

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1087 of 2018

Arising Out of PS. Case No.-335 Year-2015 Thana- PATRAKARNAGAR District- Patna

Om Prakash Singh son of Late Kanchhi Lal, Resident of F- 266, Sector- 12, Pratap Vihar, P.S.- Vijay Nagar, Ghaziabad, District- Ghaziabad, Uttar Pradesh and also resident of A- 615/616, Sudama Puri, P.S.- Vijya Nagar, Ghaziabad, District- Ghaziabad, Uttar Pradesh.

... .. Petitioner

Versus

1. The State Of Bihar through the Director General Of Police, Bihar, Patna
2. The Senior Superintendent of Police, Patna, District- Patna, Bihar.
3. The Superintendent of Police, Patna, District- Patna.
4. The Deputy Superintendent of Police, Patna Sadar, District- Patna, Bihar.
5. The Station House Officer, Patrakar Nagar, Police Station, District- Patna, Bihar.
6. Manoj Kumar @ Manoj Mahto, son of Late Baldev Prasad, Resident of Village- Medhkuri, P.S.- Meskour, District- Nawada.
7. Awdhesh Mukhiya @ Adheshwar Prasad, son of Rajendra Prasad, Resident of Village- Panchohiya, P.S.- Kadirganj, District- Nawada.
8. Devendra @ Munna, son of Ravindra Prasad, Resident of Village- Thalpos, P.S.- Pakriwarawa, District- Nawada.
9. Mani Caudhary @ Manoj Chaudhary @ Lambu, son of Rambriksh Prasad, Resident of Village- Gopalbagh, P.S.- Sarmera, District- Nalanda.
10. Awdhesh Prasad @ Pappu, son of Birendra Prasad, Resident of Village- Thalpos, P.S.- Pakriwarawa, District- Nawada.

... .. Respondents

Appearance :

For the Petitioner : Mr. Niraj Kumar, 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

The instant application under Article 226 of the
Constitution of India has been filed by the petitioner for issuance
of a writ of *habeas corpus* directing the respondent nos. 1 to 5 to



produce the petitioner's son Kaushal Kishore Singh and to set him at liberty forthwith from the illegal detention of the private respondents, who have been made accused during investigation of Patrakar Nagar P.S. Case No. 335 of 2015 registered on 06.11.2015 under Section 364 of the Indian Penal Code in respect of an occurrence of offence which took place on 29.10.2015.

2. The aforesaid Patrakar Nagar P.S. Case No. 335 of 2015 was registered on the basis of written report submitted by the petitioner Om Prakash Singh against unknown accused persons for kidnapping of his son Kaushal Kishore Singh, aged about 23 years, for ransom.

3. While the case was still under investigation, the instant writ petition was filed before this Court on 09.04.2018. Since then, several orders have been passed by this Court directing the police to recover the missing son of the petitioner.

4. By now, the official respondents have filed seven affidavits apprising the Court regarding various steps taken by the police to recover the missing/kidnapped son of the petitioner including two affidavits by the respondent Senior Superintendent of Police, Patna and the Assistant Superintendent of Police, Sadar, Patna.



5. It would be manifest from perusal of those affidavits that during investigation the police apprehended respondent nos. 6 to 9 and submitted charge-sheet against them in the court of jurisdictional Magistrate. So far as the respondent no.10 is concerned, he is still absconding. The processes have been taken against the absconding accused and all coercive measures have been taken to ensure his arrest, but he has not been arrested till date.

6. From the affidavits filed on behalf of the official respondents, it would further appear that raids have been conducted during investigation at several locations to trace the victim and to apprehend the absconding accused, but no fruitful result has surfaced.

7. Mr. Neeraj Kumar, learned counsel appearing for the petitioner submitted that the local police of Patliputra Police Station did not show any interest initially into the investigation of the case. He contended that later on, due to orders passed by the Court, the police have taken certain steps to nab the accused persons and recover the victim, but neither the victim could be recovered nor respondent no.10 has been arrested. According to him, the life of the petitioner's son is in danger. He further contended that on the basis of materials collected during



investigation, even the investigating agency is of the opinion that the victim may be traced in case the respondent no.10 is arrested.

8. On the other hand, Mr. Prabhu Narain Sharma, learned counsel appearing for the State submitted that a sensitive and committed investigation to recover the son of the petitioner is being conducted. He further contended that during investigation the respondent nos.6 to 9 were apprehended and the police have already submitted charge-sheet against them before the court. He contended that the then Superintendent of Police, Patna had appeared on 28.11.2019 before the Court and placed his report in sealed cover. He urged that as the police got some clue regarding the accused Awadhesh Prasad @ Pappu, a team of police force was sent to Delhi in order to apprehend him, but he could not be apprehended. He contended that inspite of best efforts made by the police, the son of the petitioner could not be recovered, and efforts are on to find out his whereabouts. He further contended that since the investigation is in progress, it would not be proper to issue a writ in the nature of *habeas corpus* because it would be impossible to comply with the order.

9. In reply, Mr. Neeraj Kumar, learned counsel for the petitioner submitted that this Court has entertained the application and has passed several orders in past, and at this stage, it would



not be proper to hold that the writ in the nature of *habeas corpus* is not maintainable. In respect of maintainability of the writ petition, he has placed reliance on the judgment of the Supreme Court in ***Mohd. Ikram Hussain Vs. State of U.P.***, since reported in ***AIR 1964 SC 1625***.

10. We have heard learned counsel for the parties and carefully perused the record.

11. It is true that this Court has entertained the writ petition and has passed several orders on the previous dates. The concern of the Court was to ensure that the investigation of the case is done in proper manner. The police have apprised the Court regarding the steps taken by them during investigation and have also filed their report in sealed cover. Due to intervention of the Court, the matter is being supervised by the Additional Superintendent of Police and Senior Superintendent of Police themselves.

12. 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.

13. 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.”



14. 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)

15. 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 son 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 investigation so far as some of the accused persons have been completed and the charge-sheet has been filed in the court. There is nothing on record to infer that the police investigation is being influenced by external influences.

16. Hence, we are of the view that no useful purpose would be served by keeping the writ petition pending before this Court for an indefinite period.

17. So far as the prayer of the petitioner to issue a writ of *habeas corpus* with a direction to the official respondents to produce the corpus Kaushal Kishore Singh in the court is concerned, the facts enumerated above clearly demonstrate that it is a case of kidnapping for ransom. The petitioner, who is the informant of the case, has not named anyone in the FIR. During investigation, the culpability of certain persons transpired. Out of them, four accused were apprehended and remanded to judicial custody. The police are investigating the case since more than five years and in the process, they have conducted raids at several locations. Since the accused persons, who have been arrested and against whom investigation has been completed, would be facing



trial before the court of law and their guilt or innocence would be established only after a full-fledged trial, at this stage, it will not be proper for this Court to make any observation on the merits of the criminal case.

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

19. 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.”



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

21. 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.”

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

23. 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.”

24. 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.”

25. 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.

26. 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 detenu 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).



27. Learned counsel for the petitioner has placed reliance on the decision of the Supreme Court in ***Md. Ikram Hussain*** (Supra) in order to contend that the writ of *habeas corpus* can be issued against a private person when somebody is illegally detained or confined. There is no quarrel with the proposition of law propounded by the Supreme Court. However, the question of issuing writ of *habeas corpus* against a private person would arise only when the court would be satisfied that he is the person, who has illegally detained or confined the detenu.

28. 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.

29. In the present case, the police have arrested so many persons, but the victim could not be recovered and they are still struggling to find out the person detaining the victim. Hence, the judgment of the Supreme Court in ***Mohd. Ikram Hussain*** (Supra) has no application in this matter. 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.



30. 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. It is dismissed, accordingly.

31. 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	NA
Uploading Date	07.09.2021
Transmission Date	07.09.2021

