

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPHC No. 4 of 2017**

Santosh Kumar Dhruw S/o. Shri Kunjlal Dhruw, Aged About 41 Years
R/o. Behind Police Station, Bade Bacheli, District Dantewada
(Chhattisgarh)

---- Petitioner

Versus

1. State Of Chhattisgarh Through : Its Secretary, Department Of Home, Mahanadi Bhawan, Mantralaya, Capital Complex, New Raipur, District Raipur (Chhattisgarh)
2. Director General Of Police, Mantralaya, New Raipur, District Raipur (Chhattisgarh)
3. Inspector General Of Police, Police Range Bastar, Jagdalpur, Chhattisgarh.
4. Superintendent Of Police, District Dantewada (Chhattisgarh)
5. Station House Officer, Police Station Bade Bacheli District Dantewada Chhattisgarh.
6. Sub Divisional Magistrate, Sub Division Dantewada, District Dantewada (Chhattisgarh)
7. C. H. Srinivas Rao S/o C. R. Rao, Aged About 35 Years Occupation Contractor At N M D C, Bade Bacheli R/o Nearby Vamsadhara Guest House, Tekkali (A P) Presently Residing At Ward No. 4, Near R E S Colony, Bade Bacheli, P S Bade Bacheli, District Dantewada, Chhattisgarh.
8. Yogendra Netam S/o Kripal Singh Netam, Aged About 40 Years R/o Village Kalangpur, P S And Tehsil Gunderdehi, P. O. Kalangpur, District Balod (Chhattisgarh)
9. Ishwar Netam, S/o Kripal Singh Netam, Aged About 32 Years R/o Village Kalangpur, P S And Tehsil Gunderdehi, P. O. Kalangpur, District Balod (Chhattisgarh)
10. Preetam Netam, S/o Kripal Singh Netam, Aged About 36 Years R/o Village Kalangpur, P S And Tehsil Gunderdehi, P. O. Kalangpur, District Balod (Chhattisgarh)
11. Aruna Druw W/o Santosh Kumar Dhruw, Aged About 32 Years R/o Village Kalangpur, P S And Tehsil Gunderdehi, P. O. Kalangpur, District Balod (Chhattisgarh)

---- Respondent

For Petitioner : Shri Kishore Narayan, Advocate.
For State : Shri Yashwant Singh Thakur, Additional
Advocate General

Hon'ble Shri Justice Pritinker Diwaker, Acting Chief Justice
Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

07/03/2017

(1) The petitioner has filed this writ petition for issuance of writ of habeas corpus directing the official respondents to find out and produce his missing family members i.e. his wife- Aruna Dhruv and two children namely Yuvraj Singh & Praveen Dhruv.

(2) Respondents have filed their return stating that the police has conducted search in the house of respondent No. 7 but the wife and children of the petitioner were not found therein. It has further been stated that wife of the petitioner namely – Aruna Dhruv has instituted a civil suit before the Family Court for judicial separation and for providing compensation and the Family Court, Balod has passed an order dated 7.5.2015 directing the petitioner to pay maintenance amount to his wife & children.

(3) It is also clear from the record that the petitioner has not lodged any report of missing persons with the State Officials and, as such, there is a dispute between the husband and wife i.e. petitioner and Smt. Aruna Dhruv.

(4) This Court in W.P. (Habeas Corpus) No.13/2016, while relying upon the judgments of the Supreme Court, has held as

under: -

“ 19. A writ of habeas corpus is not be issued as a matter of course. Clear grounds must be made out for issuance of such writ. (See **Dushyant Somal v. Sushma Somal**¹.)

20. In the matter of **Usharani v. The Commissioner of Police, Bangalore and others**², the writ of habeas corpus has been defined very lucidly as under: -

“The claim (for habeas corpus) has been expressed and pressed in terms of concrete legal standards and procedures. Most notably, the right of personal liberty is connected in both the legal and popular sense with procedures upon the Writ of habeas corpus. The writ is simply a judicial command directed to a specific jailer directing him or her to produce the named prisoner together with the legal cause of detention in order that the legal warrant of detention might be examined. The said detention may be legal or illegal. The right which is sought to be enforced by such a writ is a fundamental right of a citizen conferred under Article 21 of the Constitution of India.

11. The ancient prerogative writ of habeas corpus takes its name from the two mandatory words “habeas” and “corpus”. “Habeas Corpus” literally means “have his body”. The general purpose of these writs as their name indicates was to obtain the production of the individual before a Court or a Judge. This is a prerogative process for securing the liberty of the subject by

1 (1981) 2 SCC 277

2 ILR 2014 Kar 3312

affording an effective relief of immediate release from unlawful or unjustifiable detention, whether in prison or in private custody. This is a writ of such a sovereign and transcendent authority that no privilege of power or place can stand against it. It is a very powerful safeguard of the subject against arbitrary acts not only of private individuals but also of the executive, the greatest safeguard for personal liberty, according to all constitutional jurists. The writ is a prerogative one obtainable by its own procedure. ... In our country, it is this prerogative writ which has been given a constitutional status under Articles 32 and 226 of the Constitution. Therefore, it is an extraordinary remedy available to a citizen of this country, which he can enforce under [Article 226](#) or under [Article 32](#) of the Constitution of India.”

“21. Thus, the writ of habeas corpus is a process by which a person who is confined without legal justification may secure a release from his confinement. The writ is, in form, an order issued by the High Court calling upon the person by whom a person is alleged to be kept in confinement to bring such person before the court and to let the court know on what ground the person is confined. If there is no legal justification for the detention, the person is ordered to be released. However, the production of the body of the person alleged to be unlawfully detained is not essential before an application for a writ of habeas corpus can be finally heard and disposed of by the court. {See **Kanu Sanyal** (supra).}”

(5) Thus, it appears that it is not a case where private

respondent No. 7 has detained the petitioner's wife & children illegally, as such, there is matrimonial dispute pending between the parties before the Principal Judge, Family Court, Balod. Thus, we do not find any good and valid ground for issuance of a writ of habeas corpus. We hereby decline to exercise the jurisdiction for issuance of writ of habeas corpus by dismissing the writ petition leaving it open to the petitioner to proceed in accordance with law.

Sd/-

(Pritinker Diwaker)
Acting Chief Justice

Sd/-

(Sanjay K. Agrawal)
Judge

D/-