

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Criminal Writ Petition No.967 of 2015
(Vimal Sopan Narayane .vs. State and another)

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Mr.A.R.Fule, Advocate h/f. Mr.S.V.Sirpurkar, Advocate for
the Petitioner.

Mr.Ambarish Joshi, A.P.P. for the Respondent No.1.

Mr.M.P.Kariya, Advocate for the Respondent No.2.

CORAM : SMT VASANTI A NAIK &
M. G. GIRATKAR, JJ.

DATE : 23.8.2017.

By this Criminal Writ Petition, the petitioner seeks a writ of habeas corpus for a direction against the respondents to produce the body of Sopan Narayane.

The petitioner-Vimal Narayane claims to be the wife of Sopan Narayane. It is the case of Vimal that Sopan Narayane and Vimal had separated and Sopan was living with respondent no.2-Sugat, who is the son of Vimal and Sopan. It is stated that since Sopan Narayane was a diabetic patient and he had serious injury to his leg, he was admitted to the Ayurvedic hospital, Arni road, Yavatmal for treatment on 10.12.2012. According to the petitioner-Vimal, Sopan was in the hospital till 27.12.2012 when he went missing from the said hospital. It is stated that the petitioner-Vimal had lodged the report in Police Station, Kalamb on 27.6.2013 that her husband had gone missing from the Ayurvedic hospital, Arni road, Yavatmal on

27.12.2012. It is stated that since the incident of Sopan going missing did not take place within the jurisdiction of Kalamb Police Station, the petitioner had lodged a 'missing' report in Wadgaon Police Station on 28.12.2013. It is the case of the petitioner that despite the lodging of the missing report, the Police Authorities have not taken appropriate action in the matter. It is stated that the Police Authorities have not investigated in the missing complaint of the petitioner in accordance with law. It is stated that the petitioner suspects that Sugat-respondent no.2 must have murdered Sopan. In the aforesaid set of facts, a writ of habeas corpus is sought against the respondents for a direction to produce the body of Sopan.

Mr.A.M.Deshpande, the learned Additional Public Prosecutor appearing on behalf of the respondent no.1 has referred to the three affidavits filed on behalf of the respondent no.1. It is submitted that, after the missing complaint was lodged by the petitioner in December, 2013, the respondent no.1 found on enquiry that when the concerned doctor had come for a round at about 4.00 p.m. on 27.12.2012 in the Ayurved hospital, he found that Sopan was not in his bed. It is stated that the entries in the records of the hospital were checked while investigating the matter. It is submitted that, after Sopan went missing from the hospital on 27.12.2012, the respondent no.2-Sugat had published the information in respect of the missing complaint about Sopan along with the photograph of Sopan in the Daily Newspaper on 3.1.2013. It is stated that despite the publishing of missing report in the Newspaper, no information was received in respect of Sopan from the

public. It is stated that after the report was lodged at Wadgaon Police Station on 28.12.2013, since petitioner Vimal had suspected some foul play by the respondent no.2- Sugat, the respondent no.1 had further investigated in the matter and recorded the statement of Sugat. It was noticed on making inquiry that the suspicion of petitioner-Vimal was not well founded as Sopan had mortgaged about 8 acres land to Mr.Chhatani and with a view to ensure that the land is not lost to an outsider, Sugat/respondent no.2 had purchased the said land by registered sale deed, which is placed on record. It is stated that the statement of Sukhdeo Bhandarkar, a vendor was also recorded and it was found that Sopan had purchased some food items from his stall on 27.12.2013 at about 2.00 p.m. It is stated by referring to the affidavits-in-reply that serious efforts were taken by the respondent no.1 for searching Sopan Narayane after the missing complaint was lodged on 28.12.2013. It is stated that inquiry was also made from the street vendors, doctors in the Ayurved hospital as also the patients in the hospital. It is stated that the photographs of Sopan were pasted in conspicuous places like Bus stand, Railway stand, main market of Yavatmal etc. to make an effort to trace Sopan. It is stated that despite the best efforts on the part of the respondent no.1, Sopan could not be traced and in this background, a Writ of habeas corpus may not be issued against the respondent no.1 to produce the body of Sopan.

Mr.M.P.Kariya, learned Counsel for respondent no.2 denied the prayer made in the Writ Petition. It is stated that petitioner-Vimal was not on good terms with Sopan and she was separated from him. It is stated that

Sopan was residing with respondent no.2-Sugat since 2003 and when Sopan was seriously ill, Sugat had admitted him to the Ayurved hospital on Arni road, Yavatmal. It is submitted that the petitioner had never bothered for Sopan and merely because Sopan has left behind some property i.e. agricultural land and house, the present petition is filed nearly three years after the disappearance of Sopan from the hospital on 27.12.2013. It is stated that respondent no.2 Sugat was interrogated by the Police Authorities on nearly eleven occasions. It is stated that, in the circumstances of the case when the respondent no.2 was looking after Sopan during his life time, on the mere allegation of suspicion made by petitioner-Vimal, the prayer in the Writ Petition cannot be granted.

It appears on a reading of the affidavits-in-reply filed on behalf of the respondent nos. 1 and 2 that a case is not made out by the petitioner for issuance of writ of habeas corpus for producing the body of Sopan. Sopan had, admittedly, gone missing from the Ayurved hospital, Arni road, Yavatmal on 27.12.2012 and despite the efforts on the part of the respondent no.2-Sugat of publishing the missing report in the Newspaper within a short time from the date on which Sopan had gone missing, nobody turned up to inform about the whereabouts of Sopan. Nearly one year later, the petitioner had lodged the report about Sopan going missing in Wadgaon Police Station. On receiving the report, the respondent no.1 made an inquiry with doctors in the Ayurved hospital, the vendors in the nearby vicinity and had also published the photographs along with the missing report in conspicuous places in the nearby localities,

specially the Bus stand, railway station and other conspicuous places. Though the respondent nos. 1 and 2 had taken all steps to find out the whereabouts of Sopan, it appears that the whereabouts of Sopan are not known either to the respondent no.1 or to the respondent no.2. We find on a perusal of the petition and the affidavits-in-reply filed on behalf of the respondent nos. 1 and 2 that there were some disputes between the petitioner and the respondent no.2 pertaining to the property of Sopan and a complaint against the petitioner in that regard is made by the respondent no.2-Sugat before the Authorities. In the circumstances of the case, specially when the petitioner had separated from Sopan for a long time and had not admitted Sopan to the hospital, it cannot be said that respondent no.2-Sugat must have murdered Sopan. Since the whereabouts of Sopan are not to be found, a writ of habeas Corpus cannot be issued for a direction against the respondents to produce the body of Sopan nearly five years after his disappearance on 27.12.2012.

In the result, we dismiss the Writ Petition with no order as to costs.

JUDGE

JUDGE

**jaiswal*