

24.08.2021
Court No.30
rpan /08

W.P.A. (H) 10 of 2021

In re: An application under Article 226 of the
Constitution of India;

And

In re: **Md. Lutful Molla**

- Versus -

The State of West Bengal & Ors.

Mr. Atis Kumar Biswas (through v.c.),
Mr. Amit Singh

... for the Petitioner.

Mr. Saibal Bapuli,
Md. Sabir Ahmed

... for the State respondents.

The present *habeas corpus* petition has been preferred by the petitioner, namely, Md. Lutful Molla (in short, Lutful) alleging *inter alia* that his brother, namely, Mirajul Molla (in short, Mirajul) went missing since 9th April, 2017. A complaint was accordingly lodged by his father, namely, Imajuddin Molla (in short, Imajuddin) on 7th May, 2019 stating *inter alia* that the private respondents had earlier threatened Mirajul of dire consequences since he was having a relationship with the sister of the private respondent nos.9 and 10, namely, Sahinur Bibi and that the said private respondents had conspired and kidnapped Mirajul. The said complaint was registered as FIR and Kaliaganj Police Station Case no.144 of 2017, dated 7th May, 2017 was initiated under Sections 363/365/34 of the Indian Penal Code. However, there was no endeavour on the part of the police authorities to recover Mirazul and as

such Imajuddin was constrained to approach this Court earlier by filing a *habeas corpus* petition, being W. P. No. 669 (W) of 2020 but the same was dismissed by an order dated 5th February, 2020. Objecting to the final report filed in connection with Kaliaganj Police Station Case no.144 of 2017, a *naraji* petition was filed by Imajuddin.

Mr. Biswas, learned advocate appearing for the petitioner, who is the son of Imajuddin, submits that the earlier writ petition was preferred challenging *inter alia* the process of investigation. Since the same has been dismissed, the police authorities cannot take a stand that they have no obligation to recover the missing person. The police authorities have miserably failed to discharge their statutory obligation and such inaction warrants interference of this Court and issuance of necessary direction upon the police authorities to immediately recover the petitioner's brother, who is missing since the month of April, 2017.

Mr. Bapuli, learned advocate appearing for the State denies the contention of the petitioner and submits that police authorities have made a sincere endeavour to recover the petitioner's brother. The present *habeas corpus* petition preferred by the petitioner is not maintainable since the earlier *habeas corpus* petition preferred by his father pertaining to the same dispute has already been dismissed by a

Coordinate Bench of this Court. Let the report of the respondent no. 7, as filed, be kept on record.

It appears from the said report that in the concerned case a final report was filed and thereafter on 13th January, 2021, the learned Additional Chief Judicial Magistrate, Sadar Court, Krishnagar, Nadia passed an order for further investigation and pursuant to such order, investigation is still in progress.

Records reveal that aggrieved by the inaction on the part of the police authorities to recover his son, who went missing, the petitioner's father approached this Court earlier. The said *habeas corpus* petition, being W. P. No.669 (W) of 2020, was dismissed by an order dated 5th February, 2020. In the said order it was *inter alia* observed:

'We are guided by the principles laid down in the judgement reported in (2008) 2 SCC 409 (Sakiri Vasu Vs State of Uttar Pradesh & Others) and would leave the petitioner to seek appropriate remedies before the jurisdictional Magistrate.'

Reiterating similar grievance, the son of the writ petitioner in W. P. No.669 (W) of 2020 cannot again approach this Court and seek the relief, as turned down by a Coordinate Bench of this Court in the earlier writ petition.

A writ in the nature of *Habeas Corpus* is a prerogative writ by virtue of which the causes and validity of detention of a person are investigated by a

summary procedure. The allegation that the petitioner's brother had been kidnapped is being investigated by the police authorities. This Court in exercise of its jurisdiction, however, cannot usurp ordinary administration of criminal justice.

We are afraid that the exercise of the power of writ in the nature of *habeas corpus* would perhaps not be feasible in the fact situation of the instant case.

In view thereof, no interference is called for in the present writ petition and the *habeas corpus* petition, being WPA (H) 10 of 2021 is dismissed.

Nothing herein shall, however, prevent the petitioner from initiating proceedings before any other competent court or forum seeking relief according to law.

There shall, however, be no order as to costs.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

(Arindam Mukherjee, J.) (Tapabrata Chakraborty, J.)