

W.P.A.(H) No.27 of 2021

24.08.2021
SI-09
Ct.30
(S.R.)
via video
conference

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

And

**In re: Sri Niranjan Das
v.
State of West Bengal & Ors.**

Mr. Tapas Kumar Dey
Mr. Ashis Kumar Dutta ... for the petitioner.

Mr. Rana Mukherjee
Mr. Sabir Ahmed ... for the State.

Mr. Debabrata Ray
Mr. Abhijit Kumar Adhya
... for the respondent no.10.

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

‘a) A Writ in the nature of Habeas Corpus be
issued commanding the Respondents to take appropriate
steps to find out Mousumi Das and produce in Court and be
set her free and liberty;

b) A Writ in the nature of Mandamus do issue
directing the Respondents and/or his agents and
subordinates to investigate into the matter and submit a
report before this Hon’ble Court;

c) A Writ in the nature of Mandamus do issue
directing the Central Bureau of Investigation (CBI) or any
other appropriate impartial and independent investigating
agency to enquire into the matter and initiate appropriate
criminal proceedings against the private Respondents or
other persons who are involved in the instant criminal
proceeding and produce the daughter of your petitioner
before this Hon’ble Court;’

Mr. Dey, learned advocate appearing for the petitioner submits that the petitioner's daughter, aged about 21 (twenty-one) years, went missing from her residential house on and from 14th July, 2019. A general diary was lodged to that effect being G.D. Entry No.841 of 2019 dated 17th July, 2019. However, no steps were taken by the police authorities. Subsequent thereto, the petitioner came to learn that the private respondents have conspired and kidnapped her daughter. Accordingly, he lodged a complaint to that effect and ultimately on 6th August, 2019 Jagacha Police Station Case No.164 of 2019 was registered under Sections 365/34 of the Indian Penal Code against the private respondent nos. 10 and 11 including one Suklaji. In spite of registration of a formal case, proper investigation was not conducted by the police authorities and the petitioner's daughter could not be recovered. Aggrieved thereby, the petitioner has approached this Court.

Mr. Mukherjee, learned advocate appearing for the State denies the contention of the petitioner that appropriate steps have not been taken by the police authorities in the Jagacha Police Station Case No.164 of 2019. A police team went to Allahabad on 14th September, 2019 and made a sincere endeavour to recover the missing girl. In course of such investigation, the police authorities came to learn that the victim girl had already married one Shib Prakash Mishra. In fact, on

30th September, 2019, the victim girl attended the police station with her in-laws and produced a marriage certificate including her age proof document before the investigating officer. Subsequent thereto, the girl was produced before the learned Chief Judicial Magistrate, Howrah for recording her statement under Section 164 of the Code and on the same date her statement was recorded.

Enclosing all the relevant documents a report has been filed by the officer-in-charge of Jagacha Police Station. Let the said report, as placed, be kept on record. A copy of the same has been handed over to Mr. Dey.

Mr. Mukherjee further informs this Court that in the Jagacha Police Station Case No.164 of 2019 a final report has been filed with a prayer for proceeding against the *de facto* complainant, namely, Niranjana Das under Section 211 of the Code.

Mr. Ray, learned advocate appearing for the private respondent no.10 denies the allegations levelled against the said respondent and submits that the *habeas corpus* petition is not maintainable.

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 daughter had been kidnapped was investigated by the police authorities and upon completion of such investigation a

final report has been filed in Jagacha Police Station Case No.164 of 2019. This Court in exercise of its jurisdiction cannot usurp ordinary administration of criminal justice.

Records reveal that the victim girl appeared before the police authorities and her statement was recorded under Section 164 of the Code before the learned Judicial Magistrate, 1st Class, 4th Court, Howrah. As per such statement, she had willingly left her house and married one Shib Prakash Mishra.

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

In view thereof, no interference is called for in the present *habeas corpus* petition.

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

With such observations, the present petition, being W.P.A (H) 27 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.

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