

31.08.2022

Court No.32
rpan/09

WPA (H) 47 of 2022
Tapati Mukherjee
- Versus -
The State of West Bengal & Others

Ms. Arundhati Banerjee,
Mr. Kaustav Banerjee
... for the Petitioner.
Mr. Sabir Ahamed,
Mr. Simanta Kabir
... for the State.

Affidavit-of-service filed by the petitioner be kept on record.

Heard Ms. Banerjee, learned advocate appearing for the petitioner and Mr. Kabir, learned advocate appearing for the State.

Though the present writ petition has been preferred praying for a writ of *habeas corpus* to produce the petitioner's husband, however, it has *inter alia* been averred in paragraph 4 of the writ petition as follows:

‘4. However on or about the year of 2010, the respondent no.2 herein verbally intimated to your petitioner that the said Kasba Police Station G.D.E. No.736 dated 13.10.2003 lodged by your petitioner was duly investigated and the details of the said Sudip Mukherjee matches with a dead corpus recovered within the jurisdiction of Lake Police Station on 10.10.2003 which was duly registered as Lake Police Station G.D.E. No.775 dated 10.10.2003 finally culminating into Jadavpur Police Station Unnatural Death Case No.444 dated 10.10.2003.’

There is thus an apparent contradiction amongst the averments made in the writ petition and the relief as claimed.

It appears that about 19 years after the alleged incident on 9th October, 2003, a representation was submitted by the petitioner through her learned advocate on 27th June, 2022 with a prayer to communicate to the petitioner the whereabouts of her husband. There is absolutely no explanation in the writ petition as to why no steps were taken by the petitioner since 9th October, 2003 till 27th June, 2022.

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 present writ petition has been preferred annexing a representation submitted by the petitioner about 19 years after the alleged incident. The extraordinary jurisdiction of this Court under Article 226 of the Constitution of India cannot be used to usurp the ordinary jurisdiction of criminal justice.

In view thereof, no interference is called for in the present *habeas corpus* petition, being WPA (H) 47 of 2022 and the same is, accordingly, disposed of.

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

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)