

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.1142 of 2021

Arising Out of PS. Case No.-405 Year-2021 Thana- SAHEBGANJ District- Muzaffarpur

Saroj Kumar @ Saroj Thakur S/o Ramuna Thakur Resident of Village -
Parsauni Raisi, P.S. - Sahebganj, District - Muzaffarpur.

... .. Petitioner

Versus

1. The State of Bihar through the Chief Secretary Government of Bihar, Patna.
2. Senior Superintendent of Police, Muzaffarpur.
3. Investigating officer of Sahebganj P.S. Case No. -405/2021 (Sri Sunil Kumar Srivastav Sub- Inspector, Sahebganj Police Station , Muzaffarpur.
4. Officer - In- Charge, Sahebganj Police Station, Muzaffarpur.
5. Shambhu Thakur S/o Sukrit Thakur
6. Bindu Devi W/o Shambhu Thakur
7. Shashi Thakur S/O Shambhu Thakur
8. Sandip Thakur S/o Shambhu Thakur

Respondents No. 5,6 ,7 and 8 are resident of Village Parsauni Raisi P.S.-
Sahebganj, District- Muzaffarpur

9. Rajkishore Singh S/o Phudena Singh Resident of Village-Tarawan P.S.-
Sahebganj, District-Muzaffarpur..... Respondents 1st Party
10. Basant Kumar S/o Sunil Thakur Resident of Village- Parsauni Raisi P.S.
Sahebganj, District-MuzaffarpurRespondents 2nd Party

... .. Respondents

Appearance :

For the Petitioner : Ms.Anjana, Adv.

For the State : Mr. Bishwa Bibhuti Kumar Singh, Adv.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

and

HONOURABLE MR. JUSTICE NAWNEET KUMAR PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)

Date : 08-10-2021



This application under Article 226 of the Constitution of India has been filed by the petitioner for issuance of a writ in the nature of *Habeas Corpus* commanding the respondents authorities to recover the daughter-in-law and infant grandson of the petitioner from the illegal custody of respondent nos. 5 to 9.

2. Learned counsel for the petitioner submitted that respondent no. 10 is the husband of the victim lady who is adopted son of the petitioner and his biological father is Sunil Thakur, full brother of the petitioner. He contended that the wife of respondent No. 10 went together with his agnates, respondent nos. 5 to 9 along with her 15 months old child on 6.8.2021. At that time he was not at his home . When he came back, he came to know that the respondent nos. 5 to 9 have conspired together and took away his daughter-in-law and grandson. He stated that the F.I.R. was registered with the police in this regard vide Sahebganj P.S. Case No. 405 of 2021 on 01.09.2021 under Section 365 of the Indian Penal Code. He contended that the police are not conducting the investigation in proper manner and the delay caused in investigation of the case has compelled him to seek remedy before this Court under Article 226 of the Constitution of India.

3. Mr. Bishwa Bibhuti Kumar Singh, learned counsel



for the State submitted that the writ petition is totally misconceived. He contended that for an alleged occurrence which took place on 6.8.2021 an F.I.R. was registered on 01.09.2021. The delay of 25 days caused in submitting the written report has not been properly explained. The petitioner has stated in his written report that he informed the police that the delay in reporting the matter to the police was caused as he himself was trying to know the whereabouts of his missing daughter-in-law and grandson. He contended that the tenor of the F.I.R. itself would show that the alleged victim had voluntarily accompanied the accused persons who all are petitioner's agnates. He contended that even though the police have not submitted their report under Section 173(2) of the Code of Criminal Procedure, the petitioner has rushed to this Court claiming that investigation is not being done in a proper manner.

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

5. Apart from the delay caused in registration of the F.I.R., there is yet another reason for us not to entertain the instant application in extraordinary writ jurisdiction. The contents of the F.I.R. itself would suggest that the daughter-in-



law of the petitioner voluntarily went together with respondent nos. 5 to 9 on 06.08.2021. The F.I.R. would also make it evident that the informant himself was not sure about the involvement of the accused persons in abduction of his daughter-in-law. Moreover, the husband of the alleged victim, whom he claims to be his adopted son has been impleaded as a respondent in this case. Off late, when the F.I.R. has been registered, he has named respondent nos. 5 to 9 as the persons involved in the case. The truthfulness or otherwise of the allegation made in the F.I.R. is a matter which can be looked into by the police, who are statutorily required to investigate the case and come to a logical conclusion and submit a report before the Court under Section 173(2) of the Code of Criminal Procedure.

6. It is well settled principle of law that at the stage of investigation the court has no role to play. At this stage, the court cannot come to a finding that the respondent nos. 5 to 9 are the persons involved in the case. The outcome of the investigation would be known only after the investigation is complete. Mere oral assertion by the petitioner, without there being any cogent proof that investigation is not being conducted properly, would not give right to the petitioner to approach the Court by filing a writ of *habeas corpus*.



7. 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.”

8. 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 investigating 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.*

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.

xxx

xxx

xxx

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)

9. 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.

10. *Habeas corpus ad subjiciendum* means “that you



have the body to submit or answer.”

11. 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.”

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

13. 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.”

14. 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.

15. 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.

16. In view of the facts disclosed by the petitioner in the instant case and the law as discussed above, we are not



inclined to entertain the instant application under the extraordinary writ jurisdiction. It is dismissed, accordingly.

(Ashwani Kumar Singh, J)

(Nawneet Kumar Pandey, J)

Sonali/Pradeep

AFR/NAFR	AFR
CAV DATE	N.A.
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