

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1621 of 2022

Arising Out of PS. Case No.- Year-0 Thana- District- East Champaran

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Dhurendra Kumar, Male, aged about 24 years, Son of Sri Virendra Pandit, R/o Vill- and P.O- Belahiya, Ward No. 13, P.S- Darpa, Block Adapur, Dist- East Champaran.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary (Home), Govt. of Bihar, Patna.
2. The Director General of Police, Bihar, Patna.
3. The District Magistrate, East Champaran, Bihar.
4. The Superintendent of Police, East Champaran, Bihar.
5. The Officer-In-Charge (SHO) Darpa Police Station, Dist- East Champaran, Bihar.
6. Shyam Kishore Prasad, Male, aged about 50 years, Son of Late Asharfi Pandit, R/V and P.O- Belahiya, Ward No. 12, P.S- Darpa, Block-Adapur, Dist- East Champaran.
7. Sapna Kumari, Female, aged about 22 years, D/o Shyam Kishore Prasad, R/V and P.O- Belahiya, Ward No. 12, P.S- Darpa, Block-Adapur, Dist- East Champaran.

... .. Respondents

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Appearance :

For the Petitioner	:	Ms. Deepika Sharma and Mr. Rajat Kumar Tiwary, Advocates.
For the R. Nos. 6 and 7	:	Mr. Ramakant Sharma, Senior Advocate.
For the State	:	Ms. Sangeeta Sharma, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
and
HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

5 29-03-2023 Heard learned counsel for the petitioner, learned senior counsel for the respondent nos. 6 and 7 and learned A.P.P. for the State.

2. This criminal writ petition in the nature of *Habeas*



Corpus has been preferred by the petitioner, who claims to be the husband of respondent no. 7, for obtaining the custody of the respondent no. 7, contending her to be his lawfully wedded wife. In addition, the petitioner has also prayed for obtaining the following reliefs:

“1 (I) For issuance of a writ in the nature of *Habeas Corpus* commanding upon the respondents authorities to produce the *Corpus* (respondent no. 7) before this Hon'ble Court as she has been illegally/wrongfully confined/detained against her wishes by her parents (respondent no. 6) and she is not being allowed to exercise her right to choice and right to live with this petitioner i.e., her husband as per her choice.

(II) For issuance of a writ in the nature of *Habeas Corpus* commanding the respondents to expeditiously release the respondent no. 7 from the wrongful/illegal detention of her parents and she be allowed to pursue her will and live with the life partner as per her own wish which is not being allowed to be done by her parents and they have wrongfully confined her so as prevent her from living with her husband.

(III) For holding and declaring that the *Right to choose life partner* is a part of fundamental right of the respondent no. 6 under Articles 21, 19(1)(a) and 14 of the Constitution of India and same cannot be suppressed or stultified by her parents by adopting coercive means like illegal confinement/detention.

3. The brief facts of the case are that the petitioner and the respondent no. 7 (hereinafter referred to as '*corpus*')



were very close friends and known to each other since August, 2012 and they performed marriage on 14.09.2022 before the Marriage Registration Officer, Ghaziabad (U.P.) and before the Arya Samaj Vedic Sansthan Mandal, New Delhi and to that effect the marriage certificates from both places have been issued on 14.09.2022 and they sent all the photographs of the marriage certificates to their parents on their mobile phones. However, the parents of the corpus did not agree due to economically backwardness of the family of the petitioner and became agitated. On 16.09.2022, after seeing marriage certificates, the father and others of the *corpus* went to the petitioner's house and in absence of his father, abused and assaulted his family members and they demanded to hand over the *corpus* back to them. The mother of the petitioner said that her son went outside the town to earn his livelihood but they abducted his mother and younger brother and confined in the house of respondent no. 6 and the son-in-law of respondent no. 6 informed the father of the petitioner that his son abducted the corpus and if he fails to find out the *corpus*, they would murder his wife and younger son and also gave threatening if he informs the police then he would not be able to see his wife and son and they would commit gang rape upon his wife and his son



will be killed and they also took them to the residence of the son-in-law of respondent no. 6 at Motihari and assaulted them with iron rod and waist belt, as a result of which, he stood naked. On 18.09.2022, the miscreants dropped them to the maternal house of the petitioner in Tinkoni Village. On 19.09.2022, the injured were taken to hospital but due to influence of respondent no. 6 and his son-in-law, doctor and staff refused to give treatment and ousted them from the hospital. Then they were taken to another hospital for treatment. On 19.10.2022, respondent no. 6 and others abducted the *corpus* and the petitioner from U.P. and took them at the residence of the son-in-law of respondent no. 6 in Motihari on 20.10.2022. On call, the father of the petitioner with local villagers went there and as per instruction given by the son-in-law of respondent no. 6, the petitioner wrote on the plain paper whatever was dictated by them. Thereafter, respondent no. 6 forcefully took the thumb impression of all five fingers of the petitioner and his father on two stamp papers valued at Rs. 1,000/- and gave the same to his brother to keep safely and thereafter freed them from there. They also took petitioner's laptop, mobile, voter ID card and all educational certificates alongwith his tuition ID Card and threatened that if he lodges



any complaint to any person or authority then they would kill all of his family.

4. On 28.02.2023, the matter was heard by this Court and it was submitted by learned counsel on behalf of the petitioner that the *corpus* is the lawfully wedded wife of the petitioner and the marriage was solemnized between them on 14.09.2022. Learned counsel for the petitioner further submits that the *corpus* (alleged wife) has been detained by her parents and she is not being allowed to live with the petitioner.

5. A counter affidavit has been filed by the *corpus* wherein it has been stated that she is a major and she is voluntarily residing with her parents and that she does not want to live with the petitioner. It has been stated in the counter affidavit that:

“7. That in reply to the statement made in paragraph no. 5 of the writ petition, it is stated that the petitioner anyhow convinced the deponent and taken away her from the house of her sister at Motihari on 12.09.2022 and thereafter sent her to sister’s house after solemnizing marriage with her whereas the deponent is not agree with the marriage and how it is happened the deponent has no knowledge in this regard and it is apparent from the *Panchanama* signed by the petitioner on 20.10.2022 before *Panches*. Therefore, the statement made in this paragraph is not correct.

8. That in reply to the statement made in paragraph no. 6 of the writ petition, it is



stated that it is matter of records.

9. That in reply to the statement made in paragraph no. 7 of the writ petition, it is stated that the statement made in this paragraph is completely wrong. The deponent is never agree to marry with the petitioner.

10. That in reply to the statement made in paragraph no. 8 of the writ petition, it is stated that the statement made in this paragraph is completely wrong. The petitioner anyhow convinced the deponent and taken away to Delhi for providing job.

11. That in reply to the statement made in paragraph no. 9 of the writ petition, it is stated that it is completely wrong. The deponent has no knowledge how her photographs and certificates were prepared by the petitioner.

16. That in reply to the statement made in paragraph nos. 21 to 26 of the writ petition, it is stated that the statement made in this paragraph is completely wrong. The deponent is living with her parents on her sweet will and there is no any pressure in this regard on the deponent. The deponent does not want to live with the petitioner because she is not accepting the marriage as stated by the petitioner.

17. That the statement made in paragraph no. 27 of the writ petition is completely wrong and the deponent is a major girl and with her sweet will she is living with her parents.”

6. Upon hearing the submissions advanced on behalf of the petitioner and perusal of the record, this Court on 28.02.2023, deemed it appropriate to order that the *corpus* be remain present before this Court. In obedience to the order dated 28.02.2023, the *corpus* has appeared in person before this Court and in the immediate presence of the learned A.P.P. for the State,



Mrs. Sangeeta Sharma and the learned counsel of the petitioner, Ms. Deepika Sharma, the *corpus* submits before this Court that she is a major and a person of sound mind. She is able to understand the nature of proceedings and she fully supports her statements made in the said counter affidavit. She submits that she is voluntarily residing with her parents without any pressure or intimidation and that she does not want to live with the petitioner. Furthermore, she denies of having entered into any marriage relation with the petitioner and expresses her desire to continue residing with her parents in future.

7. From the above, it can be safely gleaned that the *corpus* is a major of sound mind and is voluntarily residing with her parents without any pressure or undue influence. In light of the factual matrix as indicated above, the core issue to be decided in the present case is “Whether this Court can stretch the scope of writ in the nature of *Habeas Corpus* to the extent of allowing the petitioner who claims to be the husband of the *corpus* to obtain the custody of his alleged wife, who denies the marriage and expresses her unwillingness to reside with the petitioner ?”

8. It is settled legal position that a writ of *Habeas Corpus* is available as a remedy in all cases where a person is



deprived of his personal liberty. This writ secures the liberty to citizens from unlawful or unjustified detention. The writ of *Habeas Corpus* will not lie where detention of the person whose release is sought is itself not illegal. In order to invoke the writ jurisdiction in such cases, it is to be primarily established by the petitioner that the *corpus* is in illegal custody or unlawful detention. However, in cases where the *corpus* is a major, and after physically appearing before the Court, she herself states that she is not in illegal confinement, nothing remains in the case for the Court to exercise the jurisdiction vested in them by virtue of Article 226 of the Constitution. The Hon'ble Supreme Court in the case of *Shafinjahhan Versus Asokan K.M. & Ors* (2018) 16 SCC 368, observed the purpose of *Habeas Corpus* Petition in these solemn words,

“ the pivotal purpose of the said writ is to see that no one is deprived of his/her liberty without sanction of law. It is the primary duty of the State to see that the said right is not sullied in any manner whatsoever and its sanctity is not affected by any kind of subterfuge. The role of the Court is to see that the detenue is produced before it, find out about his/her independent choice and see to it that the person is released from illegal restraint. The issue will be a different one when the detention is not illegal. What is seminal is to remember that the song of liberty is sung with sincerity and the choice of an individual is appositely respected and conferred its esteemed status as the



Constitution guarantees. *It is so as the expression of choice is a fundamental right under Articles 19 and 21 of the Constitution, if the said choice does not transgress any valid legal framework. **Once that aspect is clear, the enquiry and determination have to come to an end.*** (emphasis applied)

9. The Court also described the ambit of *Habeas Corpus Petition*, by observing that:

*“The ambit of a habeas corpus petition is to trace an individual who is stated to be missing. **Once the individual appears before the court and asserts that as a major, she or he is not under illegal confinement, which the court finds to be a free expression of will, that would conclude the exercise of the jurisdiction.**”* (emphasis applied)

10. In light of the discussions made above and in view of the facts and circumstances of the case, it is apparent that the *corpus* is a major and she is not in unlawful confinement. She is voluntarily residing with her parents and her custody cannot be said to be illegal. As such, the present writ of *Habeas Corpus* is not maintainable and accordingly, the petition is dismissed.

(Sudhir Singh, J)

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(Dr. Anshuman, J)

