

DL-4

WPA (H) 9 of 2024

13.08.2024
Court No.26

(AD)

Litan Mondal
Vs.
The State of West Bengal & Ors.

Ms. Sananda Bhattacharyya
... for the petitioner

Mr. Debabrata Chatterjee
Mr. Simanta Kabir
... for the State

1. Petitioner complains that, his minor daughter is kept in illegal detention by the respondent nos.5 to 10.
2. Learned Advocate appearing for the writ petitioner relies upon **(2020) 14 Supreme Court Cases 161 (Home Secretary (Prison) and Others vs. H. Nilofer Nisha), 2023 SCC OnLine Ori 5628 (Nimananda Biswal vs. State of Odisha and Others) and 2024 INSC 228 (Devu G Nair vs. The State of Kerala & Ors.)** in support of the contention that, a writ petition of habeas corpus is maintainable in order to trace the minor daughter who is in illegal detention.
3. Learned Advocate appearing for the writ petitioner submits that, factum of illegal detention by the respondent nos.5 to 10 is pleaded in the writ petition. Therefore, necessary ingredient for the purpose of invocation of jurisdiction of the Writ Court to issue a writ of habeas corpus stands made out.
4. Referring to the merits of the case, learned

Advocate appearing for the writ petitioners submits that, the minor daughter of the writ petitioner is missing from a given point of time. Respondent nos.5 to 10 illegally detained such minor daughter. Police are inactive despite complaint being lodged.

5. Learned Advocate appearing for the State submits that, this is third occasion when, the minor daughter of the writ petitioner went away voluntarily with the respondent no.5. On two previous occasions, no police complaints were lodged. However, the minor daughter was recovered. In the present police complaint, the father of the respondent no.5 was taken into custody and that, such person recorded a statement under Section 161 of the Code of Criminal Procedure. He draws the attention of the Court to such statement. He submits that, the father of the respondent no.5 attempted to bring the respondent no.5 and the minor daughter of the petitioner back to Kolkata. On the way, in the train at around Kharagpur station, the respondent no.5 and the minor daughter of the writ petitioner fled away.
6. Writ petition was considered from time to time by the Coordinate Bench. Reports were called for from the State.
7. A writ petition for habeas corpus is not

maintainable in respect of every missing person.

A writ petitioner is required to at least *prima facie* establish that there is an issue of illegal detention.

The authorities cited at the bar, namely,

Nimananda Biswal (supra), Home Secretary (Prison) and Others (supra) as well as ***Devu G Nair (supra)*** suggests so.

8. In the facts of the present case, minor daughter of the writ petitioner left her home voluntarily at least twice prior to the present police complaint. She left with the respondent no.5 on the two earlier occasions also. In the present police complaint, she is stated to be with the respondent no.5.
9. Police are conducting the investigation with regard to the complaint lodged by the writ petitioner. Writ of habeas corpus or its jurisdiction should not be utilized to monitor the investigation into such police complaint, as in the facts and circumstances of the present case.
10. Writ petitioner is not remediless. Writ petitioner can avail of other efficacious alternative remedies available.
11. In such circumstances, we are not minded to exercise our jurisdiction under Article 226 of the Constitution of India for issuance of a writ of habeas corpus, in the facts and circumstances of the present case.

12. This order will not prevent the parties from availing of their remedies before the appropriate forum in accordance with law.
13. **WPA (H) 9 of 2024** is disposed of accordingly without any order as to costs.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)