 18.10.2023 itself and directed the office to issue summons against all the prosecution witnesses.

Submissions on behalf of the State

10. On behalf of the State, a counter affidavit has been filed. Besides giving the chequered history of the case, learned AAG-13 submits that the views expressed by the Hon'ble Division Bench in Ashif's case were not approved by the Hon'ble Full Bench. The case was registered by the State police and after investigation of the case, charge-sheet was filed. The Law Department of the State of Bihar vide Letter No.147/J dated 27.06.2014 approved the sanction for prosecution against the petitioners under UAP Act. The sanction letter was submitted by the S.D.P.O., Lakhisarai in the court of learned District and Additional Sessions Judge and keeping in view the materials available on the record, when the records were sent back to the court of learned A.C.J.M., Lakhisarai on the request



made on behalf of the petitioners, learned A.C.J.M. took cognizance of the offences whereafter the records were committed to the court of Sessions and it was transferred to the court of learned District and Additional Sessions Judge-II, Lakhisarai where steps were taken to frame the charges.

11. Learned AAG-13 has pointed out to this Court the reasons shown by the learned District and Additional Sessions Judge-II, Lakhisarai in the impugned order dated 16.10.2023 for rejecting the application of the petitioners for discharge. The learned court below has relied upon a judgment of the Hon'ble Supreme Court in the case of **Bikramjit Singh Vs. State of Punjab** reported in **(2020) 10 SCC 616**. It is submitted that since the offences punishable under the provisions of the UAP Act carries sentence of more than 7 years, the Hon'ble Supreme Court has clearly opined that it would be triable by the court of Sessions. Keeping in view the settled legal position, learned court below has not committed any error in passing of the impugned order.

12. Learned AAG-13 has further pointed out that the accused persons were not cooperating in progress of the case and this fact may be found from the impugned order itself where it is recorded that the last chance was given to the defence for



hearing on the point of discharge but they failed to appear before the court. Only after giving a clear warning to the defence that if they would fail to appear before the court for their argument the matter would proceed on merit, the learned court below has proceeded to consider the application and passed the order which is impugned. In such circumstance, no illegality or infirmity may be found in the impugned order.

Consideration

13. We have considered the rival submissions at the bar and have gone through the materials placed before us. The bone of contention of the parties would be required to be considered keeping in view the opinion expressed by the Hon'ble Full Bench in Cr.Appeal (FB) No.192 of 2015 decided on 27.03.2015. The operative part of the judgment of the Hon'ble Full Bench reads as under:-

“We, therefore, hold that

(A) the judgment in Aasif's case (supra), insofar as it held that investigating agency of the State Government can investigate and try offences in accordance with the provisions of the N.I.A. Act, in the cases where offences punishable under the Unlawful Activities (Prevention) Act are alleged, and that such cases must be tried by the Courts of Sessions under Sub-section (3) of Section-22 of the N.I.A. Act, cannot be said to have laid the correct law;



(B) the cases even where offences punishable under the provisions of U.A.P. Act are alleged shall be tried by the courts as provided for under the Cr.P.C. and not in accordance with the special procedure, under the Act unless (i) the investigation of such cases is entrusted by the Central Government to the N.I.A. and (ii) the N.I.A. transfers the same to the investigating agency of State Government.

The appeals shall be treated as bail applications, to be heard under Section-439 of Cr.P.C. and the registry shall place the same before the learned Single Judges after requiring the parties to alter the provisions of law;

(C) all the cases in the State of Bihar, which are being tried by the Courts of Sessions, on the basis of the judgment of this Court in Aasif's case (supra), shall stand transferred to the courts that otherwise have jurisdiction to try them; and

(D) none of the steps taken in such cases that were pending before the Court of Sessions shall render the investigation or trial, invalid or unlawful."

14. In view of the settled legal position as above, we find that in this case the State police had registered the FIR and investigated the case. They had submitted the charge-sheet, sanction orders were issued by the State Government whereafter cognizance was taken for the second time on 24.11.2014 i.e. after the judgment of the Hon'ble Division Bench in Aasif's



case. This order taking cognizance is fully in consonance with the opinion expressed by the Hon'ble Full Bench and no fault may be found with the same. The petitioners have challenged the order taking cognizance dated 24.11.2014 (Annexure-P/4) at this stage only after the charges have been framed. We have gone through the order taking cognizance. It is a well reasoned order. We have also noticed that after the order, as contained in Annexure-P/4, was passed, the petitioners filed an application before the learned District and Additional Sessions Judge for transfer of the records to the court of learned A.C.J.M., Lakhisarai. The application was allowed vide order dated 18.05.2015 (Annexure-P/6 series). Thereafter, vide order dated 05.08.2023, the learned A.C.J.M., Lakhisarai proceeded with the matter and relying upon a judgment of the Hon'ble Supreme Court in the case of **Bikramjit Singh** (supra), the learned Judicial Magistrate-1st Class committed the records to the court of Sessions. This order dated 05.08.2023 passed by the learned Judicial Magistrate-1st Class has not been challenged by the petitioners. In fact, after the records were committed the court of Sessions, the petitioners filed an application under Section 227 of the Code of Criminal Procedure and in their application, they raised an issue that the learned C.J.M. has not taken cognizance



under the provisions of the UAP Act against these petitioners rather cognizance was taken only under Sections 420, 467, 468, 471 and 120B IPC on 22.05.2023. It was submitted that the records have been transferred to the court of learned District and Additional Sessions Judge without complying with the order of the court.

15. To this Court, it appears from the order dated 16.10.2023 that the petitioners were not cooperating at the stage of framing of charge. The learned trial court has rightly recorded that at this stage marshaling of evidence is not required and mere presence of sufficient material to constitute the offence would be sufficient to frame the charges. It has been duly mentioned that in the case of **Bikramjit Singh** (supra), the Hon'ble Supreme Court has held that the case of UAP Act especially the sections under which the cognizance has been taken in the instant case would be triable by the court of Sessions. Keeping in view this position emerging in law, the learned court dismissed the application under Section 227 Cr.P.C. and the accused persons were directed to be physically present before the court for framing of charge on the next date. The case was fixed for 15.01.2024. However, it appears that on 18.10.2023 itself four accused persons filed their attendance and



two custodial accused were produced from jail with their custody warrant. Both the parties were heard on the point of framing of charge and thereafter finding sufficient materials on the record, the learned court passed an order for framing of charge against the accused persons. Charges were read over and explained to them in Hindi in open court to which they pleaded not guilty and claimed to be tried.

16. We are conscious of the one of the submission at the bar that while dismissing the application of the petitioners preferred under Section 227 Cr.P.C., the learned court had fixed the case on 15.01.2024 for framing of charge but only after two days i.e. on 18.10.2023, the charges were framed. We find that there is an apparent error in putting the date by pen in the order dated 16.10.2023 otherwise there was no reason that the four out of six accused persons would file their attendance on 18.10.2023, further the production of other two accused on production warrant from jail on the same day clearly show that the case was fixed on 18.10.2023. It is evident that no prejudice has been caused to the accused persons because of the framing of charge on 18.10.2023 because it is not their contention that what are recorded in the order dated 18.10.2023 are not correct.

17. In ultimate analysis, we are of the considered



opinion that the impugned orders do not suffer from any infirmity.

18. This writ application has no merit. It is dismissed accordingly.

(Rajeev Ranjan Prasad, J)

(Soni Shrivastava, J)

arvind/-

U			
---	--	--	--

