

10.08.2022
Item No.05
Court No.32
Avijit Mitra

WPA (H) 24 of 2022

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

And

Kanchan Sharma

-vs-

Union of India & ors.

Mr. Sabyasachi Chatterjee,

Mr. Sandipan Das

....for the petitioner

Ms. Ipsita Banerjee

....for the State

The present writ petition has been preferred
primarily praying for the following reliefs :

- (a) *A writ in nature of Habeas Corpus commanding the concerned authority to produce the body of the petitioner's husband in the Court of Law;*
- (b) *A writ in nature of mandamus commanding the Central Bureau of Investigation to take over the Sarsuna P.S. Case No.03 of 2022 for an impartial investigation under supervision of this Hon'ble Court and submit report relating to the progress of the case periodically till the disposal of this application.*

Mr. Chatterjee, learned advocate appearing for the petitioner submits that on 27th September, 2021 at about 2.00 a.m. the husband of the petitioner, namely, Raj Kumar Sharma went to a nearby pond for taking a bath and he was forcibly taken away by some persons. Such fact was immediately brought to the notice of respondent no.9 upon lodging a General Diary being GDE No.1722 of 2021. However, the police authorities

did not take any step towards recovery of her husband. A further representation was submitted by the petitioner to the Commissioner of Police on 28th October, 2021 stating *inter alia* that two police personnel of Sarsuna Police Station were present at the time of occurrence. The name of one police personnel was 'Naba Babu' and that the said persons were involved in the alleged offence. The complaint was, however, not registered as FIR and as such the petitioner was constrained to file an application under Section 156(3) of the Code and on the basis of the order passed in the same, Sarsuna Police Station Case No.03 of 2022 dated 8th January, 2022 was registered under Sections 364/34 of the Indian Penal Code. As no proper steps were taken even thereafter by the police authorities, the petitioner was constrained to approach this Court.

Mr. Chatterjee submits that a serious offence has been committed and the accused persons have not yet been arrested. As police personnel are involved in the alleged offence, proper investigation has not been conducted by the respondent no.9 and such lackadaisical attitude on the part of the police authorities would be explicit from the records. In view thereof, investigation needs to be handed over to the CBI. In support of such contention reliance has been placed upon a judgment delivered in the case of *State of*

Punjab Vs. Central Bureau of Investigation reported in (2011) 9 SCC 182.

Ms. Banerjee, learned advocate appearing for the State denies and disputes the contention of Mr. Chatterjee and submits that there had been a sincere endeavour on the part of the police authorities to recover the missing person. The allegation that some police personnel are involved in the alleged offence does not feature in GDE No.1722 dated 27th September, 2021. Such allegation was subsequently incorporated in representations addressed to the Commissioner of Police and others.

She further submits that during investigation of the case, raids were conducted at Begusarai, Bihar, being the native place of the missing person and also at Delhi and Noida. The statement of the brother of the missing person as well as the statement of '*Naba Babu*' were also recorded and investigation is still continuing in Sarsuna Police Station Case No.03 of 2022 dated 8th January, 2022. In support of such contention reliance has been placed upon two reports filed by the Investigating Officer of the case. Let the said reports, as produced, be kept on record.

Drawing our attention to the contents of paragraph 11 of the report dated 25th July, 2022, Mr. Chatterjee submits that one '*Naba Babu*' was present at

the time of occurrence. Despite such fact, the said person has not been arrested.

Records reveal that the missing diary was lodged on 27th September, 2021. In a subsequent complaint, she alleged *inter alia* that one ‘Naba Babu’ and one ‘Sagar Tamang’ are involved in the alleged offence. From the orders passed by the learned Additional Chief Judicial Magistrate, Alipore, South 24 Parganas, it appears that AC(I)(A), South West Division (Behala) had been asked to keep strict vigil over the matter and to monitor the developments closely. It further appears that the video footages of two working CCTV cameras had been seized.

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. It appears that investigation in Sarsuna Police Station Case No.03 of 2022 dated 8th January, 2022 is still continuing. AC(I)(A), South West Division (Behala) had been asked to keep strict vigil over the matter. The petitioner cannot claim that such investigation should be conducted by any particular agency of his choice. In exercise of extraordinary jurisdiction in a *habeas corpus* petition, the ordinary administration of criminal justice cannot be usurped. The judgment upon which reliance has been placed by

Mr. Chatterjee, in our opinion, is also distinguishable on facts.

In the said conspectus, no further interference is called for in the present *habeas corpus* petition and the same is, accordingly, disposed of.

Needless to observe, the police authorities shall conduct investigation in Sarsuna Police Station Case No.03 of 2022 dated 8th January, 2022 in a fair and impartial manner and conclude such investigation as expeditiously as possible.

Nothing herein shall, however, prevent the petitioner from initiating proceedings before any other Court or forum seeking relief, in accordance with 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.

(Raja Basu Chowdhury, J.) (Tapabrata Chakraborty, J.)