

08.09.2021

Court No.30
rpan /03

W.P.A. (H) 12 of 2021

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

And

In re: **Smt. Malini Ghosh & Anr.**
– **Versus –**
The State of West Bengal & Ors.

Mr. Debasis Kar,
Mr. Arka Chakraborty
... for the petitioners.

Mr. Rana Mukherjee,
Md. Sabir Ahmed
... for the State respondents.

The present *habeas corpus* petition has been
preferred primarily praying for the following relief:

*‘a) A writ of and/or in the nature of Habeas
Corpus directing and commanding the
police/state respondents and each of them to
take suitable and immediate action to search
their mother in accordance with law and principle
of natural justice.’*

Mr. Kar, learned advocate appearing for the
petitioners submits that the petitioners’ mother went
missing on and from 16th July, 2020. Such fact was
immediately intimated to the respondent no.2.
However, no steps were taken by the police
authorities. Aggrieved thereby, a further
representation was submitted to the respondent no.2

on 24th July, 2020 but in vain. Hence, the petitioners were constrained to approach this Court.

According to Mr. Kar there had been no sincere endeavour on the part of the police authorities to recover the petitioners' mother, who went missing on and from 16th July, 2020. The police authorities have, thus, failed to discharge their statutory obligation and as such, appropriate direction needs to be issued in the present petition.

Mr. Mukherjee, learned advocate appearing for the State respondents opposes the petitioners' prayer and denies the allegation that there had been no endeavour on the part of the police authorities to recover the mother of the petitioners.

According to him, it is not a case that the petitioners' mother had been illegally detained by any person.

Records reveal that the present petition was initially heard on 16th July, 2021 when the respondent no.2 was directed to file a report. Such report was duly filed. Thereafter, the matter again appeared before a coordinate bench of this Court on 11th August, 2021 and the Court observed *inter alia* that it would be appropriate to request the police authorities to record the statements of the petitioners as expeditiously as possible.

It appears from the report, as filed today, that pursuant to the direction of this Court, the statements of the petitioners have been recorded under Section 161 of the Code and as per their statements search operations were conducted *‘in the area of Natagarh, under the jurisdiction of Ghola Police station, Gakul Nagar, Panihati, Khardah, Angels Nagar, Panihati, Khardah, Seth Colony, Sodepur, P.S- Khardah, Priya Nagar, Sodepur, P.S- Khardah, Bandhab Pathagar, Panihati, P.S- Khardah, Tentultala Bus Stand, Agarpara, Khardah, Sadeshi More, Sodepur as well as old age homes situated at Bosher Ghat, Khardah, Baromanir Ghat, Khardah, River Side Barrackpore, but the missing subject could not be found’*. Let the said report be taken on record.

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. In the facts and circumstances of the case, it cannot be urged that there had been any illegal detention and this extraordinary jurisdiction cannot be exercised for recovery of a missing person, more so, when it appears that there had been an endeavour on the part of the police authorities to recovery the petitioners’ mother.

For these reasons, we are of the opinion that no interference is called for in the present writ petition and the relief, as prayed for, is refused.

Nothing in this order shall prevent the petitioners from initiating proceedings before any other forum in accordance with law.

With the aforesaid observations, the present writ petition, being W.P.A. (H) 12 of 2021, is disposed of.

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.

(Rabindranath Samanta, J.) (Tapabrata Chakraborty, J.)