

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.1155 of 2016

Arising Out of PS.Case No. -null Year- null Thana -null District- MUZAFFARPUR

Rishi Kamal, son of Sri Rajkishore Prasad, resident of Mohalla – Hotel Konark,
Cinema Road, Hathichowk, P.S. – Mithanpura, District – Muzaffarpur.

.... Petitioner.

Versus

1. The State of Bihar.
 2. The Director General of Police, Bihar, Patna.
 3. The Senior Superintendent of Police, Muzaffarpur.
 4. The Superintendent of Police, Town, District – Muzaffarpur.
 5. The Officer-in-Charge of Mithanpura Police Station, Muzaffarpur.
 6. Pushpa Kumari @ Guriya, wife of Rishi Kamal, daughter of Billu Saw, presently resides at Flat No.509, Sky Line Tower, Old Puruliya Road, Mango, P.S.- Mango, District – Singhbhum at Jamshedpur, Jharkhand.
 7. Billu Saw, son of not known to the petitioner, resides at Flat No.509, Sky Line Tower, Old Puruliya Road, Mango, P.S. – Mango, District – Singhbhum at Jamshedpur, Jharkhand.
- Respondents.

Appearance :

For the Petitioner : Mr. Rajeev Ranjan, Adv.

Ms. Bela Singh, Adv.

For the Respondents : Mr. Prabhat Kumar Verma, AAG-3.

Mr. Anand Kumar, AC to AAG-3.

CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

And

HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 17-11-2016

The petitioner seeks a Writ of Habeas Corpus for
production of his alleged wife, respondent no.6 - Pushpa Kumari

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alias Guriya from the illegal confinement of her father, respondent no.7-Billu Saw.

2. The petitioner is an adult and a permanent resident of Hathichowk, P.S. Mithanpura, District Muzaffarpur. He alleges that he and respondent no.6, who is also an adult, had solemnized out of their free Will marriage under the Special Marriage Act, before the Marriage Officer, District Purlia, West Bengal, on 30.05.2013. They were living together and enjoying their conjugal life at the Muzaffarpur at the house of the petitioner's parent. On or about 17.09.2016 respondent no.7 came to Muzaffarpur and stating that mother of respondent no.6 was sick took her to Jamshedpur. The petitioner tried to get in touch on her mobile but it was found switched off. But, on the next day, i.e. on 03.07.2016, she was able to communicate that she was wrongly detained by her father and required petitioner's help to be liberated. The petitioner sent written representations to Senior Superintendent of Police, Superintendent of Police, Muzaffarpur and Officer-in-Charge, Mithanpura Police Station, Muzaffarpur but there was no help. Hence, he has filed the present writ application.

3. Having heard learned counsel for the petitioner and learned A.A.G.-3 for the State, we are of the view that

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petitioner has remedy available otherwise. Sections 97 and 98 of the Code of Criminal Procedure reads as follows:

“97. Search for persons wrongfully confined.- If any District Magistrate, Sub-Divisional Magistrate or Magistrate of the first class has reason to believe that any person is confined under such circumstances that the confinement amounts to an offence, he may issue a search-warrant, and the person to whom such warrant is directed may search for the person so confined; and such search shall be made in accordance therewith, and the person, if found, shall be immediately taken before a Magistrate, who shall make such order as in the circumstances of the case seems proper.

98. Power to compel restoration of abducted females. – Upon complaint made on oath of the abduction or unlawful detention of a woman, or a female child under the age of eighteen years, for any unlawful purpose, a District Magistrate, Sub-Divisional Magistrate or Magistrate of the first class may make an order for the immediate restoration of such woman to her liberty, or of such female child to her husband, parent, guardian or other person having the lawful charge of such child, and may compel compliance with such order, using such force as may be necessary.”

4. We can also refer to Sections 340, 342, 343, 344 and 346 of the Indian Penal Code dealing with wrongful confinement with these provisions there. Ordinarily, this Court

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will not interfere at the very first instance. We would, accordingly, direct the petitioner to take recourse to the aforesaid provisions of law and the authorities would be well advised to take prompt and expeditious action in accordance with law if such applications are promptly made. It must be remembered that it is only when the authorities take action would the truth of the matter come. We may point out that if what is alleged by the petitioner is true and correct then the authorities would have no discretion in the matter and they must act promptly, which is their duty even otherwise.

5. With these observations and directions, this writ application stands disposed of.

(Navaniti Prasad Singh, J.)

(Jitendra Mohan Sharma, J.)

Trivedi/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	18.11.2016
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