

17.01.2023  
rpan/02

**WPA (H) 74 of 2022**  
**Chandrani Chatterjee**  
**– Versus –**  
**State of West Bengal & Others**

Mr. Shibaji Kumar Das  
... for the Petitioner.  
Mr. D. Chatterjee,  
Mr. Simanta Kabir,  
Mr. Nirjhar Nath  
... for the State.  
Mr. Subhajit Chowdhury  
... for the Respondent No.10.

The present *habeas corpus* petition has been preferred primarily praying for the following relief:

A) A Writ in the nature of Habeas Corpus commanding the Respondent Police Authorities, their men, agents, subordinates and each one of them to immediately take steps to recover/rescue her husband namely Arup Dutta from the wrongful confinement and detention of the Respondent Nos.7 to 10 herein and thereafter register an criminal proceeding as against the Respondent Nos.7 to 10 herein for committing such cognizable offence based on the Written complaints dated 3<sup>rd</sup> / 4<sup>th</sup> November, 2020 & 13<sup>th</sup> September, 2022 & 14<sup>th</sup> September, 2022 lodged by the Petitioner herein being Annexure-“P-4” & Annexure-“P-5” to this Writ Petition and to complete the entire exercise within a specified period of time;”

Mr. Das, learned advocate representing the writ petitioner submitted that Arup Dutta (in short, Arup) happens to be the husband of the writ petitioner and he vociferously contended that it is his specific information

that Arup has been kidnapped and illegally detained by the private respondents herein and hence the writ of *habeas corpus* is to be issued and direction is to be given for production of the corpus of Arup. In support of his argument, Mr. Das has placed reliance upon the decision *Shafin Jahan Vs. Asokan K. M. & Others*, reported in AIR 2018 SC 1933.

Mr. Chowdhury, learned advocate appearing for the private respondent no.10 draws our attention to the order no.9 dated 15<sup>th</sup> January, 2021 passed in S. C. No. 35 of 2020 and submits that Arup surrendered in the first case and he was released on bail and thereafter, he misused the liberty and hence warrant was issued against him and till the date he is absconding and there is no case of illegal detention and/or kidnapping. He submits that the writ petition should be dismissed.

Mr. Nath, learned advocate appearing for the State respondents denies and disputes the contention of the writ petitioner and submits that the present writ petition is not maintainable. In support of such contention he has placed reliance upon the reports filed by the respondent nos. 4 and 6. He further submits that efforts are being made to execute the warrants pending against Arup.

Heard the learned Advocates appearing for the respective parties . Perused the materials on record placed before us.

From the documents placed before us it transpires that before knotting marital tie with the writ petitioner, Arup developed a love affairs with her and he allegedly cohabited with the writ petitioner giving assurance to marry but initially, he did not marry her and hence , the writ petitioner was constrained to file a complaint before the Kalyani Police Station which gave rise to Kalyani Police Station Case no.376 of 2019 dated 31<sup>st</sup> August, 2019 under Sections 417/420/406/376 of the Indian Penal Code which was subsequently renumbered as S.C. no. 35 of 2020. Thereafter, Arup tied matrimonial knot with the writ petitioner on 26<sup>th</sup> November, 2021 but later on disputes surfaced in their matrimonial life and it was submitted that on the basis of a complaint lodged by one neighbour of the writ petitioner, another case, being Kalyani Police Station Case no.553 of 2019 under Section 498(A)/325/308 of the Indian Penal Code was registered against Arup. Initially Arup surrendered before the court in connection with S.C. no. 35 of 2020 and he was enlarged on bail. But he misused the liberty and warrant of arrest was issued against him and the same is still pending. In the latter case also warrant of arrest and then, warrant of proclamation of arrest were issued against him and those warrants have not been executed as yet.

A writ of *habeas corpus* is a prerogative writ in which validity, jurisdiction and justification of illegal restraint are enquired into by way of summary procedure. While making prayer for issuance of such a writ, the writ petitioner must show that there is a *pima facie* case of illegal detention and it is well-settled proposition of law that such writ cannot be issued in respect of a person, who is absconding and who is evading arrest in a case or cases pending against him before the competent criminal court of law. In the present case, we did not find any material to infer that Anup has been suffering illegal restraint.

The decision of *Shafin Jahan Vs. Asokan K. M. & Others*, cited by Mr. Das, is quite distinguishable on facts.

In the said conspectus, the *habeas corpus* petition being WPA (H) 74 of 2022 is, accordingly, dismissed.

It is made clear that this order will not prevent the writ petitioner from taking appropriate steps before the appropriate forum, if so advised and in accordance with law.

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

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

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

