

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRWP No.7016 of 2022
Date of Decision:14.11.2022

Jaswinder Singh ...Petitioner

vs.

State of Haryana and others ...Respondents

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present : Mr. Sachin Bhardwaj, Advocate
for the petitioner.

Mr. Rajinder Kumar, Deputy Advocate General, Haryana.

N.S.Shekhawat J.

The petitioner has preferred the instant petition under Article 226/227 of the Constitution of India, praying for issuance of a writ in the nature of habeas corpus to direct respondent No.3 to produce the alleged detainee-Mandeep Kaur or to recover her body, as respondent No.3 was the last person to see the missing detainee, on 26.08.2017 and he was the one to claim that she had left the home at midnight on the said day. It was also, *inter alia*, prayed to direct the learned Principal Judge, Family Court, Panipat to adjourn the case CIS No.228 of 2020 filed by respondent No.3 for obtaining decree of divorce beyond the date given by this Court as the respondent in the said divorce case was missing since the night intervening 26/27.08.2017.

Learned counsel for the petitioner submits that the petitioner is the father of the alleged detainee-Mandeep Kaur, who was missing from her matrimonial home since the night intervening 26/27.08.2017. The petitioner

had performed the marriage of his daughter / alleged detenue - Mandeep Kaur on 24.10.2012 as per Sikh rites and ceremonies with respondent No.3-Raghubir Singh, resident of Panipat, Haryana. After the marriage, there was consistent demand of dowry and the situation worsened after the birth of a girl child, out of the said wedlock. Mandeep Kaur suspected that her husband had illicit relations with a lady, namely, Shefali Maggu, which was discovered by her after checking the chat log on the mobile phone of her husband. On the night intervening 26/27.08.2017, Mandeep Kaur made a telephonic call to her cousin and she seemed nervous. On the next day i.e. 27.08.2017, her husband made a call and informed that Mandeep Kaur was missing from the house. The petitioner, her husband i.e. Respondent No.3- Raghubir Singh and other relatives tried to search for her, but could not find any clue. Ultimately, Raghubir Singh, respondent No.3-husband of Mandeep Kaur lodged an FIR No.740, dated 27.08.2017, under Section 365 of Indian Penal Code (for short 'IPC') at Police Station Model Town, Panipat (Annexure P-2). Respondent No.3 claimed in the FIR that Mandeep Kaur had left the house at midnight of 26/27.08.2017, without informing anyone.

It was further submitted that even after the registration of the abovesaid FIR No.740 of 2017, no steps were taken to recover Mandeep Kaur. Ultimately, the petitioner also got an FIR No.775, dated 08.09.2017, under Sections 323, 498-A, and 34 IPC (Annexure P-3) at Police Station, Model Town, Panipat registered against respondent No.3 (husband of Mandeep Kaur) and his other family members. It was also contended by the learned counsel for the petitioner that even after the registration of the FIR (Annexure P-3), the house of respondent No.3 was not searched by the police and no interrogation

was made. However, it is on record that respondent No.3 was arrested in the said case and was granted regular bail by the learned Trial Court on 16.09.2017. Learned counsel for the petitioner further submits that for the last about 5 years, Mandeep Kaur, the daughter of the petitioner is missing and since she was last seen in the company of respondent No.3 on 26.08.2017, a writ in the nature of habeas corpus may be issued and respondent No.3, being the last person to see her, may be directed to produce her before the Court. Even learned counsel further submitted that the investigation in case FIR No.775 (Annexure P-3) may also be transferred to the CBI as daughter of the petitioner is missing since last five years.

I have heard learned counsel for the parties and perused the record carefully. I have also gone through the status reports, which have been filed on behalf of the State of Haryana from time to time explaining the steps taken by the police to conduct the investigation and the status of trial in the FIR (Annexure P-3).

A perusal of the record shows that after the registration of the FIR (Annexure P-2) by respondent No.3, respondent No.3 was arrested on 13.09.2017 and was produced before the learned Trial Court on 14.09.2017. His two days' police remand was sought by the police and after the police remand, he was produced before the learned Court on 16.09.2017 and an application was made for discharging him, which was duly forwarded by Deputy Superintendent of Police (Headquarter), Panipat as he was not found involved in the case. Even as per the investigation, conducted by the police as well as on the basis of the polygraph test got conducted from the FSL, nothing could come out against respondent No.3. Consequently, the application for

discharging respondent No.3 was disposed of and respondent No.3 was ordered to be released from custody. The matter was investigated by the police, however, she could not be traced and ultimately, the untrace report (final report) was produced before the Competent Court. Vide order dated 31.03.2022 (Annexure R-1), the Court of learned Judicial Magistrate 1st Class, Panipat ordered that the untrace report (final report) may be filed and the record was consigned to the record room. It is a matter of record that the petitioner chose not to challenge the said order, whereby the untrace report (final report) was accepted by the learned Judicial Magistrate and the matter was ordered to be closed.

Similarly, the present petitioner had also got an FIR No.775 of 2017 (Annexure P-3) registered on the same allegations that his daughter Mandeep Kaur i.e. the alleged detainee was missing since 26.08.2017 and was not traceable since then. Again the police conducted the investigation and could not trace the alleged detainee-Mandeep Kaur at the house of respondent No.3 Raghbir Singh, i.e. her husband. Thereafter, the final report under Section 173 Cr.P.C., was prepared on 26.02.2018 against respondent No.3-Raghbir Singh and his co-accused Avtar Kaur. The learned trial Court, vide order dated 18.07.2018 ordered framing of charges against respondent No.3- Raghbir Singh and his co-accused Avtar Kaur under Sections 323, 498-A and 34 of IPC. After framing of charges, the trial is pending before the learned trial Court and now, two prosecution witnesses have been recorded during the course of trial. Thus, it is apparent that no useful purpose will be served by ordering fresh investigation, especially when the trial is at an advanced stage and the matter has been thoroughly investigated by the police for several years.

At this stage, it also requires mentioned that the petitioner had filed two petitions before this Court i.e. **CRM-M-38279 of 2017** titled as **“Jaswinder Singh Vs. State of Haryana and others”** and **CRM-M-36368 of 2017** titled as **“Jaswinder Singh Vs. State of Haryana and others”** decided on 29.10.2018. By filing the said petitions, the petitioner in CRM-M-38279-2017 sought to challenge the order dated 16.09.2017 passed by the learned Judicial Magistrate, 1st Class, Panipat in case FIR No.775 dated 08.09.2017 under Sections 323, 498-A and 34 of IPC, whereby bail was granted to respondent No.3 (here) with an additional prayer that further investigation may be conducted in the matter and Section 304-B IPC be added to the aforesaid sections. The second petition was filed i.e. CRM-M-36368 of 2017 under Section 482 Cr.P.C. for directions to respondent No.4 to constitute a SIT or to transfer the case to CBI to conduct a fair and impartial investigation in case FIR No. 740 dated 27.08.2017 registered at Police Station Model Town, Panipat. Both the petitions were heard and disposed of by a Coordinate Bench of this Court vide order dated 29.10.2018 (Annexure P-5).

Learned counsel for the petitioner has relied upon the law laid down by the Hon'ble Supreme Court in the matter of **“*Alsia Pardhi Vs. State of M.P. and others*”, 2014 (2) SCC 725**. There is no dispute with regard to the law laid down by the Hon'ble Supreme Court in the said matter, however, the said judgement does not apply to the facts of the instant case. A perusal of the record reveals that the prayer of the petitioner for transfer of investigation has already been declined by this Court vide order dated 29.10.2018 (Annexure P-5) and the petitioner chose not to challenge the said order before the Hon'ble Supreme Court. Secondly, the petitioner has filed the instant petition before

this Court after a long and unexplained delay of five years and that too when the trial in case FIR No. 775, dated 08.09.2017, under Sections 323, 498-A and 34 of IPC, is an advanced stage and two PWs have already been recorded by the learned trial Court.

In the said order, the Coordinate Bench of this Court noticed the attempts made by the police to trace the missing girl and also took into consideration the various status reports submitted by the Senior Officers of the police regarding the attempts made to locate the missing girl/alleged detainee, namely, Mandeep Kaur and thereafter, the matter was ordered to be disposed of. It also requires mention that the petitioner chose not to challenge the said order before the Hon'ble Supreme Court of India. Consequently, the prayer of the petitioner to transfer the investigation to CBI at this stage i.e. after four years of passing of the said order is untenable and is liable to be rejected. It appears that now respondent No.3 has filed a petition before the learned Principal Judge, Family Court, Panipat for obtaining decree of divorce against the alleged detainee-Mandeep Kaur and this prompted the petitioner to make this prayer again by filing the petition for issuance of writ in the nature of habeas corpus. Even otherwise, this Court has no powers to review the order (Annexure P-5) passed by a Coordinate Bench of this Court and the petition is also liable to be dismissed on this ground.

Still further, the petitioner has prayed for issuance of writ in the nature of habeas corpus on the ground that respondent No.3 was the last person seen in the company of the alleged detainee-Mandeep Kaur on 26.08.2017 and he may be directed to produce the alleged detainee-Mandeep Kaur before this Court. In fact as observed above, two FIRs (Annexures P-2 and P-3) have

already been registered by the police to respondent No.3 and have been thoroughly investigated. Even this Court directed the police to submit the status reports of investigation before this Court to locate the missing girl and after due appreciation, this Court ordered the disposal of the petition in this regard, which were filed by the petitioner.

From the above, it is apparent that in the last five years, there is no evidence to suggest that respondent No.3 has illegally detained the alleged detenue-Mandeep Kaur and consequently, this Court finds no force in the arguments raised by learned counsel for the petitioner and therefore, the instant petition is dismissed.

14.11.2022
hemlata

(N.S.SHEKHAWAT)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No