

IN THE HIGH COURT OF JUDICATURE AT PATNA

Mansur Alam

vs.

The State of Bihar & Ors.

Criminal Writ Jurisdiction Case No. 468 of 2021

30 August 2023

(Hon'ble Mr. Justice Anil Kumar Sinha)

Issue for Consideration

Whether the police failed to conduct a proper and sensitive investigation into the kidnapping of the petitioner's minor son.

Headnotes

Matter required sensitivity but investigation proceeded in a routine manner, where the Investigating Officers were frequently changed and altogether ten Investigating Officers have investigated the present case in piecemeal manner. Directions issued by the supervising officers, from time to time, were not carried out by the Investigating Officers. SP stated that show cause was issued and proceeding has been initiated against the erring police officers for their lapses. No serious effort on the part of the SP and other higher police officers of the police department appears to have been made by forming special team for nabbing the culprit(s) for recovery of the kidnapped minor child. (Para 29)

For about four-and- a-half years, no progress in the investigation was made and the case diary has been written in a routine manner. (Para 30)

Superintendent of Police, Siwan, is further directed to hand over the entire records to the CID which is expected to re-investigate the case expeditiously considering the seriousness of the case, in which a five-year old minor child has been kidnapped and is traceless for so many years. (Para 33, 34)

Case Law Cited

Vinay Tyagi v. Irshad Ali Alias Deepak and Others, (2013) 5 SCC 762

List of Acts

Indian Penal Code, 1860; Arms Act, 1959

List of Keywords

Kidnapping; Re-investigation; Minor child; Police inaction; Case diary interpolation; Scientific investigation; Crime Investigation Department; Supervisory failure

Case Arising From

Basantpur P.S. Case No. 194 of 2012, District - Siwan

Appearances for Parties

For the Petitioner: Mr. Ajeet Singh
For the State: Mr. Md. Nadim Seraj, GP 5
For the E.O.U.: Mr. V. N. P. Sinha, Sr. Adv., Ms. Soni Shrivastava
For the Vigilance: Mr. Anil Singh, Mr. Arvind Kumar

Headnotes Prepared by Reporter: Amit Kumar Mallick, Advocate

Judgment/Order of the Hon’ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.468 of 2021

Arising Out of PS. Case No.-194 Year-2012 Thana- BASANTPUR District- Siwan

MANSUR ALAM S/O KAYAMUDDIN HUSSAIN R/o village- Pandauli,
P.S.- Basantpur, District- Siwan

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR THROUGH DISTRICT MAGISTRATE,
DISTRICT- SIWAN. Bihar
2. SUPERINTENDENT OF POLICE, DISTRICT- SIWAN Bihar
3. THANA PRABHARI, P/S- BASANTPUR, DISTRICT- SIWAN Bihar
4. Superintendent of Police, Economic Offence Unit, Patna, Bihar Bihar
5. Superintendent of Police, Nigrani Anveshan Bureau, Patna, Bihar Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Ajeet Singh
For the State	:	Mr. Md. Nadim Seraj, GP 5
For the E.O.U.	:	Mr. V. N. P. Sinha, Sr. Adv. Ms. Soni Shrivastava
For the Vigilance	:	Mr. Anil Singh Mr. Arvind Kumar

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

JUDGMENT AND ORDER
C.A.V.

Date : 30-08-2023

This writ application has been filed for a direction to the respondents to complete the investigation of Basantpur Police Station Case No. 194 of 2012, dated 03.08.2012, registered for the offences punishable under Sections 363/365 of the Indian Penal Code, lodged by the petitioner, who is father of the kidnapped minor boy (aged about 5 years) and further direction to the



investigating agency to locate his son and file report before the competent court.

2. The prosecution case, as per the First Information Report, is that on 02.08.2012, at about 10 AM, the victim boy, namely, Riyaz Alam, son of the petitioner, aged about 5 years, wheatish complexion, height 2.5 feet, wearing red-coloured half pant and red and blue-coloured half T-shirt), went missing from his own house. The petitioner, along with his relatives and friends, started searching for the boy and in the process of search, it came to their knowledge from the villagers of the Khajuhari village, which is at a distance of about 7 KM from the house of the petitioner that at about 04:30 PM, two persons, on a red-coloured Passion Pro motorcycle, were seen taking a child forcefully by shutting his mouth, who was crying to return back to his mother and when the villagers raised hulla, the motorcyclists moved towards the east direction and took the way of Meera Tola Bazaar Road, which is next to Singhasani Mandir, and fled away.

3. The grievance of the petitioner is that the Police has not taken appropriate action towards recovery of the kidnapped minor boy. He has expressed his agony saying that he has been running from pillar to post for recovery of his minor son, but



nobody is taking care of his request. In this connection, he has submitted a representation to the District Magistrate, Siwan, on 22.08.2012, and also to the Deputy Chief Minister, Bihar on 23.08.2012 (Annexure '2' series to the writ application) and further to the Superintendent of Police, Siwan, on 20.02.2020, the Director General of Police, Bihar, on 06.03.2020 and also to the Chief Minister, Bihar, on 17.02.2020 (Annexure '5' series to the writ application).

4. Learned Counsel for the petitioner argued that the petitioner's brother, Khursid Alam, informed the police, on 03.08.2012, that on 02.08.2012, at night hours, a phone call made from Mobile Phone No. 9955473345, which was received on the home mobile Phone No. 9955757272 of the informant-petitioner, saying that the child was with him and the caller directed to come to Singhasini fair (Mela) and when the relatives of the informant reached at Singhasini fair (Mela), they made a phone call on the same mobile phone, wherein it was told that he was at Vakhri Mela (fair). Thereafter the relatives of the minor boy tried to contact that person, but the attempts of the relatives went in vain. It is further submitted that the police arrested the owner of the Mobile Phone No. 9955473345, namely, Sanjay Yadav who was later on released upon interrogation.



5. The petitioner has lodged two First Information Reports; one is Basantpur Police Station Case No. 194 of 2012, dated 03.08.2012, with regard to kidnapping of the son of the petitioner, who is still traceless, and second, on 13.02.2020, bearing Basantpur Police Station Case No. 61 of 2020, registered for the offences punishable under Sections 447/384/307/504/506/120(B)/ 34 of the Indian Penal Code and Section 27 of the Arms Act against accused persons, namely Ajeet Kr Singh @ Pappu Singh, Ashok Kumar Singh, and two other persons. In the said First Information Report, it is alleged that two persons came on motorcycle at the house of the petitioner/informant and shot at him with the intention to kill him at the instance of accused persons, namely, Ajeet Kr Singh @ Pappu Singh and Ashok Kumar Singh. It has further been alleged that the said two named accused persons are also accused in Basantpur Police Station Case No. 102 of 2008, registered for the offences punishable under Sections 302/ 201/120-B) of the Indian Penal Code, but due to their political connections and financial power, the police is sitting tight over the matter. It is relevant to mention here that the named accused Ajeet Kumar Singh @ Pappu Singh filed an intervener application to be added as a party, which was rejected by this Court, vide order dated 08.02.2023.



6. This writ application came to be filed in this Court on 12.03.2021 i.e. after about eight years seven months from the date of kidnapping of the child. It was taken up for consideration for the first time on 21.09.2022. It is pertinent to mention that the police have already submitted Final Form, bearing No. 87 of 2020, dated 30.04.2020, in the present Basantpur Police Station Case no. 194 of 2012, wherein occurrence has been found true but neither the accused persons could be identified nor the child has been recovered. The final form has been submitted by the police before filing of the present writ application, in the year 2021 itself.

7. A learned Co-ordinate Bench of this Court, taking note of the fact that it is a case of kidnapping of five-years old son of the petitioner, directed the Superintendent of Police, Siwan, (respondent nos. 2) to file counter affidavit giving details of the action taken so far.

8. It is relevant to mention here that the petitioner has prayed for proper investigation in two cases, the first one is Basantpur Police Station Case No. 194 of 2012, lodged for the kidnapping of five-year child of the informant against unknown, and the second one is Basantpur Police Station Case No. 61 of 2020, lodged with regard to the attempt made by the named



accused persons to kill the petitioner. Since the said two cases are of different nature and not related to each other, Learned Counsel was directed to restrict his prayer to either of the one First Information Report in the present writ application. In light of the said circumstances, learned Counsel for the petitioner has restricted his prayer only with regard to Basantpur Police Station Case No. 194 of 2012.

9. During the pendency of this writ application, as many as four counter affidavits have been filed. Pursuant to the order, dated 21.09.2022, a counter affidavit has been submitted on 05.11.2022 stating that final form in Basantpur Police Station Case No. 194 of 2012 has been submitted, wherein the occurrence has been found true but the accused persons have not been identified. The alleged involvement of suspect Sanjay Yadav was investigated, but no evidence was found against him. It is said that Sanjay Yadav is engaged in farming and cattle raising and has no criminal antecedent. It is further stated that all possible steps have been taken for the recovery of the kidnapped child. The case has been supervised by the Superintendent of Police, Siwan and Sub Divisional Police Officer, Maharajganj and thereupon specific directions were given to the Investigating Officer regarding the search of the kidnapped child, but no clue has been found.



10. The counter-affidavit, dated 05.11.2022, reflects dismal performance of the investigating agency, this Court, vide order dated 09.11.2022, directed the Superintendent of Police, Siwan, to remain personally present before this Court along with the records of the case to show as to what steps have been taken so far.

11. Pursuant to the order, dated 09.11.2022, a Supplementary counter affidavit has been filed by the Superintendent of Police, Siwan, on 21.11.2022, which mainly relates to Basantpur Police Station Case No. 61 of 2020. On 30.11.2022, the Superintendent of Police, Siwan, was present before this Court with incomplete case diary of Basantpur Police Station Case No. 194 of 2012, which showed that there was no case diary written during the year 2015- 2019, i.e. for a period of about 4 years 7 months. This Court pointed out to the Superintendent of Police, Siwan that while the case diary written on 10.02.2015 is up to paragraph 115, thereafter the case diary starts from 06.09.2019 and the paragraph numbers are showing from 53 onwards which was totally incoherent and would not inspire confidence of this Court. The Superintendent of Police, Siwan, was granted time to arrange his records and address the Court on the next day.



12. On 01.12.2022, the Superintendent of Police, Siwan produced the case diary with some more pages. This time, page nos. 19 to 26, which were xerox copies, was placed in between the pages of the case diary of 10.02.2015 and 06.09.2019. In some of the pages, case number was written as Mahila Police Station Case No. 194 of 2012, whereas in some of the pages, it was mentioned as Basantpur Police Station Case No. 194 of 2012. This Court found that from page no. 27 onwards, the paragraph numbers have been changed by prefixing '1' before the paragraphs, which were earlier existing, meaning thereby that paragraphs '53', '54' and '55' and so on and so forth have been shown as paragraphs '153', '154' and '155' onwards. When this Court called upon Superintendent of Police, Siwan, to explain as to how can he do so overnight in the carbon copy of the case diary and why it should not be taken as an interpolation of the records, the Superintendent of Police, Siwan, submitted that it was done by mistake and he was sorry for that.

13. Since there appeared interpolation of the records and discrepancies in the case diary, the Superintendent of Police, Siwan, was directed to go through the record of the case and to take a view whether further investigation is required or it would be fit one for this court to direct re-investigation of the case. Further



Superintendent of Police, Siwan, was directed to be present and apprise this court with his view on the next date of hearing. In light of the said direction, a report, vide letter no. 8758, was submitted by the Superintendent of Police, Siwan, on 07.12.2022, wherein with regard to Basantpur Police Station Case No. 194 of 2012, it has been stated that the investigating officer has sent application for CIG (Criminal Intelligence Gazette) publication. The photograph of the kidnapped child was published in the newspaper and also attached at several places in the town. Secret agents were also deployed and all possible attempts were made for search of the kidnapped child, but the child could not be recovered. In the said case, final form has been submitted vide Final Form No. 87 of 2020, dated 30.04.2020, stating the offence to be true. Further it has been stated that at several places in the case diary, infirmities have been found and in that regard, show cause has been served and proceedings have been initiated upon the erring investigating officers.

14. This Court, vide order, dated 01.12.2022, also called for the entire records of the Basantpur Police Station Case No. 194 of 2012 from the court of learned Chief Judicial Magistrate, Siwan, and further directed the petitioner to add Economic Offence Unit, Bihar and Anti-Corruption Bureau, which is said to



be under the Department of Vigilance, Government of Bihar, as party-respondents. Thereafter, vide order, dated 22.12.2022 the Economic Offence Unit, Patna, Bihar, was handed over the investigation of two cases, i.e. Basantpur (Lakdi Naviganj) Police Station Case No. 164 of 2022 and Basantpur (Lakdi Naviganj) Police Station Case No. 213 of 2021, wherein swindling/misappropriation of huge public money is involved. In pursuance of the said order, a counter affidavit has been filed on behalf of the Superintendent of Police, Economic Offence Unit, Bihar (Respondent No. 4) on 22.04.2023. The aforesaid counter affidavit is not relevant as it is not with regard to kidnapping of the petitioner's son.

15. Vide order, dated 08.02.2023, a complete legible copy of the case diary of Basantpur Police Station Case. 194 of 2012 was called for from the court of learned Chief Judicial Magistrate, Siwan. In the meantime, the Investigating Officer was directed to submit a report as to what steps were taken to recover the kidnapped son of the informant positively before the next date of hearing and further the concerned Investigating Officers were directed to remain present before the Court on the next date of hearing.



16. On 02.03.2023, out of ten Investigating Officers, nine were present and the remaining one was present before this court on 23.03.2023. On 04.07.2023, this Court queried about the steps having been taken for recovery of the kidnapped child by the police during the course of investigation, for which three weeks time was prayed and granted to file supplementary counter affidavit.

17. In light of the order, dated 04.07.2023, an additional counter affidavit has been filed on behalf of Superintendent of Police, Siwan, on 31.07.2023. It is stated therein that in compliance of the said order, dated 04.07.2023, the Superintendent of Police, Siwan, called for a report along with the case record from the Station House Officer, Lakri, Naviganj, vide memo no. 399/legal Cell, dated 06.07.2023. A detailed report, vide D.R. No. 602/2023, dated 08.07.2023, has been submitted by the SHO, Lakri, Naviganj which is Annex- R-2/A to the said counter affidavit. It is stated therein that the Investigating Officer has deputed a spy as well as local Chawkidar for retrieving the kidnapped boy. Besides that, the petitioner himself have got paper publication regarding missing of his minor son on different dates in Hindi daily Newspaper and also pasted pamphlets at prominent places. It is further stated in the counter affidavit that the photo of



the kidnapped boy was also sent for CIG publication, vide Mahila P.S. DR- 25/15 dated 07.02.2015, but the content of the CIG was not found and hence in this regard, show cause was issued to the Investigating Officer, vide memo no. 5560, dated 23.07.2023. Also, the call details of the mobile number of suspect Sanjay Yadav were traced, but even after best efforts being made by the police, no clue was found and thereafter the police submitted final form.

18. Learned Counsel for the petitioner submits that in this case, the local police did not act in proper way, which would be evident from bare perusal of the case diary. In the name of the investigation, the Investigating Officers have only interpolated the records in the case diary, wherein re-statement of the informant (five times) and evidence of some witnesses have been recorded. The Investigating Officers did not proceed scientifically. The only thing which has been repeatedly submitted by the Investigating Officers in several paragraphs of the case diary is that they could not get any information/clue about the kidnapped boy. On the information given by the brother of the informant, the Investigating Officers interrogated suspect, Sanjay Yadav, who was, later on, said to be not involved in the case as he is a person of clean antecedent, busy with his farming and cattle raising work.



19. Learned Counsel submits that the Investigating Officers did not think it just and proper to take up the investigation further with the suspect and find out the truth from him.

20. It is submitted that being the protector of civil liberties of the citizens, this Court, in the given facts of the present case, may exercise its power and jurisdiction to transfer the investigation of the present case to an independent agency and or Crime Investigation Department.

21. On the other hand, respondent-State and the police officers, who were interacted with this Court, in course of hearing, have submitted that in this case, the local police has taken proper steps in course of investigation and even though the recovery of the kidnapped boy could not be made despite all efforts made to find out the truth and recovery of the kidnapped child. It is, thus, their submission that the police has investigated the case from all angles, but could not trace the kidnapped boy and the accused, as well.

22. I have heard learned Counsel for the parties concerned and have gone through the materials available on record.

23. From perusal of the materials available on record, in my opinion, the local police has not investigated the case with



desired sensitivity and scientifically, due to which, the petitioner moved this Court on 12.03.2021.

24. From perusal of the case diary, it is evident that the Investigating Officers of the case and the supervising authorities have not made sincere efforts to find out the kidnapped boy or the accused persons, who have committed this crime. The Investigating Officers did not examine the telephonic talks which the alleged suspect had with one person, namely, Beharan Yadav, who is said to have accompanied the suspect to Vakhari Mela, wherein the suspect, while making the call to said Beharan Yadav, mistakenly made the call to the informant. Neither the other person, namely, Behran Yadav, accompanying the suspect, Sanjay Yadav, was examined nor the police verified the call details of the mobile number of said Bahran Yadav, and the police also did not bother to enquire from the other 15-20 persons who accompanied the suspect Sanjay Yadav in the fair.

25. The Sub-Divisional Police Officer and the Superintendent of Police had made supervision at long intervals without taking care to verify as to whether the previous directions have been complied with by the Investigating Officers or not.

26. When this Court inquired From the State from where pamphlets were printed by the police authorities to paste at



different places in the locality and as to from which agency the said pamphlets were printed, learned Counsel for the respondent-State had no answer to that.

27. This Court has noticed that in course of investigation, several directions were issued to the Investigating Officers, but thereafter no care was taken to see whether those directions were actually carried out or not by them. The Investigating Officers had not immediately sent even the photograph of the minor kidnapped boy for uploading the same on the web portal “trackthemissingchild.gov.in” prepared by the Ministry of Women and Child Development, Government of India. No step was taken to send the information for publication to the concerned department. In report 1, certain directions were issued. Apparently, there is a serious miss and gap in carrying out the investigation.

28. The Investigating Officers has recorded that the brother of the informant had given mobile number of suspect, Sanjay Yadav, and the Investigating Officers had written for the CDR of his mobile number. But from paragraph 53 of the case diary, it appears that the CDR of mobile number of suspect disclosed by the brother of the informant was not called and the Investigating Officers have called the CDR of changed mobile



number of suspect Sanjay Yadav, and the said CDR has also not been received by the police, as yet.

29. From the discussion based upon the materials available on record, as mentioned herein above, the facts, which emerges is that the police did not investigate the present case regarding the kidnapping of a minor child, aged about five years, with required sensitivity and the investigation proceeded in a routine manner, where the Investigating Officers were frequently changed and altogether ten Investigating Officers have investigated the present case in piecemeal manner. It also appears that the directions issued by the supervising officers, from time to time, were not carried out by the Investigating Officers. The Superintendent of Police, Siwan, in its counter affidavit, has also stated that show cause was issued and proceeding has been initiated against the erring police officers for their lapses. No serious effort on the part of the Superintendent of Police and other higher police officers of the police department appears to have been made by forming special team for nabbing the culprit(s) for recovery of the kidnapped minor child.

30. This Court has also noticed that for about four-and-a-half years, no progress in the investigation was made and the case diary has been written in a routine manner. The investigation



was not done in right manner and even the C.D.R. of the correct mobile number of the suspect was not called by the Investigating Officer.

31. The Supreme Court, in the case of **Vinay Tyagi v. Irshad Ali Alias Deepak and Others**, reported in **(2013) 5 SCC 762**, has held that fair and proper investigation, in criminal jurisprudence, has twin purpose; firstly, the investigation must be unbiased, honest, just and in accordance with law; and secondly, the entire emphasis for a fair investigation has to be to bring out the truth of the case before the court of competent jurisdiction. The law is well settled that it is necessary to maintain credibility and inspire confidence in investigation and where such an order is required for complete justice, the Constitutional Courts can direct for re-investigation of the case.

32. Coming back to the facts of the present case, admittedly, the five-year old child of the informant-petitioner has been kidnapped from his house. Accordingly, I come to the conclusion that in the ends of justice and in order to inspire confidence in the investigation and to find out the kidnapped minor child, the case (Basantpur Police Station Case No. 194 of 2012, dated 03.08.2012), has to be re-investigated by the Crime Investigation Department, Bihar. The A.D.G., C.I.D., Bihar is



directed to nominate an officer not below the rank of Superintendent of Police to take over the charge of the investigation of this case forthwith within a period of one week from today.

33. The Superintendent of Police, Siwan, is further directed to hand over the entire records of Basantpur Police Station Case No. 194 of 2012 to the Crime Investigation Department within a period of one week from today.

34. The Crime Investigation Department is expected to re-investigate the case expeditiously considering the seriousness of the case, in which a five-year old minor child has been kidnapped and is traceless for so many years. The re-investigation of the case must be completed within a reasonable time frame and this Court hope and trust that the Crime Investigation Department shall investigate this case in scientific manner.

35. The learned District Court is also directed not to proceed further in the matter till the re-investigation of Basantpur Police Station Case No. 194 of 2012 is completed and the final form is submitted by the Crime Investigation Department.

36. Let a copy of this order be communicated to the learned District Court concerned, the A.D.G., C.I.D., Bihar and the Superintendent of Police, Siwan, through fax, immediately.



37. With the aforesaid observation and direction, this application is disposed.

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

AFR/NAFR	AFR
CAV DATE	02-08-2023
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