

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1561 of 2022

Arising Out of PS. Case No.-1199 Year-2022 Thana- BUXAR COMPLAINT CASE District-
Buxar

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Shiv Satyam Kumar, male, aged about 27 years, Son Of Mohan Yadav,
Resident Of Mohalla - Budhanpurva, Ward No.- 34, P.S.- Buxar Town,
District - Buxar

... .. Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Bihar, Patna Bihar
2. The Principal Secretary, Home Department, Government of Bihar Bihar
3. The Director General of Police, Bihar, Patna Bihar
4. The Superintendent of Police, Buxar, Bihar
5. The District Magistrate, Buxar, Bihar
6. The Station House Master, Buxar Town Police Station, Buxar, Bihar
7. Taj Ahmad Khan, Son of Not Known, Sub-Inspector of Police, P. S. - Buxar Town, District - Buxar Bihar
8. Shiv Satya @ Majhil S/O Mohan Yadav Resident of Mohalla - Budhanpurva, Ward No.- 34, P.S.- Buxar Town, District - Buxar
9. Central Bureau of Investigation through its superintendent Patna

... .. Respondents

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Appearance :

For the Petitioner	:	Mr. Parijat Saurav, Advocate
For the Respondents	:	Mr. Lalit Kishore (Ag)
	:	Mr. Prabhu Narayan Sharma, A.P.P.
For the C.B.I.	:	Ms. Nivedita Nirvikar, Sr. Advocate

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CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

14 16-10-2023 The present petition has been filed by the petitioner,

brother of the corpus, in which the petitioner has prayed that the

respondents/police authorities be directed to produce the corpus

before this Court and thereafter this Court may pass appropriate

order.



2. Heard Mr. Parijat Saurav, learned counsel for the petitioner, Mr. Lalit Kishore, learned Advocate General, Mr. Prabhu Narayan Sharma, learned A.P.P. for the Respondent-State and Ms. Nivedita Nirvikar, learned Senior Counsel for the C.B.I/Respondent.

3. Learned counsel for the petitioner has referred to the averments made in the memo of the petition and thereafter submitted that on 07.11.2022, at 2:00 am in the night, the petitioner along with his brother Shiv Satya @ Majhil and two other persons was returning from Yajna being held in Ahirauli village in the District of Buxar. At that time, the respondent no. 7, namely, Taj Ahmad Khan, Sub Inspector of Police of Buxar Town police station along with 3 to 4 police personnel intercepted them and other police personnel arrested Shiv Satya as he was having a few criminal antecedents and earlier he had refused to work as spy/informer for the police. It is also alleged by the petitioner in the petition that when the petitioner and others protested, the respondent no. 7 abused and had taken away Shiv Satya in their TATA Sumo vehicle bearing registration no. BR-44B0002. It is alleged that thereafter the corpus is missing and, therefore, the petitioner has preferred the present petition.



4. Learned counsel for the petitioner would thereafter submit that, in the present petition, the respondents/police authorities filed the counter affidavit and pointed out the inquiry carried out by them. However, as this Court was not satisfied with the reply submitted by the respondents/police authorities, this Court passed order dated 04.04.2023, which reads as under:-

“By this petition, petitioner Shiv Satyam Kumar, brother of missing person named Shiv Satya alias Majhil, is alleging that Shiv Satya alias Majhil is under illegal detention of police personnel and, particularly, that of respondent no.7 Taj Ahmad Khan, who is stated to be Sub Inspector of Police Station-Buxar, District-Buxar.

Petitioner Shiv Satyam Kumar by this petition has alleged that he along with his brothers Shiv Satya alias Majhil as well as Shiv Shakti and a friend named Shailendra Yadav were returning from a Yagya held in Ahirauli village in Buxar District in the night intervening 07/08.11.2022. At about 02.00 A.M., it is averred by petitioner Shiv Satyam Kumar that, Sub Inspector Taj Ahmad Khan (respondent no.7) alongwith his team of Buxar Police Station had intercepted them near Kohra Ghat, Mathia Mohalla, Chhoti Sarimpur, District-Buxar. Then the police party took Shiv Satya alias Majhil with them and since then Shiv Staya alias Majhil has been missing



till date. It is averred by the petitioner that he as well as his mother tried to lodge an F.I.R. of the incident with the Police Station Officer of Buxar Town Police Station as well as a complaint with the Superintendent of Police Buxar but no heed was paid to their request. As local police administration did not help them, they were constrained to approach the court of the learned Chief Judicial Magistrate, Buxar on 15.11.2022 by filing a criminal complaint. Grievance of the petitioner is to the effect that even today his brother Shiv Satya alias Majhil is missing and the petitioner contents that life of his brother is in danger. The police authorities have violated the fundamental right of personal liberty of the detenue who is still under illegal confinement of the Police Officers.

We had issued notices to all concerned. In pursuance to our notice, Md. Ashfaq Ansari, the Deputy Superintendent of Police, Buxar, had filed counter affidavit. Instead of showing any sensitivity to the issue of missing person and his alleged illegal detention, this Police Officer has straightway denied the incident and contended on affidavit that no such incident has ever happened on the date alleged by the petitioner.

Thereafter, supplementary counter affidavit has been filed by the Superintendent of Police, Buxar, wherein it is averred that no function of Yagya was organized at Ahirauli Yagya Sthal on the date alleged and from the CDR it transpires that missing boy was not near the Yagya Sthal



on the date as well as time of the incident.

During the course of hearing, the learned Government Counsel drew our attention to the communication dated 12.03.2023 sent by the Sub Divisional Police Officer, Buxar to the Superintendent of Police Buxar, wherein on the basis of tower location of cell phones of the brothers of the missing person as well as tower location of cell phone of the missing person, it is contended that the incident did not take place as alleged. However, we have noted that in paragraph-3(iii) of the said communication, the Sub Divisional Police Officer has reported that missing person Shiv Staya alias Majhil Yadav was present at Yagya Sthal of Ahirauli at 21:14:48 of 07.11.2022.

We have also heard the learned Advocate appearing for the respondent no.7 Police Officer Taj Ahmad Khan, who is also disputing the incident as alleged. He has contended that the missing person was having criminal antecedent and he was dealing with illicit weapons. It is argued that there is seven days delay in lodging the complaint and even no F.I.R. of the alleged incident was ever filed by the petitioner or mother of the missing person. It is further argued that the missing person is abducted by some criminals.

After hearing all the parties, we are totally dissatisfied with the course of action adopted by the police authorities in denying the incident itself and in not producing the corpus who is



allegedly illegally detained by the police authorities. In other words, respondent no. 8 Shiv Satya alias Majhil is still missing and his corpus is not being produced before the court by the respondent-police authorities. It seems that no sincere efforts are being taken to trace him out by the State Police. Duly sworn testimony of the petitioner undoubtedly points out that his brother Shiv Satya alias Majhil is missing from the night intervening 07/08.11 2022 upon being abducted by some police officer.

In this view of the matter, we are constrained to entrust the inquiry into the missing person, i.e., Respondent No. 8 Shiv Satya or his abduction to the Superintendent, Central Bureau of Investigation, Patna, Bihar. The Registry is directed to supply the photo copies of the entire records of this petition for taking cognizance of the complaint regarding missing person, namely, Shiv Satya alias Majhil and for inquiry into it. We direct the petitioner to implead the Superintendent, Central Bureau of Investigation, Patna, Bihar, as a party-respondent to the instant petition forthwith. Separately notice of the petition be issued to the newly added respondent who is directed to furnish his report regarding the action taken into the matter of missing person within a period of four weeks from today. The Registry is directed to supply the entire paper-book of this petition alongwith a copy of this order to the Superintendent, Central Bureau of



Investigation, Patna, Bihar, within a week from today for necessary action.

Post this matter on 04.05.2023 under the appropriate heading.”

5. Learned counsel for the petitioner would thereafter submit that the CBI, Patna has carried out the inquiry/investigation and thereafter filed the counter affidavit as well as supplementary counter affidavit. It is further submitted that thereafter the CBI has also produced the status report of investigation/inquiry.

6. Learned counsel for the petitioner further submits that though the CBI has carried out the inquiry pursuant to the direction issued by this Court, there are certain lacunae in the said inquiry. Learned counsel, at this stage, has referred to the rejoinder filed on behalf of the petitioner to the counter affidavit of the respondent no. 9, copy of which is placed at page 169 of the compilation. After referring to the same, it is mainly contended that the inquiry carried out by the CBI is not proper and till date the corpus is missing, therefore, appropriate direction be issued. Hence, this Court may direct the respondents/police authorities to produce the corpus before this Court and hand over the custody of the corpus to the present petitioner.

7. On the other hand, Mr. Prabhu Narayan Sharma,



learned A.P.P. for the respondents/police authorities has also referred to the affidavit filed on behalf of the concerned police officer and thereafter submitted that the allegations levelled by the petitioner against the concerned police officers are not correct and that is also supported by the affidavit filed by C.B.I. after making necessary inquiry pursuant to the order dated 04.04.2023 passed by this Court. Learned counsel, therefore, urged that as the corpus is not in illegal custody of the respondents/police authorities, as alleged by the petitioner, this Court may dismiss the present petition.

8. Learned Senior Counsel appearing for the C.B.I. has, on the last date of hearing, produced on record the status report and also referred to the supplementary affidavit filed by the concerned officer of C.B.I. i.e., respondent no. 9, and thereafter contended that during the course of the inquiry carried out by the C.B.I. pursuant to the order passed by this Court, it is revealed that the allegations levelled by the petitioner against the concerned police officers are not correct and during the course of the inquiry, the C.B.I. has recorded the statement of 84 witnesses and also collected the documentary evidence, CDR as well as tower location of various persons including the corpus. Learned counsel, therefore, submitted that the allegations



levelled by the petitioner in the petition are not correct. However, this Court may pass appropriate order looking to the facts of the present case.

9. Having heard the learned counsels appearing for the parties and having gone through the materials placed on record, it would emerge that the petitioner, who is the brother of the corpus, has made allegation in the memo of the petition that the respondent no. 7 along with 3 to 4 police officers arrested the corpus without following due procedure of law and since then, the corpus is missing. The petitioner has, therefore, filed the present petition with the prayer that Writ of Habeas Corpus be issued and thereby the respondents/police authorities be directed to produce the corpus before this Court and thereafter custody of the corpus be handed over to the petitioner. From the material placed on record, it would further emerge that initially this Court was not satisfied with the reply submitted by the respondents/police authorities and, therefore, this Court passed an order on 04.04.2023 (supra), wherein certain aspects have been observed. We have already reproduced the said order.

10. Thereafter, pursuant to the direction issued by this Court, the C.B.I./ respondent no. 9 herein, has carried out the inquiry. During the course of the said inquiry, it appears that



from the affidavit filed by the respondent no. 9 as well as the status report of inquiry produced before this Court, that statement of approximately 84 witnesses have been recorded, CBI has also collected the necessary material including the CDR and the tower location of mobile phone of the corpus and the concerned police officials against whom the allegations are levelled. Thereafter, CBI has specifically stated that the corpus is not in illegal custody of the respondent/police officials as alleged. We have gone through the affidavit and reply as well as the status report submitted by the CBI.

11. Learned counsel for the petitioner has tried to point out certain lacunae in the inquiry carried out by the CBI by referring to the relevant paragraph of the rejoinder affidavit filed by the petitioner pursuant to the supplementary affidavit filed by the respondent no. 9 and thereafter, the grievances raised that as the inquiry carried out by the CBI is not proper, this Court may issue appropriate direction to the respondents/police authorities to produce the corpus before this Court.

12. We are of the view that initially this Court was no doubt, not satisfied with the inquiry carried out by the respondents/police authorities and, therefore, direction was



issued to CBI to carry out proper inquiry. Now, the inquiry report as well as the affidavit of respondent no. 9/ CBI is before us. We are of the view that the allegations levelled by the petitioner against the respondents/police authorities are not correct and it cannot be said that the corpus is in illegal custody of the concerned respondents/police authorities, as alleged in the petition. The scope of the present petition is very limited. If the petitioner is not satisfied with the investigation/inquiry carried out either by the respondents/police authorities or by CBI, it is always open for the petitioner to file appropriate proceedings before appropriate forum against the concerned persons. However, when the corpus is not in illegal custody of the respondents/police authorities, as alleged in the petition, we are not inclined to entertain the present petition.

13. Accordingly, this petition is dismissed.

(Vipul M. Pancholi, J)

(Chandra Shekhar Jha, J)

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