

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.493 of 2023

Arising Out of PS. Case No.-266 Year-2022 Thana- BENIPATTI District- Madhubani

Radhe Shyam Pradhan, Son of Sri Narayan Pradhan, R/v- Mahamadpur, P.S.-
Benipatti, District- Madhubani.

... .. Petitioner

Versus

1. The State of Bihar through the Director General of Police, Department of Police, Patna, Bihar.
2. The Commissioner of Police, Darbhanga Division, Darbhanga, Bihar.
3. The Superintendent of Police, Madhubani, District- Madhubani, Bihar.
4. The Deputy Superintendent of Police Benipatti, Madhubani, Bihar.
5. The In-charge of Police Station Benipatti, District- Madhubani, Bihar.
6. Investigating Officer, Benipatti, District- Madhubani, Bihar.

... .. Respondents

Appearance :

For the Petitioner : Mr. Md. Soban Asghar, Advocate
For the Respondents : Mr. P K Shahi, A.G.

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
and
HONOURABLE MR. JUSTICE CHANDRA PRAKASH
SINGH

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

4 05-07-2023 Heard learned counsel for the petitioner and learned
counsel for the respondents.

2. This writ in the nature of *Habeas Corpus* has been
preferred seeking for the following relief:

“For passing an appropriate writ, writs, order
and direction for recovery of Chandani
Kumari, aged about 16 year, daughter of the
petitioner, who was kidnapped by unknown
persons for which Benipatti P.S. Case No.
266 of 2022 was instituted under Sections
363 and 366A of the Indian Penal Code,
1860. ”



3. The brief facts of the case as per the petitioner are that the daughter of the petitioner (hereinafter referred to as 'the victim') was kidnapped on 07.10.2022 by unknown persons, when she had gone to Benipatti for computer classes in 'Aastha Institute', for which a First Information Report was instituted bearing Benipatti P.S. Case No. 266 of 2022 dated 13.10.2022, against unknown, for the offences under Sections 363 and 366A of the Indian Penal Code, 1860 (hereinafter referred to as 'the I.P.C.'). Thereupon, investigation was started, and several representations were given to the S. P., Madhubani, the D.G.P., Bihar, Patna and the Inspector General of Police, Darbhanga for proper investigation and recovery of the victim. But neither was the victim recovered, nor was the investigation done properly. As such, the instant petition has been filed before this Court for the said relief.

4. Upon hearing the submissions advanced on behalf of the parties and perusal of the entire materials available on the record, the core issue that arises for consideration in the present case is: *'Whether the victim comes within the ambit of the term 'corpus' and whether there exists any exceptional circumstance that makes the issuance of a writ in the nature of 'Habeas Corpus' expedient under Article 226 of the Constitution of*



India.”

5. It is settled legal position that the writ of Habeas Corpus is an order calling upon the person who has detained/confined another to produce the latter before the Court, in order to let the court know on what ground he has been detained/confined and to set him free, if there is no legal jurisdiction for such confinement/detention. The applicant must show a prima facie case of unlawful detention. The objective underlying the writ is to safeguard the freedom of the citizen against arbitrary and illegal detention. The term ‘illegality’ includes a violation of the Constitutional right by the order of arrest or detention or by the law under which the order purports to have been made. The writ of Habeas Corpus is a great constitutional privilege and provides a prompt and effective remedy against illegal detention. It can be issued only in those cases where a person is deprived of his personal liberty by means of unlawful or unjustified detention by some other individual. In the case of ***Kanu Sanyal V. District Magistrate, Darjeeling*** reported in ***(1973) 2 SCC 674***, it was held that habeas corpus was essentially a procedural writ dealing with machinery of justice. The object underlying the writ is to secure the release of a person who is illegally deprived of his liberty.



The writ of habeas corpus is a command addressed to the person who is alleged to have another in unlawful custody requiring him to produce the body of such person before the Court.

In the case of ***Home Secretary (Prison) and others Versus H. Nilofer Nisha***, reported in ***(2020) 14 SCC 161***, it has been held in para no. 16 that:

“Even though, the scope may have expanded, there are certain limitations to this writ and the most basic of such limitation is that the Court, before issuing any writ of habeas corpus must come to the conclusion that the detinue is under detention without any authority of law.”

6. In the present case, it is quite evident that the victim is not contended to be under illegal confinement or unlawful detention by any named individual. Rather, it is the case of the petitioner that the victim has been subjected to kidnapping by some unknown person for which an F.I.R. has already been instituted and investigation is continuing. In the facts and circumstances of the given case, we are of the considered view that for immediate release of the alleged victim no writ of ‘Habeas Corpus’ can be issued.

7. In the facts and circumstances of the case, the petitioner may file an application under Section-98 of the Code



of Criminal Procedure, 1973 (hereinafter ‘Cr.P.C.’) before the District Magistrate, who shall pass a reasoned order within a period of four weeks from the date of filing of such application.

8. With the aforesaid observation and direction, the present writ application stands disposed of.

(Sudhir Singh, J)

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(Chandra Prakash Singh, J)

