

WPA (H) 54 of 2021

(Pinki Mondal Vs. State of West Bengal & Ora.)

Mr. Pawan K. Gupta
Ms. Sofia Hesar
Mr. Santanu Sett

.... For the petitioner

Mr. Amitesh Banerjee, Sr. Standing Counsel
Mr. Sabir Ahmed
Mr. Srimanta Kabri

..... For the State

Mr. Gaganjyoti Singh
Mr. Biswajit Mal
Mr. Abhishek Bagal

..... For the respondent nos. 12 & 13

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

‘(a) A writ of Habeas Corpus and/or in the nature of Habeas Corpus do issue commanding the respondent nos. 2 to 10 and each of them to produce the petitioner’s husband being Mr. Bibhas Mondal before this Hon’ble Court and to restore his custody to the petitioner herein.’

Mr. Gupta, learned advocate appearing for the petitioner submits that the petitioner married one Bibhas Mondal (in short, Bibhas) on 18th February, 2017. They were blessed with a male child on 2nd August, 2018. Bibhas was a medical officer working at Rajnagar Block Primary Health Centre (in short, BPHC), Raghunathganj Block-1, Murshidabad. Surprisingly, he went missing on and from 9th October, 2018. A missing diary to that effect was lodged by the petitioner but the authorities did not take any step. A

substantial amount of money was provided by the petitioner's parents at the time of marriage. Such amount was deposited in Bibhas's account at United Bank of India, Joynagar Mazilpur Branch. It would be evident from the documents pertaining to the said account that money was withdrawn and utilized by the private respondents being respondent nos. 12 and 13. She was also treated cruelly by her in-laws and as such she was constrained to lodge a complaint which was registered as Joynagar PS Case No. 213 of 2019 dated 25th April, 2019 under Sections 498A/406/34 of the Indian Penal Code (in short, IPC). As no steps were taken by the police authorities, the petitioner preferred a writ petition being WPA 6476 of 2021 which was disposed of by an order dated 12th March, 2021 observing *inter alia* that the police authority shall pursue the case sincerely and expeditiously. As proper investigation was not conducted and as Bibhas could not be recovered, the petitioner lodged a further complaint stating *inter alia* that Bibhas had been kidnapped and wrongfully confined by the private respondents including the respondent nos. 12 and 13 as they would be directly benefitted due to the absence of the petitioner and would be able to acquire Bibhas's properties. Though the said complaint was registered as Joynagar PS Case No. 202 of 2021 dated 16th April, 2021 under Section 365 of IPC, the police authorities still maintained a deceptive silence and failed to

recover Bibhas. Aggrieved thereby, the petitioner was constrained to prefer this application seeking a writ of *habeas corpus*. Being *prima facie* satisfied that Bibhas had been illegally detained, the *habeas corpus* petition was admitted by a co-ordinate Bench of this Court and DIG, CID was directed to take up the investigation. Even thereafter proper investigation was not conducted and Bibhas is still missing and as such, necessary direction needs to be issued upon the State authorities to produce her husband. From the earlier orders passed by this Court, it would be explicit that the investigation conducted was not satisfactory.

Per contra, Mr. Banerjee, learned senior standing counsel appearing for the State submits that the allegations levelled against the police authorities are unfounded. The writ petition preferred by the petitioner earlier alleging inaction against the police was disposed of on 12th March, 2021 expressing satisfaction as regards the steps taken by the police authorities. In the midst thereof, upon completion of investigation, charge sheet was submitted in the Joynagar PS Case No.213 of 2019 dated 25th April, 2019 from which it would be explicit that Bibhas is an accused person in the said case and is absconding.

Drawing our attention to the last status report filed in the form of an affidavit in the month of December, 2022, Mr. Banerjee submits that all possible steps have been taken by the investigating agency to recover

Bibhas. His photograph and details were widely circulated through publication in local newspapers. The relatives, friends and colleagues of Bibhas were interrogated. In course of investigation it was found that Bibhas was having psychiatric problems. The petitioner herself along with Bibhas attended various doctors and even approached Antara Psychiatric Center. It would be evident from the certificate dated 5th January, 2022 issued by the Medical Superintendent of the said center that the petitioner herself had stated that Bibhas had been showing odd behavioral patterns. Upon examining, the doctor opined that Bibhas was suffering from '*paranoid schizophrenia*'. Bibhas was a medical officer and he was working at Rajnagar BPHC. The Block Medical Officer of Health was contacted by the police authorities and the said officer by a letter dated 10th December, 2020 intimated that Bibhas is on unauthorized leave since 9th October, 2018.

Mr. Banerjee further informs us that the last complaint lodged by the petitioner alleging that her husband had been kidnapped by her in-laws including the respondent nos. 12 and 13 has also been registered as Joynagar PS Case No. 202 of 2021 dated 16th April, 2021 and investigation is still continuing. In the said case, the private respondents being the respondent nos. 12 and 13 were questioned by the

authorities and they have cooperated with the investigation.

Mr. Singh, learned advocate appearing for the private respondent nos. 12 and 13 submits that the allegations levelled against the respondent nos. 12 and 13 are unfounded. The respondent no. 12 happens to be the sister of Bibhas and she is residing along with her husband in a separate accommodation. The allegation pertaining to withdrawal of money from Bibhas's account is of the year 2016, i.e., much prior to the marriage of the petitioner with Bibhas.

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. There are two types of detention which can be investigated by exercise of power of *habeas corpus* by the Court – one is preventive detention by virtue of an order of detaining authority and second is illegal detention of someone at the behest of another person. From the status reports filed by the investigating agency it appears that Bibhas's relations, his colleagues and staff as well as the doctors have been examined. From the certificates issued by the doctors, *prima facie*, it appears that Bibhas is suffering from psychiatric problems.

We do not find any material on record to infer that Bibhas has been illegally detained and this Court

cannot convert itself into a monitoring agency and supervise the investigation indefinitely.

In the said conspectus, no further interference is called for in the present *habeas corpus* petition and the same is, accordingly, disposed of.

However, the investigating agency shall take all necessary steps and conclude investigation in the Joynagar PS Case No. 202 of 2021 dated 16th April, 2021 in a fair and impartial manner, as expeditiously as possible.

Nothing herein shall, however, prevent the petitioner from initiating proceedings before any other Court or forum seeking relief, in accordance with law.

(Partha Sarathi Chatterjee, J.)

(Tapabrata Chakraborty, J.)