

Court No. - 13

Case :- HABEAS CORPUS WRIT PETITION No. - 305 of 2023

Petitioner :- Phool Bano Thru. Her Mother Smt. Bakridan Nisha

Respondent :- State Of U.P. Thru. Secy. Home Lko. And 8 Others

Counsel for Petitioner :- Vidya Kant Sharma, Anil Kumar Sharma

Counsel for Respondent :- G.A., Santosh Kumar Kanaujia

Hon'ble Karunesh Singh Pawar, J.

1. Heard learned counsel for the petitioner, learned A.G.A. for State respondent Nos.1 to 3 as well as Sri Santosh Kumar Kanaujia, learned counsel for opposite party Nos.4 to 8.

2. In view of the proposed order being passed, notice to respondent No.9 is dispensed with.

3. The petitioner by way of filing this petition has prayed for the following relief:-

"Issue a writ, order or direction in the nature of Habeas Corpus commanding and directing the opposite parties to produce the detenue namely Phool Bano before this Hon'ble Court and after setting her at liberty allow to go with her mother i.e. petitioner, in the interest of justice."

4. The contention of learned counsel for the petitioner is that marriage of Phool Bano was solemnized with opposite party No.4- Sakir Ali on 27.10.2020. Sufficient dowry was given to opposite party No.4. On 29.07.2023 detenue came to the house of her mother on the occasion of Moharram and thereafter, on 31.07.2023 she went with her husband-opposite party No.4. After few days opposite party No.4 brought detenue to Gafoor Basti Khanbadi thereafter, relative of detenue's mother informed her that her daughter is missing.

5. The husband of the detenue Sakir Ali, who is present before this

Court on 31.10.2023 has stated that the detenue went away with him to Gujarat to earn livelihood, however, in the month of August, 2023 she eloped with one Rizwan.

6. Learned A.G.A. has also submitted that missing report has been lodged by husband Sakir Ali in the State of Gujarat which is on record as annexure CA-2 to the personal affidavit filed by the Commissioner of Police, Lucknow. He submits that since the missing report regarding the detenu has already been registered and investigation is going on therefore, the writ of habeas corpus is not maintainable in view of the law laid down by the Supreme Court in the case of **Nimananda Biswal vs. State of Odisha and others passed in WPCRL No.124 of 2023** as well as the judgment of the Supreme Court in the case of "**Union of SCC India Vs. Yumnam Anand M. alias Bocha alias Kora alias Suraj and another**", reported in **[(2007) 10 SCC 190]**.

7. Learned counsel for the petitioner submits that F.I.R. is after thought and has been lodged after filing of the writ petition.

8. Heard learned counsel for the parties and perused the record.

9. A perusal of annexure-2 of the personal affidavit filed by the Commissioner of Police, Lucknow depicts that detenue is missing and a missing report has also been lodged in the State of Gujarat. In this case, the investigation is going on thus, in view of the law laid down by *Nimananda Biswal (supra)* and *Union of SCC India (supra)* this Court is of the view that writ of habeas corpus in such matter where investigation is going on and a detailed inquiry is needed is not maintainable. The Supreme Court in the case of **Tejaswini Gaud and others versus Shekhar Jagdish Prasad Tewari and others reported in [(2019) 7 SCC 42]** in para 18 and 19 has held that where a detailed probing inquiry is required the exceptional power of the court to exercise the writ of habeas corpus cannot be exercised.

10. The writ of habeas corpus is *festinum remedium* and power can be exercised in clear case, the petitioner has failed to show and

establish that *prima facie* case of unlawful detention of detenue by any particular person is made out rather the facts of the matter is a missing report has been lodged regarding the detenue and personal affidavit has been filed by the Commissioner of Police, Lucknow.

11. Since the petitioner has failed to establish *prima facie* case of unlawful detention by the respondent No.4 so also the fact that a missing report has been lodged in the present case, this Court is of the view that writ of habeas corpus cannot be issued to trace out the missing person. The petition fails and is accordingly ***dismissed***.

12. Petitioner is free to avail the other alternative remedy available under law.

Order Date :- 7.12.2023

Saurabh Yadav/-