

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.382 of 2020

Arising Out of PS. Case No.-42 Year-2020 Thana- MANJHI District- Saran

Diwakar Rai Son of Late Kamla Rai, a resident of Village- Tajpur Phulwariya,
P.S.- Manjhi, District- Saran.

... .. Petitioner

Versus

1. The State of Bihar
2. The D.G.P., Patna, Bihar.
3. The Superintendent of Police, Saran.
4. The Sub- Divisional Police Officer, Saran.
5. The Station House Officer, Manjhi, Saran.
6. The Investigating Officer of Manjhi P.S. Case No. 42/20 Manjhi
7. Ankit Singh Son of Suresh Singh, a resident of Village- Tajpur Phulwariya,
P.S.- Manjhi, District- Saran.
8. Ravi Kumar Singh Son of Binod Singh, a resident of Village- Tajpur
Phulwariya, P.S.- Manjhi, District- Saran.

... .. Respondents

Appearance :

For the Petitioner	:	Mr. Harish Kumar, Advocate
For the Respondent-State:		Mr. Prabhu Narayan Sharma, AC to AG
For the respondent no.8:		Mr. Chandra Mohan Jha, Advocate

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
and
HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)
Date : 22-07-2021

In the present application, the petitioner has prayed
for issuance of a writ in the nature of *habeas corpus* for release
of his son Raja Rai.

2. The petitioner submitted a written report on
19.02.2020 at 10.30 a.m. to the Station House Officer (for short
'SHO') of Manjhi Police Station, Saran alleging therein that on



09.02.2010 at about 7 p.m., one Ankit Singh son of Suresh Singh and one Ravi Kumar Singh son of Binod Singh, both residents of village- Tajpur, P.O. Phulwariya (Tajpur), P.S.- Manjhi, District- Chapra came to his house. His son Raja Rai, aged about 21 years, went together with them. As Raja Rai did not return to his house till late at night, he started search for him. He inquired from his relatives, but failed to get his clue. When he wanted to inform the police, he was being threatened.

3. On the basis of the aforesaid written report, Manjhi P.S. Case No.42 of 2020 dated 19.02.2020 was registered under Sections 363 and 365 of the Indian Penal Code against Ankit Singh and Ravi Kumar Singh and investigation was taken up.

4. Since the petitioner's son Raja Rai could not be traced by the police, the instant *habeas corpus* writ petition has been filed before this Court.

5. Mr. Harish Kumar, learned counsel for the petitioner submitted that the petitioner has reasonable doubt that his son is under illegal confinement of the accused persons named in the first information report (for short 'FIR'). He contended that the police are not taking any action for recovery of the victim. According to him, the police are acting in



collusion with the FIR named accused persons which can be inferred from this fact that victim has not been recovered yet in spite of the institution of the FIR long back.

6. Initially, a counter affidavit was filed on behalf of the SHO of Manjhi Police Station, Saran. In the counter affidavit, he has stated that the investigating officer, namely, Jagarnath Kumar was conducting the investigation in the case as per guidelines issued from the CID Department. During investigation, statements of the witnesses under Section 161 of the Code of Criminal Procedure were recorded. The call detail record of the mobile number of the victim had also been obtained from which it appeared that the victim had his mobile at his home and was being used by his family members. The investigating officer of the case regularly tried to trace out and recover the victim. He raided multiple locations for recovery of the victim but the victim could not be recovered. It is also stated in the counter affidavit that both the accused persons were arrested in connection with Baniyapur P.S. Case No.42 of 2020 instituted under Section 30(a) of the Bihar Prohibition and Excise Act on 10.02.2020. It also transpired during investigation that earlier the victim Raja Rai was arrested in Manjhi P.S. Case No.292 of 2016 for the offence committed under the Bihar



Prohibition and Excise Act. The supervision note of the Superintendent of Police also manifests that the accused persons and the victim of the case are involved in illegal trade of liquor.

7. Subsequently, a counter affidavit on behalf of the Superintendent of Police, Saran duly sworn by the Deputy Superintendent of Police, Head Quarter, Saran, Chapra has been filed in which it has been stated that the issue of recovery of victim has been taken up seriously by the police. The Superintendent of Police has constituted a five-member special investigation team (SIT) headed by the Special Police Officer, Sadar for recovery of the victim Raja Rai with necessary direction. He has directed that the SHO, Manjhi, Saran to take over the charge of investigation of Manjhi P. S. Case No.42 of 2020 himself. Accordingly, the SHO, Manjhi has taken over the charge immediately.

8. It is further contended in the said counter affidavit that on the basis of scientific investigation such as analysis of the call detail record and tower location of mobile numbers of the accused persons and suspects of the case, multiple raids have been conducted, but unfortunately the victim has not been recovered till date.

9. Later on, a supplementary counter affidavit



duly sworn by the Superintendent of Police, Saran has been filed in which he has stated that a detailed and up-to-date report was called for from the SHO, Manjhi, who is the investigating officer of the case. He has submitted his comprehensive report regarding the latest status of investigation as well as the steps taken for recovery of the victim. The report submitted by the SHO has been annexed as Annexure-A to the supplementary counter affidavit. A perusal of the said report would show that in course of investigation it was found that the named accused persons Ravi Kumar Singh and Ankit Singh together with Raja Rai had gone to attend a *tilak* ceremony at village- Singahi. In the *tilak* ceremony, the accused persons and the alleged victim resorted to celebratory firing, which created pandemonium. When they came to know that the police are likely to arrive, they fled away from the village Singahi and went to Singahi *Chawar*. At that place, in a discharge from the country made pistol the victim sustained injury in his temple as a result of which he died.

10. The SHO has further stated in his report that the FIR named accused Ravi Kumar Singh and Ankit Singh have confessed their guilt in their statement regarding the said incident and on their confession, the country made pistol has



also been recovered from the place of occurrence. He has stated that the accused persons also confessed that the maternal uncle of the accused Ravi Kumar Singh, namely, Amit Singh has disposed of the body of the victim Raja Rai. He has stated that during investigation when Amit Singh son of Badan Singh was arrested on 09.03.2021, he confessed that he had put the body of Raja Rai in a jute bag and threw the same in the mainstream of river Ghaghra from Jai Prabha Setu.

11. The SHO has further stated in his report that efforts were made to trace and recover the body of the deceased Raja Rai. In this regard, inquiries were made from several fishermen, but the body could not be recovered. He has reported that since the incident took place about a year back and the stream of river Ghaghra merges the river Ganges, the police are finding it difficult to recover the jute bag in which the body of the deceased Raja Rai was packed.

12. Referring to the aforesaid report of the SHO, the Superintendent of Police, Saran stated in his affidavit that the investigation of the case is going on in proper direction and efforts are still on for recovery of the body of Raja Rai.

13. Mr. Prabhu Narayan Sharma, learned counsel for the State submitted that instant writ petition in the nature of



habeas corpus is misconceived. He contended that a writ of *habeas corpus* can only be issued when there is assertion of wrongful confinement. In the present case, what has been asserted in the FIR is that the son of the petitioner went together with the respondent nos. 7 and 8 and did not return back till late at night. He submitted that a missing person report with suspicion against respondent nos. 7 and 8 was given by the petitioner to the SHO of Manjhi Police Station after 10 days of the incident. He contended that a sensitive and committed investigation is being conducted. The investigation of a criminal case is confidential in nature. He contended that since it is not a case of illegal detention, the writ petition ought to be dismissed.

14. A counter affidavit has also been filed on behalf of respondent no. 8.

15. It is contended in the counter affidavit that a writ petition for violation of rights by private is not maintainable. It is contended that there is no admission that the victim Raja Rai is in the custody of respondent no.8. The criminal case is under investigation. The basic fact of custody is disputed. The same is incapable of being determined on the basis of affidavit. It is further contended that in the backdrop that the custody of the victim being disputed no writ could lie



for parting with the custody.

16. We have heard learned counsel for the parties and carefully perused the materials on record.

17. On perusal of the materials on record, we do not find any reason to doubt the fairness in investigation of the police case. The way in which the police have conducted the investigation so far shows that sincere efforts have been taken by them to trace the victim.

18. Insofar as the question of maintainability of the present application is concerned, we need to first examine the meaning and scope of a writ of *habeas corpus*.

19. The Latin phrase *habeas corpus* means literally that “you”, that is, the person with custody over the prisoner, must “have the body” of the prisoner produced in court at the place and time ordered by a judge. The writ of *habeas corpus* provides individuals with protection against arbitrary and wrongful imprisonment.

20. The meaning of the term *habeas corpus* is “you must have the body”. In Halsbury Laws of England, 4th Edition, Vol.11, p.1452, p.768, it is observed:

“The writ of *habeas corpus ad subjiciendum*” which is commonly known as the writ of *habeas corpus*, is a prerogative



process for securing the liberty of the subject by affording an effective means of immediate release from the unlawful or unjustifiable detention whether in prison or in private custody. It is a prerogative writ by which the queen has a right to inquire into the causes for which any of her subjects are deprived of their liberty. By it the High Court and the judges of that Court, at the instance of a subject aggrieved, command the production of that subject, and inquiry into the cause of his imprisonment. If there is no legal justification for the detention, the party is ordered to be released. Release on *habeas corpus* is not, however, an acquittal, nor may the writ be used as a means of appeal.”

21. *Habeas corpus ad subjiciendum* means “that you have the body to submit or answer.”

22. May in his Constitutional History of England (1912), Vol.II, p.130, described writ of *habeas corpus* as “the first security of civil liberty”. Blackstone called the writ of *habeas corpus* as “the great and efficacious writ in all manner of illegal confinement.”

23. Julius Stone in Social Dimensions of Law and Justice, (1966), p.203 described the writ of *habeas corpus* as a picturesque writ with an extraordinary scope and flexibility



of an application.

24. According to Dicey (A.V.Dicey), Introduction to the Study of Law of the Constitution, Macmillan and Co., Ltd., p.215(1915): “if, in short, any man, woman or child is, or is asserted on apparently good grounds to be deprived of liberty, the court will always issue a writ of *habeas corpus* to anyone who has the aggrieved person in his custody to have such person brought before the court and if he is suffering restraint without lawful cause, set him free.”

25. In *Greene vs. Home Secretary, (1941) 3 All ER 388*, it has been observed:

“*Habeas corpus* is a writ in the nature of an order calling upon the person who has detained another to produce the later before the court, in order to let the court know on what ground he has been confined and to set him free if there is no legal jurisdiction of imprisonment.”

26. The prerogative writ of *habeas corpus* ad subjiciendum is the most renowned contribution of English common law to the protection of human member.

27. In India, the jurisdiction to issue prerogative writs came with the establishment of the Supreme Court by regulating Act of 1773. The charter of 1774 gave power to each



of the justices of the Supreme Court of Calcutta to issue a writ of *habeas corpus*. The three Supreme Courts in Calcutta, Bombay and Madras by the Act of Parliament in 1861 were abolished and High Courts were established and the power to issue writs of *habeas corpus* was inherited by them. This power to issue writ of *habeas corpus* was taken away from 1875 and new power of the High Court arose under Section 491 of the Code of Criminal Procedure, 1898 to issue statutory directions in the nature of *habeas corpus*. By Articles 32 and 226, the Supreme Court and all the High Court got jurisdiction to issue writ of *habeas corpus* throughout their respective territorial jurisdiction when the Constitution came into force.

28. Article 21 of the Constitution of India provides that no person shall be deprived of his life or personal liberty except according to procedure established by law.

29. A writ of *habeas corpus* under Article 32 of the Constitution of India in the Supreme Court is available in case of violation of fundamental rights guaranteed under Article 21 but it does not relate to interference with the personal liberty by a private citizen. However, the High Court has jurisdiction to issue writ of *habeas corpus* under Article 226 of the Constitution of India not only for violation of fundamental



rights of freedom but also for other purposes. The High Court can issue such writ against a private person also.

30. In *Union of India vs. Yumnam Anand M. @ Bocha @ Kora @ Suraj*, (2007) 10 SCC 190 while explaining the nature of writ of *habeas corpus*, the Supreme Court held that it is writ of right, it is not a writ of course. The application must show a prima facie case of his unlawful detention. Relevant para-7 of the judgment reads as under:

“7. Article 21 of the Constitution having declared that no person shall be deprived of life and liberty except in accordance with the procedure established by law, a machinery was definitely needed to examine the question of illegal detention with utmost promptitude. The writ of habeas corpus is a device of this nature. Blackstone called it “the great and efficacious writ in all manner of illegal confinement”. The writ has been described as a writ of right which is grantable ex debito justitiae. Though a writ of right, it is not a writ of course. The applicant must show a prima facie case of his unlawful detention. Once, however, he shows such a cause and the return is not good and sufficient, he is entitled to this writ as of right.”

31. In *Dushyant Somal vs. Sushma Somal*,



(1981) 2 SCC 277, the Supreme Court observed that a writ of *habeas corpus* is not to be issued as a matter of course. It further observed that clear grounds must be made out for issuance of such writ.

32. In *Kanu Sanyal vs. Distt. Magistrate, (1973) 2 SCC 674*, the Supreme Court held that while dealing with a writ of *habeas corpus*, the Supreme Court held that it is essentially a procedural writ. It deals with the machinery of justice, not the substantive law. The object of the writ is to secure release of a person who is illegally restrained of his liberty.

33. In *Swapan Das vs. the State of West Bengal & Ors. 2013 SCC Online Cal 11681*, the High Court Calcutta held as under:

“A habeas corpus writ is to be issued only when the person concerning whose liberty the petition has been filed is illegally detained by a respondent in the petition. On the basis of a habeas corpus petition the power under art. 226 is not to be exercised for tracing a missing person engaging an investigating agency empowered to investigate a case under the Code of Criminal Procedure, 1973. The investigation, if in progress, is to be overseen by the criminal court. Here the petitioner is



asking this court to direct the police to track down his missing son.

For these reasons, we dismiss the writ petition.”

34. Similarly, in *Sulochana Bai vs. State of M.P. & Ors, 2008 (2) MPHT 233*, the High Court of Madhya Pradesh observed as under:

“12. We have referred to the aforesaid decisions only to highlight that the writ of habeas corpus can only be issued when there is assertion of wrongful confinement. In the present case, what has been asserted in the writ petition is that her father-in-law has been missing for last four years and a missing report has been lodged at the Police Station. What action should have been taken by the Police that cannot be the matter of habeas corpus because there is no allegation whatsoever that there has been wrongful confinement by the police or any private person. In the result, the writ petition is not maintainable and is accordingly dismissed.”

35. In *Selvaraj vs. the State, Rep. by the Superintendent of Police, Nagapattinam District, in 2018(3) MLJ (Cri) 712*, a Division Bench of the Madras High Court observed as under:



“20. The constitutional Courts across the country predominantly held in catena of judgments that establishing a ground of "illegal detention" and a strong suspicion about any such "illegal detention" is a condition precedent for moving a Habeas Corpus petition and the Constitutional Courts shall be restrained in entertaining such Habeas Corpus petition, where there is no allegation of "illegal detention" or suspicion about any such "illegal detention". Man/Women missing cases cannot be brought under the provision of the Habeas Corpus petition. Man/Women missing cases are to be registered under the regular provisions of the Indian Penal Code and the Police officials concerned are bound to investigate the same in the manner prescribed under the Code of Criminal Procedure. Such cases are to be dealt as regular cases by the competent Court of Law and the extraordinary jurisdiction of the Constitutional Courts cannot be invoked for the purpose of dealing with such Man/Women Missing cases.

21. The Courts have noticed in large number of cases that the Police personnel are spending lot of time by travelling across the Country under the guise of Man/Women missing cases. Certainly such waste of time by the uniformed personnel is a great concern for the State. This apart, such unnecessary



travelling causes large scale expenditures to the State Ex-Chequer, which is to be construed as unnecessary and the tax payer's money has to be spent judiciously and meaningfully. This apart, the efforts taken without any basis causes concern for all concerned and also to the investigating authorities and the State as a whole. Thus, the uniformed Police forces must be used potentially to trace out the cases, where there is a genuine allegation of "illegal detention". Thus, the Police personnel are also bound to apply their mind in such type of cases before commencing their investigation and the investigations are to be conducted meaningfully, in judicious manner and without wasting the tax payers money.

22. As we have elaborately discussed the scope of the Habeas Corpus petitions in such cases of Man/Women missing cases, we are of an undoubted opinion that the Constitutional Courts shall show some restraint in entertaining such Habeas Corpus petitions in relation to Man/Women missing cases.

23. Accordingly, the present Habeas Corpus petition, there is not even an iota of doubt in respect of any "illegal detention" nor any such allegations are made out in the petition. This being the factum of the case, the petitioner has not established any cause for the purpose of entertaining the present Habeas



Corpus petition and accordingly, the same stands dismissed.”

36. Keeping in mind the ambit and scope of *habeas corpus* writ petition and the decisions rendered by the Supreme Court and the various High Courts, when we look to the facts of the present case, we notice that the victim left his house voluntarily with the respondent nos. 7 and 8 on 09.02.2020 in the evening. As he did not return to his house, his father submitted a written report to the police raising suspicion against the respondent nos. 7 and 8. During investigation of the case, the police came to know that the son of the petitioner Raja Rai was made accused in Manjhi P.S. Case No. 292 of 2016 registered for the offence punishable under the provisions of Bihar Prohibition and Excise Act. During investigation, it also transpired that the victim Raja Rai and respondent nos. 7 and 8 are involved in illegal trade of liquor. It also transpired that respondent nos. 7 and 8 and the victim had participated in a tilak ceremony where they resorted to celebratory firing and when they came to know that the police may arrive, they went towards Chawar where in the country made pistol of the victim discharged causing injury to him in his temple as a result of which he died. The confessional statements of the accused



persons in Manjhi P.S. Case No. 72 of 2020 disclosed that body of the deceased Raja Rai was concealed in a jute bag and was thrown in the mainstream of the river Ghaghra, which merges in the river Ganges. In spite of the efforts made by the police, the body or the jute bag in which the body was packed could not be recovered.

37. The aforesaid Manjhi P.S. Case No. 42 of 2020 is still under investigation. An investigation into a criminal case is confidential in nature. At this stage, the Court has no role to play. Apparently, it is not a case of illegal detention. The basic fact of custody even by private person is disputed. The same is incapable of being determined on the basis of affidavit.

38. Under such circumstances, we are of the considered opinion that the present writ petition in the nature of *habeas corpus* is not maintainable.

39. It is dismissed, accordingly.

(Ashwani Kumar Singh, J)

(Arvind Srivastava, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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