

**IN THE HIGH COURT OF ORISSA AT CUTTACK**  
**WPCRL No.2 of 2020**

***Banita Bariha***

.....

***Petitioner***

Mr. G.K. Routray, Adv.

-Versus-

***State of Odisha & Others***

.....

***Opp. Parties***

Ms. S. Pattnaik, AGA.

**CORAM:**

**JUSTICE S. TALAPATRA**

**JUSTICE SAVITRI RATHO**

**ORDER**

**01.12.2022**

**Order No.**

14.           1.       This matter is taken up through Hybrid Arrangement (Virtual/Physical Mode).
2.       Heard Mr. G.K. Routray, learned counsel appearing for the petitioner and also Ms. S. Pattnaik, learned Addl. Government Advocate appearing for the State.
3.       The grievance enumerated in this writ petition, in brief, is that the petitioner's husband went to work in a brick kiln in the State of Andhra Pradesh at the instance of the Opposite Parties No.5 to 7.
4.       The other labourers who went to Andhra Pradesh to work in the brick kiln had returned home, the petitioner enquired from them about the whereabouts of her husband. According to them, the petitioner's husband had gone along with the other labourers. A long time has elapsed in the meanwhile, but the petitioner's husband did not return.
5.       After 5 years of the occurrence, the petitioner filed one complaint which was latter on registered as Khaprakhhol Police Station Case No.0065 of 2019 under Section 302/201 and 34 IPC implicating

3 persons viz. Opposite Parties No.5,6 & 7. During investigation, two of them were arrested but, latter on, they were released on bail.

6. By means of this writ petition, the petitioner has urged this court for directing the Opposite Parties No.3 & 4 in particular to trace out the husband of the petitioner namely, Satyanarayan Bariha. That apart, the petitioner has urged to direct the Opposite Parties No.1 and 2 for handing over the investigation to an independent agency, but no specific agency has been named. For quite some time, we had monitored this case and passed order/s directing the police to find out the husband of the petitioner.

7. A photograph of a dead body of an unidentified person was shown to the petitioner. But the petitioner has clearly stated that the person is not her husband.

8. The Opposite Party No.4 filed an affidavit on 01.08.2022 and another additional affidavit on 30.08.2022 stating that in the course of further investigation, the post-mortem report and the said photograph of one deceased (unrelated to the petitioner's husband) was given to the investigating team. The photographs were shown to the persons who knew the husband of the petitioner, for identification. It has been stated that the body was completely mutilated.

9. After observance of the requisite procedure, our order and on showing to the petitioner the photographs of the mutilated body, as referred, the police could not come to any finding as yet. The police has taken the sample for DNA profiling for establishing the identity of the person, but identity could not be established for absence of the matching sample.

**10.** We observe that the police has been doing whatever is possible to locate the husband of the petitioner and there is no dereliction or inaction as alleged by the petitioner. But without any definite lead, the police is at lurch. It may so happen that the police suddenly discovered a lead and found out the whereabouts and well-being of the petitioner's husband. Hope is not totally lost.

**11.** We opine that this writ petition cannot be maintained for purpose of issuance of a writ of Habeas Corpus. As there is no allegation against the State. Though some allegations have been made against 3 persons viz. Opposite Parties No.5,6 &7 but those allegations don't have any foundation. The police investigated against those persons and launched the prosecution against them. That was in contemplation that they might have done something foul to the petitioner's husband. But so long, the police had been unsuccessful in tracing out the husband of the petitioner.

**12.** Mr. Routray, learned counsel has stated that as the police had not acted on the complaint, the National Human Rights Commission was approached to pass the direction for locating the husband of the petitioner.

**13.** In this perspective fact, we would like to close this writ petition by giving the direction on the Opposite Parties No.1,2,3 & 4 that they shall continue the search for the husband of the petitioner. The petitioner shall regularly be informed about the investigation and its outcome.

**14.** We expect that the police will be successful in ascertaining the facts relating to missing of the petitioner's husband.

**15.** There shall be no order as to costs.

16. A free copy of this order be supplied to Ms. S. Pattnaik, learned Addl. Government Advocate.

**(S. Talapatra)**  
**Judge**

**(Savitri Ratho)**  
**Judge**

Rati Ranjan

