

WPA (H) 56 of 2021

Tarakeswar Biswas
Vs.
State of West Bengal & Ors.

Mr. Kunal Ganguly

.... For the petitioner

Mr. Sabir Ahmed

Mr. Simanta Kabir

.... For the State

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

‘(a) To issue a writ in the nature of Habeas Corpus directing the respondents Authorities to recover and produce the Son of the petitioner namely Trishit Biswas respectively before this Hon’ble Court forthwith.’

Shorn of unnecessary details, the facts are that the petitioner’s son, namely, Trishit Biswas (in short, Trishit) went missing on and from 6th November, 2019. A missing diary was lodged by the petitioner on 7th November, 2019. On 16th July, 2020, a further complaint was lodged which was registered as F.I.R. being New Alipore Police Station Case No. 139/2020 dated 16th July, 2020 under Sections 265/120B of the Indian Penal Code (in short, IPC). Upon completion of investigation, FRT No. 16 of 2021 dated 18th March, 2021 was filed. Alleging inaction on the part of the police authorities and as Trishit was not recovered, the petitioner was constrained to prefer the present writ petition on 28th September, 2021.

Records reveal that by an order dated 1st October, 2021, a co-ordinate Bench of this Court directed the D.I.G. (Special), C.I.D., West Bengal to investigate the matter and to file a progress report. A further order was passed on 22nd November, 2021 directing the investigating agency to submit a comprehensive report. Pursuant to such directions, a report in the form of an affidavit, affirmed on 3rd February, 2022, was filed by the D.I.G. (Special), C.I.D., West Bengal and a report in the form of an affidavit, affirmed on 17th March, 2022, was filed by the Inspector of Police under C.I.D., West Bengal. In the midst thereof, the New Alipore Police Station received an envelope containing a postal stamp of Bangladesh through registered post from one Trishit Biswas. In the said letter it was *inter alia* stated by Trishit that he had voluntarily left his parental house and is in Bangladesh. In the said envelope a mobile number was incorporated. The investigating officer made several attempts to contact the person operating the said mobile but in vain as the said mobile was switched off. The investigating officer also forwarded the mobile number and other details through the appropriate authority to NCB, Dhaka. A report was filed by NCB, Dhaka disclosing the name of the subscriber of the said mobile number. When such facts were placed before this Court, an order was passed on 12th February, 2022 directing the petitioner to file a supplementary affidavit incorporating contemporaneous documents bearing the signature of

Trishit so that the signatures may be examined and compared by the competent authority. Pursuant to such direction, a supplementary affidavit was filed and the original documents were handed over. The signature of Trishit in the said documents was compared with his signature as appearing in the letter sent to New Alipore Police Station and a report was filed by the Examiner of Questioned Document, QDEB, CID, West Bengal observing that *'the person who executed the standard writings marked B 1 to B 22, C 1 to C 8 did not execute the disputed writings marked A-2'*.

Mr. Ganguly, learned advocate appearing for the petitioner submits that the petitioner's complaint was registered as F.I.R. about eight months after the initial complaint was lodged by the petitioner on 7th November, 2019. From such sequence, it is explicit that proper investigation had not been conducted by the police authorities.

He submits that in connection with the said case, one Sanjay Sarkar @ Raju Seikh @ Sanju (in short, Sanju) was initially arrested and interrogated but surprisingly thereafter the investigation was abruptly concluded by filing FRT No. 16/2021 dated 18th March, 2021 discharging the accused, namely, Sanju. The authorities were initially satisfied that Trishit had been wrongfully confined and as such, the case was registered under Section 365 of IPC. It thus cannot be ruled out that Trishit is under illegal detention in Bangladesh.

Per contra, Mr. Ahmed, learned advocate appearing for the State submits that Trishit is an adult person and the fact that he had voluntarily left his residence and is in Bangladesh, cannot be ruled out. The police authorities had discharged their statutory obligations and had made a sincere endeavour to recover Trishit. The investigating officer subsequently submitted a prayer for further investigation before the learned Chief Judicial Magistrate, Alipore on 25th October, 2021. Such prayer was allowed and investigation is still continuing. In view thereof, no further interference is called for in the present writ petition.

We have heard the learned advocates appearing for the respective parties and considered all the materials 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. The first complaint was lodged by the petitioner on 7th September, 2019, which was registered as a General Diary. In the same, it was, *inter alia*, stated that Trishit was suffering from depression. It is only after the petitioner received a phone call from a mobile number on 4th July, 2020, a formal complaint was lodged on 16th July, 2020 disclosing the number of the said mobile phone. Immediately thereafter, the complaint was registered as F.I.R. and investigation was started. From

the materials on record it is difficult to infer that it is a clear case of illegal detention. This Court cannot convert itself into a monitoring agency and supervise the investigation.

We are afraid that exercise of 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 further interference is called for and the present *habeas corpus* petition being WPA (H) 56 of 2021 is disposed of.

As further investigation is still in progress, the police authorities would conduct the same in a fair and impartial manner without being influenced by the observations made in the present order.

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.)