

**134 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRWP-417-2019

Date of decision-15.05.2019

Himani Sharma

...Petitioner

Vs.

State of Haryana and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Perdhuman Yadav, Advocate for the petitioner.

Mr. Sukhdeep Parmar, DAG, Haryana.

Mr. Parminder Singh, Advocate for respondent No.4.

MANOJ BAJAJ, J. (Oral)

Petitioner-Himani Sharma daughter of Vinod Sharma has filed this writ petition under Article 226 of Constitution of India for issuance of a writ in the nature of habeas corpus for release of alleged detainee, namely, Tanya Datta wife of Virender Kaushik from alleged illegal custody of respondent Nos.3 and 4 i.e.Sadbhavna Hospital, Karnal and Virender Kaushik (husband of detainee), respectively where the alleged detainee was getting treatment at the instance of her husband.

On 01.05.2019, the following order was passed:-

“Notice of motion.

On the asking of the Court, Mr. Navdeep Singh, AAG, Haryana, has accepted notice on behalf of respondent(s)-State. A copy of complete paper-book be handed over to him during the course of the day.

Respondent No.2-Superintendent of Police, Karnal himself or any other senior officer to be deputed by him, shall visit the house of private respondent Nos.3 and 4 and make enquiry as to whether detainee-Tanaya Datta Kaushik is residing there

with her own consent or has been detained by the private respondents illegally and forcibly. If it is found so, then she be produced immediately before this Court. Otherwise, a detailed report be furnished on the date fixed.

Adjourned to 06.05.2019.

To be shown in the urgent list.

A copy of this order be given dasti to learned State counsel under the signatures of Bench Secretary of this Court.”

The matter was taken up on 06.05.2019 and after hearing the learned counsel for the parties and examining the alleged detainee, this Court had given the custody of the detainee with Nari Niketan, Sector-26, Chandigarh with a further direction that in case of need to provide her medical assistance. The order dated 06.05.2019, reads as under:-

“Petitioner Himani Sharma as well as respondent No.4, husband of the detainee are present in the Court along with their counsels.

Alleged detainee Tanaya Datta Kaushik has been produced before this Court. She has made a statement before this Court that she has been illegally kept in Sadbhavna Hospital, Karnal against her wish at the instance of her husband respondent No.4 and her mother. The doctor of Sadbhavna Hospital respondent No.3, namely, Suresh Kumar is also present in the Court and states that detainee Tanaya Datta Kaushik is suffering from schizophrenia disease and has been got admitted in the hospital by her husband and the doctor also says that detainee was admitted in the hospital with her own consent also.

In view of above, Superintendent of Police, Karnal is directed to enquire the matter as to whether detainee Tanaya Datta Kaushik has been illegally detained in Sadbhavna Hospital at the instance of her husband or she was suffering from alleged acute disease.

Learned State counsel is further directed to get detainee medically checked up from the PGI, Chandigarh after constituting a Board of Directors for this purpose.

Adjourned to 15.05.2019.

In the meantime, detainee be kept in the Nari Niketan, Sector-26, Chandigarh with direction that if there is any

*need to provide any medical assistance to her be provided immediately and extra care be also taken.
Petitioner Himani Sharma wants to meet the detenue in the Nari Niketan. She is allowed to meet her.
To be shown in the urgent list.
A copy of this order be given dasti to learned State counsel under the signatures of Bench Secretary of this Court.”*

The reply dated 05.05.2019 already stands filed in response to the order dated 01.05.2019 by Superintendent of Police Karnal (Respondent No.2). It is mentioned that Deputy Superintendent of Police, Headquarters, Karnal was appointed as Enquiry Officer and report dated 04.05.2019 was submitted by the said officer. As per the report, Tanya Datta was got admitted in the hospital by her mother, namely, Chaitali Datta for getting the treatment of mental disorder (Schizophrenia). It is also revealed that Tanya Datta also levelled allegations upon her husband that she was forcibly got admitted in the Sadbhavna Hospital. It is evident from the reply that the detenue was admitted on 26.04.2019 by her husband and mother. The said admission form was also signed by Tanya Datta. During the enquiry, the statement of Dr. Suresh Kumar was also recorded, wherein it was stated by him that Tanya Datta was suffering from mental disorder with schizophrenia affective features.

At this stage, Mr. G.S.Kaura, Advocate appears on behalf of respondent No.3 and filed his power of attorney which is taken on record. Mother and husband of the detenue are also present in the Court. All the private respondents in one voice have apprised the Court that the alleged detenue is undergoing a treatment and the petition filed by the petitioner is frivolous.

At this stage, learned counsel for the petitioner has made a request to the Court to examine the report of the board sent by Postgraduate Institute of Medical Education & Research, Chandigarh, which was constituted by this Court to medically examine the detainee. The report dated 14.05.2019 has been perused and the same reads as under:-

Ms. Tanya (Taniya) Datta Kaushik was examined by the Medical Board on 13.05.2019 in Psychiatry OPD of PGIMER, Chandigarh, vide CR No.201903190868, Psychiatry No.111585.

Currently her psychiatric diagnosis kept deferred. In view of the complexity and sensitivity of the case, lack of availability of key informants (such as her husband, her previous doctor who treated her at Sadbhavna Hospital, and her mother), and the need to observe her closely over a period of time and conduct further psychological tests, it is advised by the Medical Board that Ms. Taniya Datta be admitted in PGIMER Psychiatry Ward for observation as soon as possible. We also request the honourable Court to please permit us to contact her husband, her mother and the previous doctor (Dr.Suresh) for providing further information.

We plan to admit her as soon as possible pending availability of inpatient psychiatry beds, but hoping to be able to admit her in 2-3 days. After that she would require around 10-12 days for observation, investigations and data collection from various sources. Thus, we are hopeful to provide final report in about three week's time from now."

As per the above report, the admission of the patient is necessary for her examination and it may require 10-12 days observation. The board has not commented upon medical condition of detainee.

At this stage, the Court is compelled to examine the *locus standi* of the petitioner, who claims herself to be the next friend (guardian) of Tanya Datta. As per the pleadings in the petition, petitioner and Tanya Datta were classmates in the year 2009-11 at NIFT, Sector- 8, Chandigarh.

Tanya Datta had love affair with Virender Kaushik and she entered into matrimonial alliance with him. It is the specific stand of the petitioner that after marriage in the year 2011, the friends were not in contact with each other till 02.04.2019, when Tanya Datta had successfully found the petitioner on facebook. The mobile number was also given by Tanya Datta to Himani Sharma (petitioner), and thereafter, the petitioner met Tanya Datta in the month of April, 2019. The petitioner has claimed herself to be the well wisher of Tanya Datta as well as next friend and filed the present petition in the said capacity. According to her, Tanya Datta is being treated with cruelty and being kept forcibly in the hospital at the instance of her husband (natural guardian). The said stand of the petitioner-Himani Sharma does not inspire confidence and is not worth acceptance, particularly in the light of the facts that the petitioner and Tanya Datta were not in contact with each other after the marriage of Tanya Datta with respondent No.4 i.e. for a period of approximately 9 years. It was only in April 2019, the contact between the two friends was established, which hardly gave any opportunity to Himani Sharma to interact and understand the relatives of Tanya Datta and her family status, before condemning them adversely by levelling allegations of ill-treatment. There is nothing on record to indicate that the marriage between the parties was not successful or any other litigation was pending.

Except for the bald assertion in the petition, there is nothing on record to substantiate that Tanya Datta was not being treated well and kept in illegal custody. Admittedly, the husband is the natural guardian of Tanya Datta and her mother has also supported the stand of respondent No.4, as far

as interest of Tanya Datta is concerned.

It is a general rule that a person who is affected by any proceedings or believes infringement of his fundamental right shall have a cause of action to approach the Court for redressal of the grievance. It is incumbent upon the Court to satisfy itself regarding the cause of action portrayed in the petition and the *locus standi* of the petitioner. The same principle is equally applicable to the writ jurisdiction before the power under Article 226 Constitution of India is exercised. Of course the maintainability of the writs in the nature of quo-warranto or habeas corpus may be in a given set of facts be an exception to the general rule, unless the petition is carrying a cause of action in the public interest. Normally a writ petition by a third person is not entertained in respect of relief in favour of an individual, until and unless there are compelling circumstance warranting interference at the instance of third party, which are supported by convincing material.

At this stage, it is useful to place reliance upon judgment of the Hon'ble Supreme Court in **Kishore Samrite Vs. State of U.P. and others,** **2013 (2) SCC 398.** The relevant paragraph is extracted below:-

“49. On the analysis of the above principles, it is clear that a person who brings a petition even for invocation of a fundamental right must be a person having some direct or indirect interest in the outcome of the petition on his behalf or on behalf of some person under a disability and/or unable to have access to the justice system for patent reasons. Still, such a person must act bonafidely and without abusing the process of law. Where a person is a stranger/unknown to the parties and has no interest in the outcome of the litigation, he can hardly claim locus standi to file such petition. There could be cases where a public spirited person bonafidely brings petition in

relation to violation of 50 Page 51 fundamental rights, particularly in habeas corpus petitions, but even in such cases, the person should have some demonstrable interest or relationship to the involved persons, personally or for the benefit of the public at large, in a PIL. But in all such cases, it is essential that the petitioner must exhibit bonafides, by truthful and cautious exercise of such right. The Courts would be expected to examine such requirement at the threshold of the litigation in order to prevent abuse of the process of court.”

In view of the above discussion, in the facts and circumstances of the present case and the law on the subject, this Court does not find any valid reason to entertain the petition on behalf of the petitioner as she has no *locus standi* to maintain this petition in the nature of habeas corpus for the release of alleged detainee, namely, Tanya Datta wife of Virender Kaushik.

The writ petition is hereby dismissed.

Further, it is ordered that the detainee, namely, Tanya Datta be released from Nari Niketan, Sector- 26, Chandigarh and be sent with the respondent No.4 (husband).

A copy of this order be given to learned counsel for U.T., Chandigarh and counsel for the parties, under the signatures of the Court Secretary of this Court.

(MANOJ BAJAJ)
JUDGE

15.05.2019

vanita

Whether speaking/reasoned :

Yes

No

Whether Reportable :

Yes

No