

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1284 of 2022

Arising Out of PS. Case No.-169 Year-2022 Thana- GHOSWARI District- Patna

Santosh @ Santosh Singh S/O Rampravesh Kishore Narayan Singh @
Rampravesh Singh Resident of Village- Samyagadh Samaya No-5 (Samaya),
P.S.- Ghoshwari, District- Patna, 803306

... .. Petitioner

Versus

1. The State of Bihar through Chief Sect., Old Sect. Govt. Of Bihar, Patna
2. The Additional Chief Secretary, Home Dept. Govt. of Bihar.
3. The Director General of Police, Bihar, Patna
4. The Superintendent of Police (Rural), District- Patna.
5. The Senior Superintendent of Police, District- Patna.
6. The Sub Divisional Police Officer, Barh, District- Patna.
7. Banarasi Chaudhary, S.I. currently posted as O.P., Incharge Samya Garh,
P.S. Ghoswari Mokama District- Patna
8. Pramod Bihari Singh Currently Posted as A.S.I. O.P. Samya Garh, P.S.-
Ghoswari, Mokama, Dist- Patna
9. Vineet Kumar Currently posted as Supt. of Police (Rural), Dist.- Patna Bihar
10. Manavjit Singh Dhillon Currently Posted as Senior Supt. of Police, District-
Patna
11. The Additional Director General of Police, Crime Investigation Department,
Bihar, Patna Patna.

... .. Respondents

Appearance :

For the Petitioner/s : Mr. Shekhar Singh, Advocate
Mr. Amrit Kumar, Advocate
For the Respondent/s : Mr. Deepak Kumar, AC to GP-4

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

3 17-11-2022 Heard learned counsel for the petitioner and Mr.
Deepak Kumar, learned AC to GP-4 for the State.

2. By order dated 15.11.2022, for the reasons recorded
therein this Court called upon the Superintendent of Police,
(Rural), Patna (Respondent no. 4) to be present in-person with
complete records and information.



3. Today, this Court has been informed by Mr. Pramod Kumar Singh, Superintendent of Police (East), Patna who is Incharge of S.P. (Rural), Patna w.e.f. 15th November, 2022 that the regular incumbent on the post has gone on leave from 15.11.2022 to 20.11.2022 and because he is Incharge of the said Post, therefore he is putting appearance. With him present is Banarsi Choudhary, S.I. currently posted as O.P. Incharge Samyagarh Police Station (respondent no. 7). Let it be recorded that he was not called in-person but has come on his own with a view to assist S.P. (Rural) Incharge.

4. When the hearing of the case started, this Court called upon S.P. (Rural) Incharge to answer certain queries. As regards 107 Cr.P.C. notice, this Court has been informed that in village Samyagarh, there is one person namely, Chotu Kumar who is an accused in Barauni F.C.I. P.S. Case No. 241/2022 dated 03.06.2022 registered under Section 457/380/511/411 I.P.C. Since the Mokama by-poll was scheduled for 3rd of November, 2022, there was a meeting of the police officers. In the said meeting an information was passed on regarding said Chotu Kumar being an accused in the said case.

5. S.P. (Rural) I/C states that against Chotu Kumar the Samyagarh O.P. was not made available any warrant of arrest in



connection with the Barauni F.C.I. P.S. Case. No police officer had visited from the said police station with any warrant to arrest Chotu Kumar but a proceeding under Section 107 Cr.P.C. was initiated against said Chotu Kumar, the basis of which is not known to him. This Court asked him as to whether there is any police report against him for purpose of initiation of a 107 Cr.P.C. proceeding, the S.P. (Rural) and the Incharge of the O.P. (respondent no. 7) who are present in court are unable to say that there is any such police report forming basis for initiation of a 107 Cr.P.C. Proceeding. They, however say that earlier the S.D.O. Barh had issued a summon against Chotu Kumar for his appearance in the proceeding under Section 107 Cr.P.C. but said Chotu Kumar had not appeared whereafter a warrant of arrest has been issued against him. Copy of summon is not available with these officers. The warrant of arrest does not bear any endorsement as to whether it is aailable or a non-ailable warrant.

6. This Court has been informed that it is for the said execution of warrant the informant had gone to the village where the alleged occurrence took place at 8:15 A.M. When this Court called upon S.P. (Rural) to say as to why the said occurrence was not immediately recorded giving rise to the



F.I.R. and the lodging of the F.I.R. has been shown after seven hours, there is no explanation to the same. This fact is being noticed only for purpose of the present discussions.

7. This Court has invited the attention of the S.P. (Rural) Incharge towards the language used in the F.I.R. wherein the informant has stated “ स्थानीय एक ही जाति के 30-35 अज्ञात व्यक्ति हमलोगों को पीछा करते हुए, ओपीआय आय”

8. This Court wanted to know that what was the occasion for the informant to refer that those unknown persons belong to the same and one caste and if those persons were unknown to the informant then how he can claim that they belong to the same and one caste, the S.P. (Rural) Incharge has after taking a look upon the F.I.R. submits that in all fairness the police officer who was lodging the F.I.R. making himself an informant and victim both should not have used this kind of language.

9. At this stage, this Court called upon respondent no. 7 to say as to what time he along with police force had raided the house of the villagers, he has said in presence of S.P. (Rural) Incharge that it was around 1:00 A.M. (midnight) when he along with the informant and about 35 police personnel who were requisitioned from different police stations arrived in the village



and made entry into the multiple houses of the villagers.

10. When this Court called upon him to say as to whether prior to entering into the houses that too in several houses in the midnight he had followed the safeguards provided in the matter of entering into the residential houses wherein female members are residing that too in the midnight, there is no answer to this query and he only says that he had with him one lady police constable namely, Anju Priti who had been requisitioned from Bhadaur Police Station. He admits that after the morning occurrence, preparations were made during the day to nab the named accused persons in the F.I.R. during the midnight and for this purpose police force were requisitioned. In this connection however no information was sent to the jurisdictional Magistrate about the occurrence which had taken place at 8:15 A.M. Respondent no. 7 further states that the force was sent by Arbind Pratap Singh, A.S.P. Barh.

11. Regarding the manner of arrest of the brother of the petitioner, this Court had earlier noticed the submissions of learned counsel for the petitioner and called for a report from the jurisdictional Magistrate, 1st Class, Barh as to whether the arrest of the brother of the petitioner has been communicated to him and he has satisfied himself with the compliances to be made by



a police officer in the matter of arrest of a person. The learned Magistrate was called upon to submit a report on other aspects including as to whether the brother of the petitioner had been taken on remand by police authorities or not or in what manner his arrest has been authorized.

12. Today, in course of hearing, this Court called upon the S.P. (Rural) Incharge to show from the records as to whether any arrest memo was prepared and submitted in the court of learned jurisdictional Magistrate. The S.P. (Rural) Incharge first tried to locate the arrest memo from the file which he was carrying but later on he said that it is not available in his file. Respondent no. 7 at this stage intervenes to say that the arrest memo is available in the main file. This Court granted time to the officers present in Court and the learned Government Counsel to get a copy of the memo of arrest, if any, available in the records through FAX and produce it after Luncheon interval but even after granting sufficient time to produce the copy of the memo of arrest, they are unable to produce the arrest memo. This Court has, therefore, reasons to believe that both the officers at this stage only tried to mislead this Court.

13. This Court has gone through the report as contained in letter no. 05 dated 16.11.2022 submitted by Mr.



Avinash Kumar, learned Judicial Magistrate, 1st Class, Barh, Patna. The learned Magistrate has informed this Court that on 29.10.2022 an application was filed in this Court by the I.O. of this case informing that the police officers went to arrest the F.I.R. named accused Deepak Kumar (petitioner's brother) at his house and when they surrounded the house of the accused, the accused Deepak Kumar jumped from the roof of his house due to which his hands and legs were severely injured. It was further informed that the Deepak Kumar was referred from Primary Health Centre, Ghoswari to PMCH, Patna and was undergoing treatment there in police custody. The learned Magistrate has categorically stated that neither Deepak Kumar was produced before the Court nor he has been taken on remand by the police authorities. Only information has been furnished that he was undergoing treatment in PMCH, Patna and that after discharge from there he would be produced before the Court.

14. The learned Magistrate has stated that “no arrest memo and accused forwarding memo regarding arrest of the accused was produced before this Court. Without the production of the accused before this court and without necessary documents relating to arrest it was not possible to satisfy myself about the compliances to be made by the police officer in the



matter of arrest of a person.” The learned Magistrate further says that the arrest of the accused Deepak Kumar was not authorised by this Court as he was not produced before the Court nor any document relating to arrest was produced.

15. From a reading of the report of the learned Magistrate, this Court has no iota of doubt that the claim made by the police officer that an arrest memo was prepared is only a wrong and false statement with an intention to mislead the court.

16. Learned counsel for the petitioner has relied upon the judgment of the Hon’ble Supreme Court in the case of **D.K. Basu Vs. State of West Bengal** reported in **(1997) 1 SCC 416** and submits that this judgment deals with the constitutional right of a citizen guaranteed under Article 21. The Hon’ble Supreme Court has held that custodial violence and torture in police custody infringes Article 21 as well as basic human rights and strikes at the blow of the rule of law. It is submitted that for established breach of fundamental rights even compensation may be granted under public law by the Supreme Court and by the High Courts in addition to private law remedy for tortuous action and punishment for wrong doer. The Hon’ble Supreme Court has issued guidelines which are to be followed in all the cases of arrest or detention till legal provisions are made in that



behalf as preventive measures.

“(1) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.

(2) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may either be a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest.

(3) A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.

(4) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

(5) The person arrested must be made aware of this right to have someone informed of his arrest or detention as



soon as he is put under arrest or is detained.

(6) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.

(7) The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.

(8) The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the State or Union Territory concerned. Director, Health Services should prepare such a panel for all tehsils and districts as well.

(9) Copies of all the documents including the memo of arrest, referred to above, should be sent to the Illaqa Magistrate for his record.

(10) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

(11) A police control room should be provided at all district and State headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a



conspicuous notice board.

Failure to comply with the requirements hereinabove mentioned shall apart from rendering the official concerned liable for departmental action, also render him liable to be punished for contempt of court and the proceedings for contempt of court may be instituted in any High Court of the country, having territorial jurisdiction over the matter.”

17. It is evident from the failure of the two Police Officers to produce the “Arrest Memo” in presence of their learned counsel and the report of the learned jurisdictional Magistrate that no arrest memo has been prepared and sent to the learned Magistrate. Even other requirements which are to be followed in terms of the judgment of the Hon’ble Supreme Court has not been abide by the Police officials effecting arrest. What disturbs the judicial conscience of this Court is that in a planned manner police force were called and they waited for the midnight to enter into the multiple houses of the village. The brother of this petitioner is a Civil Engineer who works in the State of West Bengal and had come to his village on 28.10.2022 on the eve of Chhath Puja when the alleged occurrence is said to have taken place. The F.I.R. in connection with the alleged occurrence was sent to the jurisdictional Magistrate only on the next date i.e. 29.10.2022 as it appears from the endorsement



made by the learned Magistrate showing his perusal on 29.10.2022.

18. This Court is presently not going into the merit of the allegations as the truth may reveal only after conduct of proper investigation of the case but this Court is certainly going into the manner in which the police force planned the entry into several houses during the midnight that too without having adequate female constables and the allegation as contained in Annexure '2' gives another version of the story. The S.S.P., Patna has yet not taken any action on the basis of Annexure '2' even though apart from saying other things the informant who is wife of this petitioner has alleged inter alia that

“उसी दिन अचानक रात करीब 12 बजे श्री प्रमोद बिहारी सिंह तथा श्री बनारसी चौधरी ओ.पी. अध्यक्ष सैकड़ो पुलिसकर्मियों के साथ मेरे घर आ धमके। वे लोग घर के औरतों के साथ अभद्र व्यवहार किया एवम गालियां दी। मेरे भैसुर जो कमरे में सो रहे थे उनको कमरे से निकल कर दोनों ने मिल कर लात-घुसे तथा पुलिसकर्मियों के राइफल के बट से खूब पीटा। प्रमोद बिहारी सिंह उनका गर्दन पकड़ के छत पर किनारे ले गए और बनारसी चौधरी ये बोलते हुए की बहुत जमींदार बनते हो आज तुम्हें जान से ही मार देते हैं और छत के रेलिंग से नीचे धक्का दे दिये और मेरे भैसुर उनके धक्का से नीचे गिर गए। पूरे शरीर में चोट की वजह से बेसुध हो गए। उनके हाथ-पैर चोट की वजह से लगभग निष्क्रिय हो गए। वो लोग मेरे भैसुर की सम्यागढ़ ओपी तक जमीन में घसीटते हुए ले गए। श्री बनारसी चौधरी जाते समय बार बार हमलोंगों के जाति का नाम ले कर यह कह रहे थे कि इनकी औकात दिखानी जरूरी है। वो यह भी कह रहे थे की आज रात में ही इसका खेल खत्म कर देते हैं। गम्भीर चोट से जब मेरे भैसुर की हालत खराब होने लगी तो उनको प्राथमिक उपचार केंद्र घोसवरी भेजा गया। मेरे भैसुर दीपक कुमार की चोट की गंभीरता को देखते हुए घोसवरी, मोकामा तथा बाढ़ स्थित अस्पतालों द्वारा रेफर करने के पश्चात 29.20.2022 की सुबह पीएमसीएच पटना में इलाज हेतु भर्ती करवाया गया है। लाख कोशिश की परंतु अभी तक उपरोक्त घटना की विरुद्ध एफ़.आई.आर दर्ज नहीं हुआ है। सम्यागढ़ ओपी के द्वारा ये कहा जा रहा है की केस दर्ज करवाओगे तो सारे



परिवार को बरबाद कर देंगे।

अतः श्रीमान से निवेदन है की इस मामले में दोषियों के विरुद्ध केस दर्ज कर उचित कारवाही की कृपा करे।”

19. When this Court perused Annexure ‘2’ day before yesterday, called upon learned counsel for the State to seek instruction from S.S.P., Patna as to what action has been taken upon Annexure ‘2’ because it was *prima-facie* disclosing commission of a cognizable offence. This Court also pointed out in it’s order the judgment of the Hon’ble Constitution Bench of the Hon’ble Supreme Court in the case of **Lalita Kumari vs. Government of Uttar Pradesh** reported in **(2014) 2 SCC 1** that wherever a cognizable offence is reported the same must be registered as an F.I.R. and entry in the Station Diary be made. Paragraphs 120 to 120.9 of the said judgment of the Hon’ble Constitution Bench were referred by this Court.

20. To utter surprise to this Court, learned counsel for the State submits that he has not received any instruction from S.S.P., Patna. This further strengthens the belief of this Court that the complaint made by wife of the petitioner has been ignored and even S.S.P., Patna is not taking any keen interest in attending the allegations made in Annexure ‘2’. This is an exceptional situation and in such circumstance, this Court being a constitutional court has no other option but to direct the S.S.P.,



Patna to get Annexure '2' registered as a First Information Report forthwith with the concerned police station and information be furnished to this Court tomorrow.

21. Since this Court will take a view as to which investigating agency may be given the responsibility to properly and fairly investigate both the cases, this Court once again call upon the official respondents to say as to why the investigation of the case be not referred to the CB-CID. In any case, same police officers against whom there are specific allegations in Annexure '2' and who are facing serious allegations of not following the mandate of the Hon'ble Supreme Court and are registering F.I.R. implicating persons on the basis of their caste even though he says that they are unknown, cannot be allowed to investigate the case.

22. In the case of Mohammed Zubair vs. State of NCT of Delhi reported in AIR 2022 SCC 3649, the Hon'ble Supreme Court has dealt with power of arrest by a police officer.

23. In paragraph 27 and 28 of the judgment of **Mohammed Zubair (supra)** their Lordships noticed as under:

“27. Police officer have a duty to apply their mind to the case before them and ensure that the condition(s) in Section 41 are met before they conduct an arrest. This Court has time and again, reiterated the importance of doing so, including in Arnesh Kumar v. State of Bihar,



where the Court observed:

“6[...] The existence of the power to arrest is one thing, the justification for the exercise of it is quite another. Apart from power to arrest, the police officers must be able to justify the reasons thereof. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person”

28. We once again have occasion to reiterate that the guidelines laid down in Arnesh Kumar (supra) must be followed, without exception. The *raison d'être* of the powers of arrest in relation to cognizable offences is laid down in Section 41. Arrest is not meant to be and must not be used as a punitive tool because it results in one of the gravest possible consequences emanating from criminal law: the loss of personal liberty. Individuals must not be punished solely on the basis of allegations, and without a fair trial. When the power to arrest is exercised without application of mind and without due regard to the law, it amounts to an abuse of power. The criminal law and its processes ought not to be instrumentalized as a tool of harassment. Section 41 of the CrPC as well as the safeguards in criminal law exist in recognition of the reality that any criminal proceeding almost inevitably involves the might of the state, with unlimited resources at its disposal, against a lone individual.”

As to the role of the court in protecting personal liberty and ensuring that investigation are not used as a tool of harassment, in the case of **Arnab Ranjan Goswami v. Union of India reported in (2020) 14 SCC 12**; their Lordships held in paragraph 60 and 61 as under:



“60.[...] Courts must be alive to the need to safeguard the public interest in ensuring that the due enforcement of criminal law is not obstructed. The fair investigation of crime is an aid to it. Equally it is the duty of courts across the spectrum – the district judiciary, the High Courts and the Supreme Court – to ensure that the criminal law does not become a weapon for the selective harassment of citizens. Courts should be alive to both ends of the spectrum – the need to ensure the proper enforcement of criminal law on the one hand and the need, on the other, of ensuring that the law does not become a ruse for targeted harassment. Liberty across human eras is as tenuous as tenuous can be. Liberty survives by the vigilance of her citizens, on the cacophony of the media and in the dusty corridors of courts alive to the rule of (and not by) law. Yet, much too often, liberty is a casualty when one of these components is found wanting.

61. [...] The doors of this Court cannot be closed to a citizen who is able to establish prima facie that the instrumentality of the State is being weaponized for using the force of criminal law. Our courts must ensure that they continue to remain the first line of defense against the deprivation of the liberty of citizens. Deprivation of liberty even for a single day is one day too many. We must always be mindful of the deeper systemic implications of our decisions.”

(emphasis supplied.)

24. Since Deepak Kumar brother of the petitioner was deprived from meeting his lawyer and family member till 15.11.2022, he has not filed a petition on his behalf but in the exceptional circumstances the petitioner who is the brother of



Deepak Kumar has filed I.A. no. 1/2022 pointing out the entire facts and circumstances and has sought release of his brother from the police custody in connection with Gorshware P.S. Case no. 169/2022.

25. From the aforementioned discussions, it is crystal clear to this Court that no arrest memo of Deepak Kumar, brother of the petitioner has been sent to the learned jurisdictional Magistrate and his arrest has not been authorized, this Court is therefore, of the considered opinion that Deepak Kumar cannot be treated under arrest and he shall not be kept under confinement by use of police force hereinafter.

26. The statement of Deepak Kumar has been recorded by the learned CJM which has been produced in a sealed envelope to this Court and this Court has perused the same. Let the same be kept inside the envelope and placed under seal. Deepak Kumar is set at free and shall not be arrested unless otherwise authorized by competent court of law. He would however, be required to cooperate in course of investigation. As and when he receives any notice from the investigating agency to participate in course of investigation, he will present himself before the investigating officer.

27. Let this case be listed tomorrow within top ten



cases.

28. This Court has in the first session of the Court called upon S.P., Rural Incharge to seek instruction from S.S.P., Patna as to why under this circumstance when so much dispute has arisen and serious allegations have been made against respondent nos. 7 & 8 they should not be transferred to somewhere else from the present place. After discussing the matter from S.S.P., Patna, the S.P., Rural Incharge has informed this Court that S.S.P., Patna has agreed to do so if the Court so directs. In the interest of justice, to instill confidence in the ongoing investigation, it has become necessary to direct S.S.P., Patna to immediately transfer respondent nos. 7 and 8 immediately to some other place so that they remain away from the investigation of the case.

29. List accordingly.

(Rajeev Ranjan Prasad, J)

vats/rajeev-

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Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.

