

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1045 of 2021

Arising Out of PS. Case No.-188 Year-2020 Thana- DORIGANJ District- Saran

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Sharda Rai son of Late Ramna Rai Resident of Village - West Balua, P.S.
Kans Diar, P.S. - Doriganj, District - Saran at Chapra.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Home Affairs, Old Secretariat, Patna.
2. The Director General of Police, Bihar, Patna.
3. The Deputy Inspector General of Police, Saran Range, at Chapra, Saran.
4. The Superintendent of Police, Saran at Chapra.
5. The officer Incharge, Police Station - Doliganj, Chapra.

... .. Respondents

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Appearance :

For the Petitioner/s : Mr. Ashok Kumar Singh, Adv.
For the Respondent/s : Mr. Pawan Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
and
HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)

Date : 23-09-2021

Heard Mr. Ashok Kumar Singh, learned counsel for the petitioner and Mr. Pawan Kumar, learned counsel for the State.

2. The instant application under Article 226 of the Constitution of India has been filed by the petitioner for issuance of a writ in the nature of *hebeas corpus* directing the respondents to recover his kidnapped eight years old grand-son (*Nati*), namely, Pritam Kumar and produce him before the



Court.

3. The case of the petitioner is that his grand-son Pritam Kumar, son of Manoj Rai, resident of village-Thikha Marcha, P.S. Garkha, District-Saran was residing with him since two months. On 3.11.2020, he had gone to Mahavir Asthan at about 10:00 AM. He did not return home. The petitioner started searching for him, but he could not be traced. Ultimately, a written report was submitted to the police on 06.11.2020, pursuant to which, Doriganj P.S. Case No. 188 of 2020, was registered against unknown under Section 363 of the Indian Penal Code.

4. Learned counsel for the petitioner submitted that the police have not been able to recover the missing grand-son of the petitioner. He contended that the petitioner is having land dispute with his four brothers and they had threatened him earlier. He submitted that the petitioner has represented before the D.I.G. and the A.D.G., Headquarter, regarding his missing grand-son as also ransom call made to him, but no effective steps have been taken so far.

5. On the other hand, learned counsel appearing for the State has raised a preliminary question regarding maintainability of the instant case. He submitted that the case is



still under investigation. The police are investigating the matter with full sensitivity and commitment. It is not known as to who has illegally confined the grand-son of the petitioner. According to him, under such circumstance, a writ of *habeas corpus* cannot be issued.

6. We have heard the parties and perused the materials on record.

7. Admittedly, in the first information report, no suspicion has been raised against anyone. The written intimation given to the police discloses only that the grand-son of the petitioner had gone to Mahavir Asthan and from there he became traceless. However, during investigation, the petitioner seems to have raised suspicion against his brothers with whom he has land dispute. The matter is still under investigation.

8. 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. It cannot be said with certainty in whose detention or captivity the victim is being kept. However, this much is sure that the victim is not in illegal confinement of the police or any other known person.

9. The meaning of the term *habeas corpus* is “you must have the body”. *Habeas corpus* ad subjiciendum means



“that you have the body to submit or answer.”

10. 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.”

11. Thus, 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 grandson 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.

12. 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).

13. 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.

14. In the instant case, the writ of habeas corpus cannot be issued because the writ of *habeas corpus* can only be exercised in clear case.

15. In view of the facts of the instant case, we are of the opinion that the writ petition is not maintainable. Accordingly, it is dismissed.

(Ashwani Kumar Singh, J)

(Arvind Srivastava, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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