

GAHC040014902022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(ITANAGAR BENCH)

WP(C) No./477(AP)/2022

Shri Shoriful Islam

...Petitioner

-Versus-

State of Arunachal Pradesh and others

... Respondents

B E F O R E
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

Advocate for the Petitioner : Mr. K. Taja

Advocate for the Respondent: Mr. T. Ete

Nos. 1 to 4

Advocate for the Respondents: Mr. B. Picha

No. 5

Advocate for the Respondent: Ms. T. Mossang

No. 6

Date of Hearing : 07.05.2024

Date of Judgment : 07.05.2024

JUDGMENT & ORDER (ORAL)

Heard Mr. K. Taja, learned counsel for the petitioner. Also heard Mr. T. Ete, learned counsel for the respondent Nos. 1 to 4, Mr. B. Picha, learned counsel for the respondent No. 5 and Ms. T. Mossang, learned counsel for the respondent No. 6.

2. The petitioner has filed this application under Article 226 read with Article 227 of the Constitution of India for issuance of a writ in the nature of Habeas Corpus or a writ of Mandamus or a direction of like nature. The petitioner in this case is Shri Shoriful Islam, brother of the missing person 'X'. Victim 'X' (name withheld) is the missing person who is aged about 31 years. A video clipping went viral on social media with footage of a woman being brutally tortured and assaulted by a group of individuals, at Sood village in Yupia. On being queried about the assault, the officials of Popu Hill Police Station came and took the injured lady in the PCR van. The petitioner thereafter came to know that the injured lady is his sister 'X' and was taken by the police and so, he went to the Popu Hill Police Station to enquire about his sister. The petitioner was then informed by the Popu Hill police personnel that the police team tried to hand over the injured victim to Laluk Police Station, but they refused to take custody of the victim without any case and they declined to act beyond their jurisdiction.

They informed the petitioner that the victim was helped into a train at Yupia train station and the TTE was asked to drop her at Harmuti train station.

3. The petitioner is aggrieved as his sister is still missing on account of apathy of the officials of the Popu Hill Police Station. It was the duty of the police officials to hand over the victim to any NGO or similar institution which would have helped her through the State Commission for Women. The miscreants were not arrested in connection with this case. The whereabouts of the victim woman is unknown. The incident impelled the petitioner to lodge an FIR which was registered as Itanagar Women Police Station Case No. 145/2022 under Sections 355/211/509/506/341/323/34 of the Indian Penal Code, 1860. Even after the FIR-cum-missing report was lodged, no action was taken by the police nor any information was provided to the petitioner about the whereabouts of the victim. The petitioner has prayed to direct the Officer-in-Charge of the concerned Police Station to hand over the custody of the victim 'X' to the petitioner and also to direct the police to trace the missing person at the earliest.

4. Initially The State of Arunachal Pradesh, the Superintendent of Police Capital Complex, Itanagar, the Officer-In-Charge, Popu Hill Police Station, the Officer-In-Charge, Women Police Station, Itanagar, were arrayed as respondent Nos. 1, 2, 3 and 4 respectively, but later on, D. Dulom, Inspector, Officer-In-Charge of Popu Hill Police Station and Lady ASI B. Adhikari were impleaded as respondent Nos. 5 and 6 in this case.

5. The respondent Nos. 2, 3, 5 and 6 have filed affidavits-in-opposition contending *inter-alia* that they are not responsible for the disappearance of the

victim 'X'.

6. The respondent Nos. 3 and 5 i.e. the Officer-in-Charge of the Popu Hill Police Station through his affidavit stated that on 08.11.2022 around 9.10 PM, the victim was brought to the Police Station by the Emergency Response Support System (ERSS) team. She was caught by public for alleged child trafficking at Sood village and she was assaulted. The police was also informed about a woman child trafficker at Sood village. The respondent No. 6, a lady Assistant Sub-Inspector (ASI for short) was called by the respondent No. 3 as the alleged trafficker was a woman and he entrusted her to attend the case. After tracking down the location, the police party of the aforementioned Police Station proceeded to the place of occurrence.

7. When they met the victim 'X', she was drenched in muddy water especially on the lower part of her body. She got drenched, when she tried to cross the river. No injuries were noticed by the police team, which also included the lady ASI, respondent No. 6. A thorough enquiry was conducted and no incriminating material was found against the victim 'X' and no case of child trafficking could be established. As such, the victim was not arrested despite the allegation of child trafficking against her. After interrogating the victim 'X', it was unearthed that she was accompanied by some other people upto Naharlagun who had abandoned her. The lady ASI, respondent No. 6, also tried to locate her relatives in Naharlagun but failed to find any person related to the victim 'X'. The victim was also provided with garments to replace her soaked attire. The proceedings in the Police Station are available in the CCTV footage, which has been submitted along with the objection filed by the respondents. Every endeavour

was made to hand over the custody of the victim to any person known to her or to Women Helpline, but not a single organization or institution was willing to take custody of a woman at night or even at any other time of the day. The Enquiry Officer stated that she took the victim 'X' to Laluk Police Station to hand her over to her relatives, but the Laluk Police Station also refused to accept the victim 'X'.

8. As per the provisions of the Bengal Eastern Frontier Regulation, 1873, an order has to be passed for externing violators of Inner Line Permit (ILP). Finally, it was decided that the victim who was from Laluk, Lakhimpur should be sent back to Laluk, Lakhimpur. It is submitted that every endeavour was made to hand over the victim 'X' to proper custody, but as her address could not be found, the victim 'X' was taken to the railway station and with the help of constable Ct. Mr. Bapi Ligo of Naharlagun GRP, the victim was helped into a train for her onward journey towards Laluk.

9. It is further submitted that although there are allegations that the victim 'X' was assaulted, no injuries could be detected by the investigating team and the victim appeared to be normal, except she was shivering because her garment was soaked in muddy water. Every endeavour was made to trace out the victim's address. Finally, it was unearthed that the victim's husband is Islam Ali from Doimukh. It is further submitted that it is intriguing that the victim's husband never came forward to lodge a missing complaint when the victim 'X' disappeared. The police left no stone unturned to find the victim. A search team was also formed and a thorough search was made in places like Gohpur, Lakhimpur, Tezpur, Harmuti, Laluk etc. etc. and even in mortuaries, police

stations, isolated places, hospitals and in market places. The police failed to trace out the victim. It is further submitted that with *malafide* the petitioner has filed this petition to shift the blame to the police, who had taken care of the victim and had even undertaken the task of helping the victim by helping her into the Tinsukia Express Train No. 15908, as the victim had stated that she was from Assam.

10. The learned counsel for the petitioner has submitted that the victim has not been traced out till date. It is speculated that the victim might have succumbed to the injuries which she sustained on the date of alleged incident. The petition for a writ of Habeas Corpus was submitted against the wrongful detention of the victim by the miscreants who assaulted her.

11. The learned counsel for the respondents has relied on the decision of this Court in *Mamoni Kakoty (Ms.) Vs. State of Assam & Ors. reported in 2021 (5) GLT 18* wherein it has been observed and held that:

“15. On overall consideration of the cases referred herein before, it appears that the Constitutional Courts across the Country have held that establishing a ground of illegal detention and a strong suspicion about any such illegal detention is a condition precedent for moving a habeas corpus petition. Thus, the legal proposition would be that the Constitutional Courts would not entertain habeas corpus petitions where there is no allegation of illegal detention or suspicion regarding illegal detention. Thus, missing person cases would not come within the ambit of a habeas corpus petition, but such cases are required to be registered under the regular provisions of the [Indian Penal Code](#) and the police and other investigating agencies would investigate the same in the manner prescribed under the [Code of Criminal Procedure](#).”

12. Reverting back to this case, the respondent No. 3 has annexed photographs of the victim 'X' as Annexure-8 series which clearly depicts that the

victim was inside the railway station and thereafter, the victim was sitting inside the train, she had boarded. The respondents have buttressed their submission that the victim appeared normal. The change of garments provided to her is also reflected through the pictures annexed along with the objection filed by the respondent Nos. 3 and 5. The respondents have also annexed CCTV footage as Annexure-4 and the CCTV footage marked as Annexure-4 has also been furnished to the petitioner, who has viewed the CCTV footage. The investigation conducted by the team of Popu Hill Police Station is also recorded and the Annexure-6 series shows the footage of the place where the investigation was conducted to trace out the victim 'X'

13. Thus, it is clear from the objection and the submissions (including the Annexures) that the respondents could refute the allegation of illegal detention of the victim 'X'. The respondents have also relied on the decision of the *High Court of Judicature at Odisha, Cuttack in Nimananda Biswal Vs. State of Odisha and others reported in (2023) SCC OnLine Ori 5628* wherein it has been held and observed that:

“9. In the case of Samir Kumar Paul v. State, 2004 SCC OnLine Cal 117, a Division Bench of the Calcutta High Court that where prayer was made by the father of a ten years old missing girl for issuance of a writ of habeas corpus for tracing out the girl, it was held that in a habeas corpus proceeding the Court is required to consider the legality or otherwise of the detention of a particular person and since such a situation was not involved in the case, writ in the nature of habeas corpus cannot be issued as prayed for. Accordingly, it was held that the writ petition is not maintainable.

10. Writ of habeas corpus cannot be issued in a casual and routine manner. Though it is a writ of right, it is not a writ of course. The writ of habeas corpus is festinum remedium and power can be exercised in clear case. Illegal confinement is a pre-condition to issue a writ of habeas corpus. It cannot be issued in respect of any and every missing person more so when no named person is alleged to be responsible for the 'illegal detention' of the person for whose production

before the Court, a writ is to be issued. On the basis of a habeas corpus petition, the power under Article 226 of the Constitution of India is not to be exercised for tracing a missing person engaging an investigating agency empowered to investigate a case under Cr.P.C.

11. In this case, the petitioner has not established a prima facie case of 'unlawful detention' of his daughter by any particular person, rather it is submitted on his behalf that his daughter has been missing. Therefore, we are of the considered view that a petition seeking the issuance of the writ of habeas corpus cannot be entertained to trace out a missing person and for such purpose, the petitioner can pursue other effective remedy."

14. In the instant case, an FIR was lodged by the petitioner after the video clipping went viral. The petitioner viewed the clipping and recognized that the person who was ruthlessly assaulted was his sister. The aggressors were not the police personnel of Popu Hill Police Station but some other miscreants. The intervention of the police was only to rescue the detenu or the victim 'X'. There is no allegation of detention by the police. The only allegation against the police personnel of Popu Hill Police Station is relating to the apathetic mode of investigation and dealing with the custody of the victim. It is apparent that the condition precedent of illegal detention for moving a Habeas Corpus petition could not be established, moreso, when there are no allegations in the petition of any illegal detention by the police personnel. The petitioner has been aggrieved by the procedure adopted by the police while dealing with the victim 'X' after she was assaulted by a group of miscreants. It is averred that the victim was not handed over to proper custody.

15. A writ of Habeas Corpus cannot be issued in a routine manner. The power has to be exercised in a clear case. The Court, before issuing any writ of habeas corpus must come to the conclusion that the detenu is under detention without any authority of law. In the instant case, when there is no direct allegation of

illegal detention, this Court refrains from issuing a writ of Habeas Corpus. This Court is also hesitant to direct a proper investigation and recover the victim as the investigation is under progress and the criminal case being Itanagar Women Police Station Case No. 145/2022 under Sections 355/211/509/506/341/323/34 of the Indian Penal Code, 1860, has already been registered.

Petition is hereby dismissed. No order as to costs.

JUDGE

Comparing Assistant