

Court No. - 13

Case :- HABEAS CORPUS WRIT PETITION No. - 117 of 2023

Petitioner :- Nandini, Thru. Her Sister Subhashini

Respondent :- State Of U.P. Thru. Prin. Secy. Home, Lko. And Others

Counsel for Petitioner :- Vijay Kumar

Counsel for Respondent :- G.A.

Hon'ble Karunesh Singh Pawar,J.

Heard learned counsel for the petitioner as well as learned AGA for the State and perused the record.

This petition has been filed by the detenue through her sister Subhashini that the detenue is detained illegally by opposite party no. 4. The detenue had lodged the F.I.R. bearing case crime No. 414/2021, under Section 346/365 IPC, P.S. Bangarmau, District Unnao.

It is alleged in the FIR that on 19.11.2021, the younger sister of the deponent namely Nandini aged about 21 years was called by respondent no. 4 Sudeep Kumar from District Hardoi on the pretext of "Ganga Snan" and consequently she went along with her friends after talking to her father. The sister of the deponent Nandini was accompanied by Sunaina and Arti. It has been further alleged in the F.I.R. that at Nana Mau Ghat her sister Nandini met with Sudeep and when Sunaina and Arti asked Nandini to return home, then Sudeep said that he will drop Nandini on his motorcycle. Since then, her sister Nandini has not returned home. She had apprehension that some offence might have been committed by Sudeep with her sister.

It is submitted on behalf of the petitioner that although FIR has been lodged, however, till date the detenue has not been traced.

Learned AGA has submitted that on the basis of written report, case crime No. 414/2021, under Section 346 and 365 IPC at P.S. Bangamaru, District Unnao was registered. After conducting investigation, charge sheet was filed under Section 364 IPC. The statement of the accused was recorded and he is in custody after being arrested on 20.11.2021 at Lucknow-Agra Expressway. The accused in his statement has confessed that he gave the mobile to Nandini as they were in relationship and since she was talking to other boys, in a pursuit to snatch his mobile, she slipped from the bridge and fell into the Ganga River.

Learned AGA has further submitted that for tracing the detainee, assistance of NDRF team as well as other divers were taken. One Oppo mobile has been recovered from the accused. It was told by the accused that it is the same mobile which he gave to Nandini. He further submits that after recovery of the mobile and perusal of CDR, last location of Nandini was found at Nana Mau Bridge and consequently, charge sheet under Section 364 IPC was filed. Presently cognizance of the offence has been taken by the learned court and three prosecution witnesses Subhashini, Sunaina and Maya Devi have deposed before the Court. The accused Sudeep Kumar, respondent no. 4 is in judicial custody.

Learned AGA has further invited attention of the Court that Subhashini in her statement as PW-1 before the Court has submitted that Sudeep after having hatching conspiracy with Chandini has killed Nandini. In view of this statement of PW-1/Subhashini, it is admitted fact that the detainee is not in the custody of respondent no. 4, rather is dead. The statement of the accused/opposite party no. 4, call detail records and the statement of the other prosecution witnesses and the fact that opposite party no. 4 is in judicial custody go on to show that it is not a case of illegal detention. Opposite party no. 4 is in judicial custody and therefore, at no stretch of imagination, it can be presumed that the detainee is in custody of opposite party no. 4, hence, relying on the judgment "Ramsati @ Shyamsati through her husband Jitendra Vs. State of U.P., passed in Habeas Corpus Writ Petition No. 247/2015" and "Nimanda Biswal Vs. State of Odhisa and others", passed in WPCRL No. 124 of 2023, it has been submitted by the learned AGA that if the detainee has gone missing and a report has been lodged there, then writ of habeas corpus shall not be maintainable.

Perused the record.

It is not disputed that respondent no. 4 is in judicial custody. The petition has been filed by Subhashini on behalf of the detainee who is PW-1 in the trial court which is being faced by opposite party no. 4. It is also not disputed that as per the own statement given on oath before the Court, Subhashini has stated that the detainee has been killed by opposite party no. 4. The investigation further reveals that last location of the detainee along with Sudeep was found at Nana Mau Bridge and Sudeep (respondent no. 4) confessed that he gave the mobile to Nandini and in snatching his mobile from her, she slipped from the bridge and fell into the Ganga River. It is also admitted that three prosecution witnesses in the trial have been examined.

On due consideration to the fact that the respondent no. 4

Sudeep is facing trial for an offence committed under Section 364 IPC and presently he is in custody, coupled with the efforts done by the police with the aid of NDRF team in tracing the detainee; averments made by the deponent in the petition and the statement of Subhashini (deponent in this petition) before the trial court is contrary, it appears that the allegations levelled in the petition that opposite party no. 4 has illegally confined the detainee are misconceived.

No case is made out to issue a writ of habeas corpus against opposite party no. 4 who is in judicial custody. Writ of habeas corpus fails and is accordingly ***dismissed***.

Order Date :- 1.11.2023

R.C.