

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

W.P.A. No. 10404 of 2020

(Through Video Conference)

Kajal Das & Anr.

-vs.-

The State of West Bengal & Ors.

Mr. Jayanta Narayan Chatterjee,
Mr. Debashis Banerjee,
Mr. Nazir Ahmed,
Mr. Supreem Naskar
...for the petitioners

Mr. Amitesh Banerjee,
Mr. Tarak Karan
...for the respondent-authorities

Mr. Amitabha Ghosh,
Mr. Sk. Sujauddin
...for the respondents nos. 7 to 9

The petitioners submit that one Tapan Ghosh is mentally challenged, taking advantage of which certain persons have unlawfully detained the said Tapan Ghosh. On such premise, the petitioners lodged a complaint with the police, alleging that Tapan Ghosh went missing.

Learned counsel for the petitioners argues that Tapan Ghosh has been kept confined by certain persons, having interest in the property of the said Tapan Ghosh, taking undue advantage of the fact that the said Tapan Ghosh, due to his mental condition, is not in a position to defend himself.

However, learned senior counsel appearing for the respondent-authorities, by filing a report, argues that the police investigated duly into the matter and it was revealed that the “missing person”, Tapan Ghosh, willingly went to the house of one Pranab Ghosh and stayed there. It is further revealed from the said report that Tapan Ghosh was produced at the Barasat Police Station on March 19, 2020, after which he voluntarily went along with his neighbour, Subash Mitra. The address of the said Subash Mitra has also been mentioned in the report.

There is a limit up to which a writ court can interfere with the action of the executive. In the present case, no patent *mala fides* and/or illegality has been established by the petitioners with regard to the investigation carried on by the police. As far as the grievance that the police are inactive with regard to the petitioners’ complaint about the abduction of Tapan Ghosh, it cannot but be said that such complaint was duly dealt with by way of registering a police case and investigating into the matter. There is no scope for presumption, at least in the present case, that the police had any *mala fide* intention or abused the process of law while investigating the matter. As such, there is no occasion to interfere with the action of the police.

Accordingly, W.P.A. No. 10404 of 2020 is dismissed without costs. However, it will be open to the petitioners to espouse the cause of the said Tapan Ghosh before an appropriate Civil Court and, if permitted under the law, to seek appointment as the next friend/ legal guardian of the said Tapan Ghosh upon satisfying the Civil Court having competent jurisdiction in that regard.

If such a proceeding is initiated by the petitioners, the same will be dealt with by the competent civil court in accordance with law, without being prejudiced in any manner by the report filed by the police authorities in Court today and/or the observations made above.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)