

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1058 of 2018

Arising Out of PS. Case No.-254 Year-2017 Thana- GRIYAK District- Nalanda

Laxmi Singh @ Laxmikant Singh S/o Late Parmod Singh, R/o Village-
Katridih, P.S.- Giriyak, Katrisarai, District- Nalanda.

... .. Petitioner

Versus

1. The State Of Bihar Through The Director General Of Police, Patna, Bihar
2. The Superintendent of Police Nalanda at Biharsarif.
3. The Station House Officer, P.S.- Giriyak, Katrisarai, District- Nalanda.
4. Nirala Pandey S/o Late Parmanand Pandey, R/o Vill.- Katridih, P.S.-
Giriyak, Katrisarai, District- Nalanda.
5. Manish Pandey S/o Nirala Pandey, R/o Vill.- Katridih, P.S.- Giriyak,
Katrisarai, District- Nalanda.
6. Golu Pandey S/o Nirala Pandey, R/o Vill.- Katridih, P.S.- Giriyak, Katrisarai,
District- Nalanda.
7. Priya Devi D/o Shashi Pandey, R/o Vill.- Katridih, P.S.- Giriyak , Katrisarai,
District- Nalanda.
8. Suraj Pandey S/o Arvind Pandey, R/o Vill.- Sadikpur, District- Shekhpura,
Presently residing at 2nd Floor, House No. 13, Srya Nagar Part-1, near
Nibha Petrol Pump , Palla, Sector 41, Faridabad, Hariyana.

... .. Respondents

Appearance :

For the Petitioner	:	Mr. Ashok Kumar Chaudhary, Sr. Adv. Mr. Anil Kumar Tiwary, Adv.
For the RespondentS	:	Mr. Prabhu Narain Sharma, Adv.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
and
HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)

Date : 06-09-2021

Heard Mr. Ashok Kumar Chaudhary, learned senior
counsel being assisted by Mr. Anil Kumar Tiwary, learned counsel
for the petitioner and Mr. Prabhu Narain Sharma, learned counsel
for the State.



2. The instant application has been filed by the petitioner under Article 226 of the Constitution of India for issuance of a writ in the nature of *habeas corpus* directing the respondents to recover and produce his minor daughter, who is missing since 11.08.2017 for which Giriyak, Katrisarai P.S. Case No. 254 of 2017 dated 12.08.2017 was registered under Sections 363 and 365 of the Indian Penal Code.

3. The case of the petitioner is that his daughter aged about 14 years went to Katrisarai Bazar for getting a blouse stitched with a co-villager Priya Devi, aged about 19 years on 11.08.2017 at about 03:00 PM. Since, she did not return home, the petitioner started searching for her, but she could not be traced. Ultimately, a written report was submitted to the Officer-in-Charge, Katrisarai Police Station on 12.08.2017 by the petitioner regarding his missing daughter pursuant to which Katrisarai P.S. Case No. 254 of 2017 dated 12.08.2017 was registered against unknown accused under Sections 363 and 365 of the Indian Penal Code.

4. As the whereabouts of the daughter of the petitioner could not be known for over seven months even after the institution of the FIR, the instant application was filed by the petitioner before this Court on 05.04.2018.



5. It is contended by Mr. Ashok Kumar Chaudhary, learned senior counsel for the petitioner that in the instant case, the respondent nos. 2 and 3 have filed one counter affidavit and 14 supplementary counter affidavits stating therein the upto-date status of the investigation of the case from time to time. He contended that though more than three years have elapsed since the date of the institution of the FIR, the police have not been able to trace the victim girl. He submitted that though some efforts have been made by the police during investigation of the case to find out the missing daughter of the petitioner, they are not sufficient.

6. On the other hand, Mr. Prabhu Narain Sharma, learned counsel appearing for the State submitted that despite sincere and continuous efforts by the police during the last more than three years, they have not been able to recover the victim girl. He contended that during investigation of the case, the police went to several places and arrested some of the suspects, but no clue of the victim girl could be found till today. He submitted that pursuant to the direction of this Court, a special investigating team was constituted by the Superintendent of Police for searching the victim and arresting an accused, namely, Suraj Kumar at his suspected places of hiding in the State of Delhi, Haryana and Rajasthan and the special police team conducted raids at various



places, neither the victim could be recovered so far nor the suspected accused Suraj Kumar could be arrested. He contended that the sincere efforts made by the police in investigation cannot be doubted. He urged that under the circumstances no writ in the nature of *habeas corpus* can be issued by the Court because there is no certainty as to whether the victim is in illegal detention or not. There is also no certainty about the illegal detention of the victim either by the police or by any particular person or any other authority.

7. In reply, Mr. Chaudhary, learned senior counsel for the petitioner submitted that since the petitioner has no other equally efficacious remedy available to him for the redressal of his grievance, he has invoked the jurisdiction of this Court under Article 226 of the Constitution of India. He contended that the writ petition should be kept pending before this Court till the recovery of the missing daughter of the petitioner.

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

9. It would be manifest from the record that the instant application has been taken up by the Court on several dates. A counter affidavit was filed on behalf of the respondents, firstly, on 21.04.2018 on behalf of the respondent nos. 2 and 3 and since then



14 supplementary counter affidavits have filed on their behalf highlighting the steps taken by the respondents during investigation of the case.

10. After the police arrested the respondent no.7 on 10.08.2017, the learned 1st Additional Sessions Judge, Nalanda at Bihar Sharif granted her bail vide order dated 24.11.2018. Similarly, respondent no.8 was granted pre-arrest bail by a Bench of this Court vide order dated 06.12.2018 passed in Cr.Misc. No. 53768 of 2018. Subsequently, the State took steps for cancellation of their bail and vide order dated 07.03.2019 the bail granted to the respondent no.8 was cancelled by the Court in exercise of powers conferred under Section 439(2) of the Code of Criminal Procedure and in the matter of respondent no.7 notices were issued for cancellation of bail pursuant to which she entered into appearance through her counsel and contested the matter.

11. The counter affidavits filed on behalf of the respondents would also make it manifest that apart from arresting the suspected accused persons, the Investigating Officer has procured call detail record of mobile number of the victim and on the basis of lead proceeded to Faridabad (Haryana), Kota (Rajasthan) and Delhi to find out the victim. The Senior Superintendent of Police constituted a Special Investigating Team



(for short 'SIT') for recovery of the victim. The photographs of the victim were published and placed at nearby Railway Station and Bus Stand.

12. It would also appear that at one stage this Court had even directed the State Government to show cause as to why the investigation and enquiry of the case be not handed over to some other investigating agency.

13. Subsequently, an affidavit was filed by the Director General of Police, Bihar. He informed the Court through his affidavit that vide order dated 16.09.2019 the police headquarter with the concurrence of the Director General of Police has directed the Criminal Investigation Department (for short 'CID'), Bihar to control and monitor further investigation of the case. However, it is also a fact that till date the victim has not been recovered.

14. Now, the question before us is as to whether we keep the matter pending before the Court and monitor the investigation of the case till recovery of the victim or dispose it of with an expectation that the police would discharge its statutory duty in a sensitive and committed manner.

15. From the materials on record, we do not find that the Investigating Officer is not functioning bonafide. The investigation is being supervised by the Superintendent of Police, Nalanda at



Biharsharif and under and under the orders of the Director General of Police, Bihar, the same is being controlled and monitored by the CID, Bihar.

16. Under the circumstances, we do not find that the investigating agency has breached any statutory provisions while investigating the case. There is also no reason for us to come to any conclusion that the investigating agency has abused its investigatory power or the investigation is tainted with animosity.

17. Thus, we are of the opinion that no useful purpose would be served by keeping the present proceeding, which is in the nature of *habeas corpus*, pending before the Court till recovery of the victim girl.

18. Now, we will take up the next issue as to whether a case for issuance of a writ in the nature of *habeas corpus* is made out.

19. To hold investigation in a cognizable offence is the statutory right of the police. It is well settled that at the stage of investigation the Court has no role to play. However, the investigating agency is required to take all necessary steps to conclude the investigation and submit its report to the Magistrate concerned. If the police fail to perform their statutory duty in accordance with law, the Court has a bounden statutory obligation



to ensure that the investigation is conducted in accordance with law.

20. In *Amar Nath Chaubey Vs. Union of India (SLP (Cr.) no.6951 of 2018)* by order dated 14th December, 2020, a three-Judge Bench of the Supreme Court observed as under :-

“8. The police has a statutory duty to investigate into any crime in accordance with law as provided in the Code of Criminal Procedure. Investigation is the exclusive privilege and prerogative of the police which cannot be interfered with. But if the police does not perform its statutory duty in accordance with law or is remiss in the performance of its duty, the court cannot abdicate its duties on the precocious plea that investigation is the exclusive prerogative of the police. Once the conscience of the court is satisfied, from the materials on record, that the police has not investigated properly or apparently is remiss in the investigation, the court has a bounden constitutional obligation to ensure that the investigation is conducted in accordance with law. If the court gives any directions for that purpose within the contours of the law, it cannot amount to interference with investigation. A fair investigation is, but a necessary concomitant of Articles 14 and 21 of the Constitution of India and this Court has the bounden obligation to ensure adherence by the police.”



21. In *Manohar Lal Sharma Vs. Principal Secretary & Ors.*, since reported in (2014) 2 SCC 532, the Supreme Court observed as under :

24. *In the criminal justice system the investigation of an offence is the domain of the police. The power to investigate into the cognizable offences by the police officer is ordinarily not impinged by any fetters. However, such power has to be exercised consistent with the statutory provisions and for legitimate purpose. The courts ordinarily do not interfere in the matters of investigation by police, particularly, when the facts and circumstances do not indicate that the inv*25. Lord Denning [*The Due Process of Law, First Indian Reprint 1993, p. 102.*] has described the role of the police thus:

“In safeguarding our freedoms, the police play a vital role. Society for its defence needs a well-led, well-trained and well-disciplined force of police whom it can trust: and enough of them to be able to prevent crime before it happens, or if it does happen, to detect it and bring the accused to justice.

The police, of course, must act properly. They must obey the rules of right conduct. They must not extort confessions by threats or promises. They must not search a man's house without authority. They must not use more force than the occasion warrants.”

26. *One of the responsibilities of the police is protection of life, liberty and property of citizens. The investigation of offences is one of the important duties*



the police has to perform. The aim of investigation is ultimately to search for truth and bring the offender to book.

27. Section 2(h) of the Code of Criminal Procedure (for short “the Code”) defines investigation to include all the proceedings under the Code for collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by the Magistrate in this behalf.

28. In H.N. Rishbud [H.N. Rishbud v. State of Delhi, AIR 1955 SC 196 : 1955 Cri LJ 526] this Court explained that the investigation generally consists of the following steps: (AIR p. 201, para 5)

(1) Proceeding to the spot;

(2) ascertainment of the facts and circumstances of the case;

(3) discovery and arrest of the suspected offender;

(4) collection of evidence relating to the commission of the offence which may consist of the examination of:

(a) various persons (including the accused) and the reduction of statement into writing, if the officer thinks fit;

(b) the search of places and seizure of things, considered necessary for the investigation and to be produced at the trial;

(5) formation of the opinion as to whether on the materials collected, there is a case to place the accused before a Magistrate for trial, if so, take the



necessary steps for the same for filing necessary charge-sheet under Section 173 CrPC.

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39. *However, the investigation/inquiry monitored by the court does not mean that the court supervises such investigation/inquiry. To supervise would mean to observe and direct the execution of a task whereas to monitor would only mean to maintain surveillance. The concern and interest of the court in such “Court-directed” or “Court-monitored” cases is that there is no undue delay in the investigation, and the investigation is conducted in a free and fair manner with no external interference. In such a process, the people acquainted with facts and circumstances of the case would also have a sense of security and they would cooperate with the investigation given that the superior courts are seized of the matter. We find that in some cases, the expression “Court-monitored” has been interchangeably used with “Court-supervised investigation”. Once the court supervises an investigation, there is hardly anything left in the trial. Under the Code, the investigating officer is only to form an opinion and it is for the court to ultimately try the case based on the opinion formed by the investigating officer and see whether any offence has been made out. If a superior court supervises the investigation and thus facilitates the formulation of such opinion in the form of a report under Section 173(2) of the Code, it will be difficult if not impossible*



for the trial court to not be influenced or bound by such opinion. Then trial becomes a farce. Therefore, supervision of investigation by any court is a contradiction in terms. The Code does not envisage such a procedure, and it cannot either. In the rare and compelling circumstances referred to above, the superior courts may monitor an investigation to ensure that the investigating agency conducts the investigation in a free, fair and time-bound manner without any external interference.”estigating officer is not functioning bona fide. In very exceptional cases, however, where the court finds that the police officer has exercised his investigatory powers in breach of the statutory provision putting the personal liberty and/or the property of the citizen in jeopardy by illegal and improper use of the power or there is abuse of the investigatory power and process by the police officer or the investigation by the police is found to be not bona fide or the investigation is tainted with animosity, the court may intervene to protect the personal and/or property rights of the citizens.

25. Lord Denning [The Due Process of Law, First Indian Reprint 1993, p. 102.] has described the role of the police thus:

“In safeguarding our freedoms, the police play a vital role. Society for its defence needs a well-led, well-trained and well-disciplined force of police whom it can trust: and enough of them to be able to prevent crime before it happens, or if it does happen, to detect it and bring the accused to justice.



The police, of course, must act properly. They must obey the rules of right conduct. They must not extort confessions by threats or promises. They must not search a man's house without authority. They must not use more force than the occasion warrants.”

26. One of the responsibilities of the police is protection of life, liberty and property of citizens. The investigation of offences is one of the important duties the police has to perform. The aim of investigation is ultimately to search for truth and bring the offender to book.

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39. However, the investigation/inquiry monitored by the court does not mean that the court supervises such investigation/inquiry. To supervise would mean to observe and direct the execution of a task whereas to monitor would only mean to maintain surveillance. The concern and interest of the court in such “Court-directed” or “Court-monitored” cases is that there is no undue delay in the investigation, and the investigation is conducted in a free and fair manner with no external interference. In such a process, the people acquainted with facts and circumstances of the case would also have a sense of security and they would cooperate with the investigation given that the superior courts are seized of the matter. We find that in some cases, the expression “Court-monitored” has been interchangeably used with “Court-supervised investigation”. Once the court supervises an



*investigation, there is hardly anything left in the trial. Under the Code, the investigating officer is only to form an opinion and it is for the court to ultimately try the case based on the opinion formed by the investigating officer and see whether any offence has been made out. If a superior court supervises the investigation and thus facilitates the formulation of such opinion in the form of a report under Section 173(2) of the Code, it will be difficult if not impossible for the trial court to not be influenced or bound by such opinion. Then trial becomes a farce. Therefore, supervision of investigation by any court is a contradiction in terms. The Code does not envisage such a procedure, and it cannot either. **In the rare and compelling circumstances referred to above, the superior courts may monitor an investigation to ensure that the investigating agency conducts the investigation in a free, fair and time-bound manner without any external interference.***”

(emphasis supplied)

22. From the materials on record, it cannot be said that the police have exercised their investigatory power in breach of the statutory provisions or they are influenced by external influences. The bonafide of the investigation also cannot be doubted. It is true that the daughter of the petitioner has not been recovered till date, but that alone cannot be a factor to monitor the case till the recovery of the victim, especially, when the senior police officers



are personally looking into the matter and the case is being controlled and monitored by the CID, Bihar. The police have not only arrested some of the suspects but when they were granted bail, they have taken steps for cancellation of their bail and as a matter of fact on the application moved by the State, the bail granted to the respondent no.8 has already been cancelled by the Court in exercise of powers conferred under Section 439(2) of the Code of Criminal Procedure.

23. The facts enumerated above clearly demonstrate that it cannot be said with certainty in whose detention or captivity the victim is being kept. The only person named in the FIR by the informant is a co-villager Priya Devi, a young woman aged about 19 years. She was apprehended by the police and was granted bail. Subsequently, steps were taken for cancellation of her bail. The police are investigating the case for more than four years and in the process they have conducted raids at several locations in different States. Since the accused persons, who have been arrested and against whom investigation have been completed would be facing trial in the court of competent jurisdiction and their guilt or innocence would be established only after a full-fledged trial, at this stage, it would not be proper for this Court to make any observation on the merits of the criminal case.



24. However, this much is sure that the victim is not in illegal confinement of the police or any other known person.

25. 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.”

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

27. 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.”

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

29. The Constitution Bench of the Supreme Court in the case of ***Kanu Sanyal vs. District Magistrate, Darjeeling & Ors., [(1973) 2 SCC 674]***, dealing with the nature and scope of the writ of habeas corpus observed as under:-

“4. It will be seen from this brief history of the writ of habeas corpus 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. The writ is, no doubt, a command addressed to a person who is alleged to have another person unlawfully in his custody requiring him to bring the body of such person before the Court, but the production of the body of the person detained is directed in order that the circumstances of his detention may be inquired into, or to put it differently, “in order that appropriate judgment be rendered on judicial enquiry into the alleged unlawful restraint”.



The form of the writ employed is “We command you that you have in the King's Bench Division of our High Court of Justice — immediately after the receipt of this our writ, the body of A.B. being taken and detained under your custody — together with the day and cause of his being taken and detained — to undergo and receive all and singular such matters and things as our court shall then and there consider of concerning him in this behalf”. The italicized words show that the writ is primarily designed to give a person restrained of his liberty a speedy and effective remedy for having the legality of his detention enquired into and determined and if the detention is found to be unlawful, having himself discharged and freed from such restraint. The most characteristic element of the writ is its peremptoriness and, as pointed out by Lord Halsbury, L.C., in Cox v. Hakes “the essential and leading theory of the whole procedure is the immediate determination of the right to the applicant's freedom” and his release, if the detention is found to be unlawful. That is the primary purpose of the writ; that is its substance and end. The production of the body of the person alleged to be wrongfully detained is ancillary to this main purpose of the writ. It is merely a means for achieving the end which is to secure the liberty of the subject illegally detained. In the early days of development of the writ, as pointed out above, the production of the body of the person alleged to be wrongfully detained was essential, because that was the only way in which the



Courts of common law could assert their jurisdiction by removing parties from the control of the rival courts and thereby impairing the power of the rival courts to deal with the causes and persons before them. The common law courts could not effectively order release of the person unlawfully imprisoned by order of rival courts without securing the presence of such persons before them and taking them under custody and control. But the circumstances have changed long since and it is no longer necessary to have the body of the person alleged to be wrongfully detained before the Court in order to be able to inquire into the legality of his detention and set him free, if it is found that he is unlawfully detained. The question is whether in these circumstances it can be said that the production of the body of the person alleged to be unlawfully detained is essential in an application for a writ of habeas corpus. We do not think so. There is no reason in principle why that which was merely a step in the procedure for determining the legality of detention and securing the release of a subject unlawfully restrained should be elevated to the status of a basic or essential feature of the writ. That step was essential to the accomplishment of the purpose of the writ at one time, but it is no longer necessary. The inquiry into the legality of the detention can be made and the person illegally detained can be effectively set free without requiring him to be produced before the Court. Why then should it be necessary that the body of the person



alleged to be wrongfully detained must be produced before the Court before an application for a writ of habeas corpus can be decided by the Court? Would it not mean blind adherence to form at the expense of substance? Why should we hold ourselves in fetters by practice which originated in England about three hundred years ago on account of certain historical circumstances which have ceased to be valid even in that country and which have certainly no relevance in ours? But we may point out that even in England it is no longer regarded as necessary to order production of the body of the person alleged to be wrongfully detained, in an application for a writ of habeas corpus.”

30. Considering the decision of the Constitution Bench, most recently the Apex Court in ***State Vs. H. Nilofer Nisha***, since reported in ***(2020) 14 SCC 161*** has considered the expanding scope of the writ of habeas corpus and has held as under :-

“16. A writ of habeas corpus can only be issued when the detention or confinement of a person is without the authority of law. Though the literal meaning of the Latin phrase habeas corpus is “to produce the body”, over a period of time production of the body is more often than not insisted upon but legally it is to be decided whether the body is under illegal detention or not. Habeas corpus is often used as a remedy in cases of preventive detention because in such cases the validity of the order detaining the



detenu is not subject to challenge in any other court and it is only writ jurisdiction which is available to the aggrieved party. The scope of the petition of habeas corpus has over a period of time been expanded and this writ is commonly used when a spouse claims that his/her spouse has been illegally detained by the parents. This writ is many times used even in cases of custody of children. Even though, the scope may have expanded, there are certain limitations to this writ and the most basic of such limitation is that the Court, before issuing any writ of habeas corpus must come to the conclusion that the detenu is under detention without any authority of law.”

31. Illegal confinement is the pre-condition to issue a writ of *habeas corpus*. Though a writ of right, it is not a writ of course. It is an extra ordinary remedy and cannot be granted on mere asking. It cannot be resorted to in a casual and routine manner. Who is responsible for kidnapping the son of the petitioner and who is wrongfully confining him are matters of investigation and definite opinion in this regard is lacking in the present case.

32. In ***Madhav Das Agrawal & Anr. Vs. State of U.P. 2007 (59) All.Cr.Cases 202***, the Allahabad High Court held that in every case of kidnapping or abduction, the proper remedy is to lodge an FIR and get it investigated and not to issue a writ of



habeas corpus. It has also been held when a writ of *habeas corpus* is to be issued against a private party, prima facie proof that detinue is alive or is in illegal custody of private person is necessary. (See AIR 2000 (NOC) 309 MP Ram Kishan Pal Vs. State of M.P. and another).

33. In a criminal investigation, what action should have been taken by the police that cannot be a matter of *habeas corpus* because there is no application whatsoever that there has been wrongful confinement by the police.

34. In the instant case, the writ of *habeas corpus* cannot be issued because the writ of *habeas corpus* is festinum remedium and the power can only be exercised in clear case.

35. In view of the facts of the instant case, developments during pendency of the instant case and the law as discussed above, we are of the opinion that the writ petition is not maintainable. Accordingly, it is dismissed.

36. Before parting with the case, however, this Court would observe that dismissal of the instant case is not to be viewed by the police authorities as a license to in any way decrease the thrust of the investigation. The same is expected to continue in accordance with law with due sensitivity and sincerity and the



petitioner would be at liberty to avail his remedies before the appropriate forum in accordance with law.

(Ashwani Kumar Singh, J)

(Madhuresh Prasad, J)

Pradeep/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	07.09.2021
Transmission Date	07.09.2021

