

24.04.2023
Item No.07
Court No.32
Avijit Mitra

WPA (H) 14 of 2023

In re: An application under Article 226 of the
Constitution of India;

And

Sunil Mallick

-versus-

State of West Bengal & ors.

Mr. Debajyoti Deb,
Mr. Abhishek Roy Chowdhury,
Ms. Somdyuti Parekh
....for the petitioner
Mr. Debabrata Chatterjee,
Mr. Simanta Kabir
...for the State

The present writ petition has been preferred
primarily praying for the following relief :

*‘(a) A Writ and/or Order and/or Direction in the
nature of a Habeas Corpus, directing the Respondent
No.4 (Officer-in-Charge, Pragati Maidan P.S.) and
Respondent No.5 (Inspector-in-Charge, Narendrapur
P.S.) to trace out and/or locate the female child
Shreya Mallick and produce her before this Hon’ble
Court.’*

Mr. Deb, learned advocate appearing for the
petitioner submits that the petitioner, namely, Sunil
Mallick (in short, Sunil) married the respondent no.6,
namely, Mala Mallick (in short, Mala) and they were
blessed with a female child on 4th February, 2017. There
was some matrimonial dispute between the parties which

led to initiation of a divorce proceeding by the petitioner being Matrimonial Suit No.114 of 2018. The said suit was decreed *ex parte* on 8th October, 2021. In the midst thereof, the respondent no.6 also lodged a complaint against the petitioner which was registered as Sonarpur Police Station Case no.839 of 2018 under Section 498A of the Indian Penal Code. Thereafter the respondent no.6 started residing with her daughter, namely, Shreya Mallick (in short, Shreya) at the residence of respondent no.7. Subsequently in the month of December, 2022, the petitioner came to learn that the respondent no.6 along with Shreya had left the residence of the respondent no.7. In spite of his best efforts, the petitioner was not able to ascertain the whereabouts of the respondent no.6 and Shreya thereafter. Ventilating such grievance, the petitioner lodged a complaint but the police authorities did not take necessary steps to recover Shreya and as such the petitioner was constrained to approach this Court.

When the matter last appeared before this Court on 5th April, 2023, Mr. Kabir, learned advocate appearing for the State respondents, apprised us that investigation is in progress and the authorities are making a sincere endeavour to ascertain the whereabouts of Mala and Shreya. Today, he informs that in spite of their best efforts, the authorities have not been able to recover the respondent no.6 and his daughter. However, investigation is still continuing.

Records reveal that there was a matrimonial dispute between the petitioner and the respondent no.6. The said Matrimonial Suit being No.114 of 2018 was decreed *ex parte* on 8th October, 2018. Since then the respondent no.6 was residing along with Shreya in the residence of respondent no.7. It appears that only on 24th January, 2023, the first complaint was lodged by the petitioner before the respondent nos.4 and 5 with a request to recover Shreya i.e. about two years after his marriage was dissolved. The petitioner has not filed any application under the Guardians and Wards Act seeking custody of his child. We do not find any material on record to infer that the respondent no.6 or Shreya had been illegally detained.

A writ in the nature of *habeas corpus* is a prerogative writ by virtue of which the causes and validity of detention of a person are investigated by a summary procedure. This Court in exercise of its jurisdiction can neither usurp the ordinary administration of criminal justice nor can convert itself into a monitoring agency and indefinitely supervise the investigation.

In view thereof, no further interference is called for in the present *habeas corpus* petition being WPA (H) 14 of 2023 and the same is, accordingly, disposed of.

Nothing in this order shall, however, prevent the petitioner from taking appropriate steps before the competent forum, in accordance with law.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties.

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)