

**Court No. - 80**

**Case :-** CRIMINAL APPEAL No. - 4088 of 2024

**Appellant :-** Happy Singh @ Shiv Pratap Singh

**Respondent :-** State of U.P. and Another

**Counsel for Appellant :-** Amit Kumar Srivastava

**Counsel for Respondent :-** G.A.,Sanjay Kumar Yadav,Saurabh  
Pandey,Shivakant Singh

**Hon'ble Samit Gopal,J.**

1. List revised.
2. Heard Sri Amit Kumar Srivastava, learned counsel for the appellant, Sri Gyan Prakash, learned Senior Advocate/Deputy Solicitor General of India, assisted by Sri Sanjay Kumar Yadav, learned counsel for the C.B.I./opposite party no. 3 and Sri Shivakant Singh, learned counsel for the opposite party no. 2 and perused the material on record.
3. Counter affidavit has been filed by learned counsel for the C.B.I.,which is on the record.
4. Learned counsel for the appellant submits that he does not propose to file any rejoinder affidavit to the same and the matter be heard.
5. The matter is thus taken up for hearing.
6. This appeal under Section 14A (2) of S.C./S.T. Act, 1989 has been filed by the appellant Happy Singh @ Shiv Pratap Singh with the following prayers:-

"It is, therefore, Most Respectfully prayed that this Hon'ble Court may graciously be pleased to allow this appeal, set-aside the order dated 22.3.2024 passed by learned Special Judge S.C./S.T. (P.A.) Act/Additional Sessions Judge, Fatehpur in Bail Application No. 423 of 2024 (CNR No.UPFT010014522024), Happy Singh @ Shiv Pratap Singh vs. State of U.P., arising out of Case Crime No. 232 of 2021, under Sections 366, 504, 506, 120B I.P.C., Sections 3(2)(V) of S.C./S.T. (P.A.) Act, Police Station Kalyanpur, District Fatehpur.

It is further prayed that this Hon'ble Court may also be pleased to release the applicant on bail in Case Crime No. 232 of 2021, under Sections 366, 504, 506, 120B I.P.C. sections 3(2)(V) of S.C./S.T. (P.A.) Act, Police Station Kalyanpur, District Fatehpur, during pendency of the trial before trial court."

7. Before advertng to the facts of the matter it would be relevant to give some brief history of the matter.

8. A Habeas Corpus Writ Petition No. 777 of 2021, Kalawati and another vs. State of U.P. and 5 others, was preferred before this Court by the petitioners namely the petitioner no.1/Kalawati Devi who is the mother of the petitioner no. 2/Ritu Devi who is the corpus. The matter was heard by a co-ordinate Bench of this Court and vide order dated 24.11.2021 a direction was passed to trace out the petitioner no. 2/Ritu Devi and produce her before the Court on the next date. The said order reads as under:

"The instant habeas corpus writ petition has been preferred by the petitioners alleging inter-alia that petitioner no.1 Kalawati is mother of petitioner no.2 Ritu Devi (corpus).

It is submitted that the marriage of petitioner no.2 (corpus) was solemnized in the year 2019 with Sumit Kumar but she was living with petitioner no.1. On 23.02.2021, respondent no.4 with the help of respondent no.5 and 6 forcibly abducted the petitioner no.2 from the house of petitioner no.1. Thereafter, the petitioner no.1 has moved an application dated 04.03.2021 to the respondent no.2/Superintendent of Police, Fatehpur regarding the said incident with the prayer to lodge FIR in the matter against the respondent nos.4, 5 and 6 who are anti-social elements but no FIR was registered. Thereafter, a complaint dated 4.3.2021 was sent by the petitioner no.1 to the Chairman SC/ST Commission, U.P. Lucknow as well as State Movement Commission, U.P. Lucknow by the registered post but her FIR was not registered. Thereafter, the petitioner no.1 has also made a complaint on the concerned portal of the State Government which was registered as reference no.40017221004774. It is further pointed out that a reminder letter dated 15.03.2021 was also sent to the Superintendent of Police, Fatehpur but police in collusion with respondent nos.4, 5 and 6 instead of lodging FIR in the matter, made an entry about missing of petitioner no.2 in G.D.No.040 dated 3.4.2021. The petitioner no.1 is an illiterate lady and she is running from pillar to post for lodging her FIR and taking action against respondent nos.4 to 6 by moving several other applications dated 29.05.2021 to the Superintendent of Police, Fatehpur and application dated 13.10.2021 to the District Magistrate, Fatehpur.

On the strength of aforesaid facts, the main substratum of argument of learned counsel for the petitioners is that petitioner no.2 (corpus) is in the captivity of respondent nos.4, 5 and 6 and there is every possibility of indulging her in immoral trafficking activities.

Learned A.G.A has accepted notice on behalf of State of U.P.-respondent nos.1, 2 and 3. He prays for and is allowed a week's time to seek instructions in the matter from the concerned Station House Officer, Superintendent of Police, Fatehpur as well as District Magistrate, Fatehpur.

Copy of this order shall be communicated by the learned A.G.A to the aforesaid authorities for necessary action in the matter. The Station House Officer, Police Station Kalyanpur, District Fatehpur shall file his personal affidavit on the next date explaining as to why FIR has not been registered in the matter and what action has been taken on the aforesaid applications of the petitioner no.1.

In the meantime they shall also make an effort to trace out the petitioner no.2 Ritu Devi and shall produce the corpus before this Court on the next date.

Put up this matter on 09.12.2021 as fresh."

9. Subsequently the said Habeas Corpus Writ Petition was heard by another co-ordinate Bench of this Court and vide order dated 05.02.2024, since the corpus was not traceable, directed the C.B.I. to investigate the matter so as to enable it, to recover the corpus. The said order reads as under:

"1. The instant Habeas Corpus petition has been filed with the following prayer:-

"1. Issue a writ, order or direction in the nature of Habeas Corpus commanding/ directing the respondent nos. 2 and 3 to produce/ensure the presence of the corpus (Petitioner No.2) before this Court on the date fixed and set her at her own free will and liberty

2. Issue a writ, order or direction in the nature of mandamus directing the respondents authority to search out corpus (petitioner no.2) who is said by the respondents as missing.

3. Issue any other suitable writ, order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case.

4. Award the cost of the writ petition in favour of the petitioner."

2. When the matter came up for consideration before the co-ordinate Bench of this Court on 24.11.2021, following order was passed:-

"The instant habeas corpus writ petition has been preferred by the petitioners alleging inter-alia that petitioner no.1 Kalawati is mother of petitioner no.2 Ritu Devi (corpus).

It is submitted that the marriage of petitioner no.2 (corpus) was solemnized in the year 2019 with Sumit Kumar but she was living with petitioner no.1. On 23.02.2021, respondent no.4 with the help of respondent no.5 and 6 forcibly abducted the petitioner no.2 from the house of petitioner no.1. Thereafter, the petitioner no.1 has moved an application dated 04.03.2021 to the respondent no.2/Superintendent of Police, Fatehpur regarding the said incident with the prayer to lodge FIR in the matter against the respondent nos.4, 5 and 6 who are anti-social elements but no FIR was registered. Thereafter, a complaint dated 4.3.2021 was sent by the petitioner no.1 to the Chairman SC/ST Commission, U.P. Lucknow as well as State Movement Commission, U.P. Lucknow by the registered post but her FIR was not registered. Thereafter, the petitioner no.1 has also made a complaint on the concerned portal of the State Government which was registered as reference no.40017221004774. It is further pointed out that a reminder letter dated 15.03.2021 was also sent to the Superintendent of Police, Fatehpur but police in collusion with respondent nos.4, 5 and 6 instead of lodging FIR in the matter, made an entry about missing of petitioner no.2 in G.D.No.040 dated 3.4.2021. The petitioner no.1 is an illiterate lady and she is running from pillar to post for lodging her FIR and taking action against respondent nos.4 to 6 by moving several other applications dated 29.05.2021 to the Superintendent of Police, Fatehpur and application dated 13.10.2021 to the District Magistrate, Fatehpur.

On the strength of aforesaid facts, the main substratum of argument of learned counsel for the petitioners is that petitioner no.2 (corpus) is in the captivity of respondent nos.4, 5 and 6 and there is every possibility of indulging her in immoral trafficking activities.

Learned A.G.A has accepted notice on behalf of State of U.P.-respondent nos.1, 2 and 3. He prays for and is allowed a week's time to seek instructions in the

matter from the concerned Station House Officer, Superintendent of Police, Fatehpur as well as District Magistrate, Fatehpur.

Copy of this order shall be communicated by the learned A.G.A to the aforesaid authorities for necessary action in the matter. The Station House Officer, Police Station Kalyanpur, District Fatehpur shall file his personal affidavit on the next date explaining as to why FIR has not been registered in the matter and what action has been taken on the aforesaid applications of the petitioner no.1.

In the meantime they shall also make an effort to trace out the petitioner no.2 Ritu Devi and shall produce the corpus before this Court on the next date.

Put up this matter on 09.12.2021 as fresh.”

3. When the matter came up for consideration on 09.12.2021, it was pointed out by learned A.G.A. that though the order dated 24.11.2021 was communicated to the Superintendent of Police, Fatehpur but neither any affidavit has been filed by the concerned Station House Officer nor any instruction has been received from the Superintendent of Police, Fatehpur, ergo, the matter was directed to be placed as fresh on 14.12.2021 and the Station House Officer, Police Station Kalyanpur, District Fatehpur was directed to remain present to explain as to why the order dated 24.11.2021 was not complied.

4. Thereafter, the case was taken up on 14.12.2021, on which date, following order was passed:-

“Pursuant to order dated 09.12.2021 Anurudh Kumar Dwivedi, who is presently posted as Station House Officer, Police Station-Kalyanpur, District-Fatehpur, is personally present before this Court and filed his personal affidavit dated 13.12.2021, which is taken on record.

In the affidavit seeking unconditional apology it is mentioned that F.I.R. has been lodged in the matter on 10.12.2021 against the respondent nos. 4 and 5 registered as Case Crime No. 232 of 2021, under Section 366, 504, 506, 120B I.P.C. and 3(2)(v) S.C./S.T. Act, at Police Station-Kalyanpur, District-Fatehpur. It is further mentioned that Circle Officer Bindki, Fatehpur is the Investigating Officer of this case, who has constituted a team vide order dated 11.12.2021 to trace out the corpus. Copy of the said order has been brought on record as Annexure No. 3 to the affidavit. It is also mentioned that the current location of the corpus has been found at Gujrat and the police team, constituted vide order dated 11.12.2021 of Circle Officer, is trying to recover the corpus. The location of respondent no. 4 has also been traced out near Ludhiana and efforts are being made to arrest him.

On the other hand learned counsel for the for the petitioners submits that the police has deliberately did not lodge the F.I.R. against the respondent no. 6-Sanjay Singh in order to save him, whereas in the application dated 29.05.2021 addressed to Superintendent of Police, District-Fatehpur allegation has also been levelled against him. The said application has been filed as Annexure No. 6 to the petition.

In view of above, put up this case as fresh on 04.01.2022. Respondent nos. 2 and 3 are directed to ensure the production of corpus before this Court on the next date. Affidavit shall also be filed by the investigating officer of this case about further progress in the matter. The investigating officer of this case as well as Station House Officer, Police Station-Kalyanpur, District-Fatehpur shall remain present in person before this Court on the next date.

Copy of this order shall be communicated to Superintendent of Police, District-Fatehpur by the learned A.G.A. within three days.”

5. On 04.01.2022, it was intimated by learned A.G.A. that Investigating Officer of the case had been changed and Sri Yogendra Singh Malik, Circle Officer, Bindki, District Fatehpur

was investigating the matter. For that purpose his team had gone to State of Gujarat to trace out the corpus, in such circumstances, the case was directed to be placed on board as fresh on 28.01.2022 however, the Investigating Officer of the case was directed to produce the corpus positively by the next date fixed. In case, the corpus was not produced, the Superintendent of Police, Fatehpur was directed to appear in person.

6. Thereafter, on 28.01.2022, the case was taken up through video conferencing, on which date, the Superintendent of Police Fatehpur also appeared through video conferencing and the case was directed to be listed on 14.02.2022 as fresh along with progress report. Personal appearance of the Superintendent of Police, Fatehpur was dispensed with. Pursuant to the order dated 28.01.2022, learned A.G.A. had filed the progress report which was taken on record and the case was directed to be listed as fresh on 24.02.2022.

7. Since the corpus could not be produced till 24.02.2022 and the matter was taken up on 24.02.2022, this Court had directed the Senior Superintendent of Police/Superintendent of Police, Fatehpur to appear in person along with affidavit explaining the reasons as to why the corpus had not been recovered so far, inspite of the directions passed by this Court and also to explain the efforts made in the matter and the matter was fixed for 14.03.2022 as fresh. Pursuant to which order, compliance report was submitted, however the Superintendent of Police, Fatehpur had sought further fifteen days time, to recover the corpus, therefore the matter was directed to be listed on 04.04.2022 exempting the personal appearance of the Superintendent of Police, Fatehpur and to file his personal affidavit with regard to the progress report.

8. The time, as sought by the State authorities to recover the corpus, was granted time and again yet, the corpus could not be recovered. When the case was taken up on 04.04.2022, an affidavit of compliance was filed by Superintendent of Police, Fatehpur dated 02.04.2022, wherein telephonic conversation between the mother and brother of the corpus has been appended. Sri Yogendra Singh Malik, Circle Officer/Investigating Officer, District Fatehpur had tried to demonstrate that the corpus is with the mother-petitioner no.1 and they wanted to settle the matter after taking huge amount from the accused persons. He had also stated that they themselves have hidden the corpus, so how could he bring the corpus. The Circle Officer/Investigating Officer stated-"वो खुद छिपाये है तो हम कैसे लाये". The order, so passed on 04.04.2022 is quoted below:

"Vide earlier order of this Court dated 24.11.2021, the Station House Officer, Kalyanpur, District Fatehpur was directed to file his personal affidavit explaining as to why FIR has not been registered in the matter and what action has been taken on the applications of the petitioner no.1 In the meantime, they were directed to trace out the corpus-petitioner no.2 Ritu Devi before this Court. Again on 09.12.2021 the matter was fixed for 14.12.2021 on which date, the Station House Officer was directed to remain present explaining as to why the order dated 24.11.2021 has not been complied. This Court on 14.12.2021 again granted time to the respondent nos. 2 and 3 to ensure the production of the corpus fixing the matter for 04.01.2022. On 04.01.2022, learned A.G.A. informed the Court that the Investigating Officer has been changed and now Sri Yogendra Singh Malik, Circle Officer Bindki, District Fatehpur is investigating the matter, thus the Investigating Officer of the case was directed to produce the corpus, failing which the Superintendent of Police Fatehpur, was directed to be present before the Court. On 28.01.2022, 14.02.2022, the matter was adjourned, again on 24.02.2022, the Senior Superintendent of Police/Superintendent of Police, Fatehpur was directed to appear in person explaining the reasons as to why the corpus has not been recovered so far inspite of strict directions issued by this Court fixing the matter for 14.03.2022. This vide order dated 14.03.2022 has granted time to the Circle Officer/Investigating Officer, District Fatehpur to recover the corpus by the next date of listing, fixing the matter for 04.04.2022.

Today when the case was taken up, Yogendra Singh Malik, Circle Officer/Investigating Officer, District Fatehpur is present before this Court, pursuant to the earlier order of this Court dated 14.03.2022.

Perusal of the compliance affidavit dated 12.03.2022 shows that the Investigating Officer since 04.01.2022 is ensuring the Court that he will produce the corpus on the next date of listing, however, he failed till today, inspite of the fact, that in the order dated 14.12.2021, it has been observed that a team was constituted vide order dated 11.12.2021 to trace out the corpus and a location of the corpus has been found at State of Gujarat, the said team would recover the corpus.

An affidavit of compliance has been filed by Superintendent of Police, Fatehpur dated 02.04.2022, wherein telephonic conversation between the mother and brother of the corpus has been appended as Annexure-3 to the said affidavit. The Circle/ Investigating Officer has stated that from the perusal of the said conversation, it is evident that the mother of the corpus is stating to her son that they will get about 7 lacs, meaning thereby, the Investigation Officer wants to demonstrate that the corpus is with the mother-petitioner no.1 and they wants to settle matter after taking huge amount. He further states that they have hidden himself, so how do we bring the corpus. "वो खुद छिपाये है तो हम कैसे लाये".

From the perusal of the compliance affidavit filed by Superintendent of Police, Fatehpur, dated 15.03.2022, it is evident that in paragraph 8 of the affidavit, that the accused persons have kept the victim at Gujarat and thus the team went to Gujarat on 07.01.2022, which returned on 24.01.2022 but the whereabouts of the victim could not be ascertained. Vide G.D. entry no.17 dated 06.02.2022. annexed as Annexure-3 to the compliance affidavit dated 15.03.2022, it is clear from the parcha no.12 that the corpus was living with the accused-respondent no.4 Happy Singh @ Shiv Singh upto 09.01.2022 i.e. during the period when Happy Singh @ Shiv Singh was suffering from COVID-19 Pandemic and it is very surprising that once the corpus did not left him during the difficult time, then how the corpus will left the respondent no.4 in good days.

Inspite of time being granted to Investigating Officer several times nothing has been done in tracing out the corpus, rather the Investigating Officer is twisting and misleading the Court on the basis of the conversation between the mother and son that the corpus is with them and he is helpless to trace out the corpus. This Court when asked about the details of mobile numbers by which conversation took place between the mother and son, the Circle Officers, has stated that it has been obtained by the order of ADGP, and the order is not with him. Learned A.G.A. states that the Investigating Officer may be permitted to interrogate them. In reply thereto, it is always open for a police in order to achieve the fair and impartial investigation, they may interrogate any person and in this regard no specific direction is required.

Considering the aforesaid facts and circumstances, it is necessary in the interest of justice that the matter be looked into by Inspector General of Police, Prayagraj Region, Prayagraj, along with the Investigation Officer/Circle Officer and shall submit a progress report on the next date of listing.

Investigation Officer/Circle Officer in case, fails to produce the corpus on the next date of listing then he along with Inspector General of Police, Prayagraj Region, Prayagraj shall remain present on the next date.

List on 13.04.2022.

Let a copy of this order be supplied to learned A.G.A. for necessary compliance".

9. During the course of arguments on 13.04.2022, it was brought to the notice of this Court that one unidentified dead body was recovered from the road side of Kanspur Gagoli

and since there was suspicion of the dead body being of the corpus as such learned Additional Advocate General, State of U.P. had stated before this Court that the tissue of the unidentified body had already been preserved to get the same matched with the DNA test of mother of corpus, namely, Smt. Kalawati and the steps would be taken for sending the samples to the Forensic Laboratory and some time is required. The order so passed on 13.04.2022 is in the following terms:-

“Pursuant to the earlier order of this Court dated 04.04.2022, the Inspector General of Police, Prayagraj Region, Prayagraj as well as Investigating Officer/ Circle Officer, Jafarganj, District Fatehpur are present before this Court along with the progress report. The report has been produced before this Court and this Court after perusing the same returned to learned Government Advocate to file the same in the registry on or before 18.04.2022.

Heard learned counsel for the applicants, Sri Mahesh Chandra Chaturvedi, learned Additional Advocate General assisted by Sri Shiv Kumar G.A. and Sri Manoj Dwivedi, learned A.G.A. learned counsel for the State-respondents and perused the record.

During the course of arguments, it has brought to the notice of this Court that on 11.03.2021 one unidentified dead body was recovered from the road side of Kanspur Gagoli however, the incident is of date 23.02.2021 and with regard to the said incident the F.I.R. was not lodged by the concerned Police Officer which is in violation of Rule 5 of The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rule 1995. Rule 5 (3) of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act 1989 as amended by the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act 2018, read as under:-

(3) Any person aggrieved by a refusal on the part of an officer in-charge of a police station to record the information referred to in sub-rule (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who after investigation either by himself or by a police officer not below the rank of Deputy Superintendent of Police, shall make an order in writing to the officer in-charge of the concerned police station to enter the substance of that information to be entered in the book to be maintained by the police station.

In the instant case, it is borne out from record that with regard to the incident, the cognizance has been taken by SC/ST Commission on the other hand, the petitioner was running from pillar to post for redressal of her grievance.

It has been stated by learned Additional Advocate General, State of U.P. that the tissue of the unidentified body has already been preserved and sent to Forensic Laboratory Test. To collect the material for DNA test of mother of corpus namely, Smt. Kalawati, steps will be taken, thereafter, the same will be sent for laboratory test thus the report will take time.

Considering the urgency in the matter, the concerned Forensic Science Laboratory, is directed to expedite the process of DNA test.

Looking to the gravity of the case, it necessary in the interest of justice that the Investigating Officer/Circle Officer is directed to obtain the DNA test report as expeditiously as possible, and to place it before this Court by the next date of listing.

The Inspector General of Police, Prayagraj Region, Prayagraj, is directed to keep vigilant and monitor the investigation and the outcome of the same be also placed before this Court by the next date of listing.

List on 04.05.2022 for further hearing on which date the Investigating Officer/Circle Officer, Jafarganj, District Fatehpur as well as Inspector General of Police, Prayagraj Region, Prayagraj shall remain present before this Court.

Let a copy of this order be provided to learned Government Advocate, for necessary compliance.

It goes without saying that this Court on certain query this Court had called upon Mr. V.P.Srivastava, learned Senior Advocate, who has rendered his assistance to the Court and for his act and conduct, this Court appreciate the same.”

10. When the matter was heard at length on 05.05.2022, the Inspector General of Police, Prayagraj Region, Prayagraj had undertaken that a comprehensive report disclosing the action taken against the officials concerned, who were trying to mislead the Court by diverting the investigation from the date of lodging of the F.I.R. till recovery of the deceased body i.e. 11.03.2021 and also the action taken in the matter. On which, matter was adjourned to 04.07.2022.

11. On 04.07.2022, an affidavit was filed duly sworn by Sri Anil Kumar Investigating Officer/ Circle Officer, Jafarganj, District Fatehpur, annexing therewith the report of Forensic Science Laboratory, Bhopal. Perusal of that report revealed that the DNA collected did not match and it was found that Smt. Kalawati was not the biological mother of the unidentified female dead body, however the progress report submitted on that date shows that there are sufficient material in the S.C.D. No.60 to resolve the controversy involved but no substantial efforts were taken. Another plea was taken by the State authority that they would undertake NARCO test of the accused persons, though without any concrete evidence and only to twist the matter. The State authorities had sought further time, which was granted and to bring on record a report specifically mentioning therein the action taken with regard to recovery of the corpus. The order dated 04.07.2022 runs as under:-

“Pursuant to the earlier order of this Court dated 05.05.2022, The Inspector General of Police, Prayagraj Region, Prayagraj, Investigating Officer/ Circle Officer, Jafarganj, District Fatehpur as well as Tej Bahadur Yadav, S.I.T member are present before this Court.

Heard learned counsel for the petitioner, Sri M.C.Chaturvedi, learned Additional Advocate General, State of U.P., Sri Shiv Kumar Pal, learned Government Advocate, assisted by Syed Ali Murtuza and Sri Rajeshwar Singh, learned Additional Government Advocates and perused the compliance affidavit, affidavit of I.O. as well as progress report.

The case of the petitioner is that she married her daughter (corpus-petitioner no.2) with one Sumit Kumar in the year 2019 and when she came to her parental house with her husband, she was forcibly abducted by the respondent no.4 with the help of the respondent nos.5 and 6 pursuant to which a complaint was made on 04.03.2021 regarding forcibly abduction of the corpus on 23.02.2021 before the police authorities for registration of the F.I.R. but nothing was done by the District/police Authorities, a complaint was also sent to the Chairman SC/ST Commission, U.P. Lucknow as well as to the State Movement Commission, U.P. Lucknow and also before the concerned portal of State Government even then nothing was done. Hence the instant habeas corpus writ petition had been filed before this Court in the month of October, 2021 with a prayer to direct the respondent nos. 2 and 3 to produce the corpus (petitioner no.2) and set her at liberty.

The case was taken up for the first time on 24.11.2021 and since then the police authorities are giving one statement after another by twisting the matter and are trying to divert the matter only to save the skin of accused-culprits by developing a new story.

The paragraph no.4 and 5 of the order dated 04.04.2022 passed by this Court is quoted below:-

"An affidavit of compliance has been filed by Superintendent of Police, Fatehpur dated 02.04.2022, wherein telephonic conversation between the mother and brother of the corpus has been appended as Annexure-3 to the said affidavit. The Circle/ Investigating Officer has stated that from the perusal of the said conversation, it is evident that the mother of the corpus is stating to her son that they will get about 7 lacs, meaning thereby, the Investigation Officer wants to demonstrate that the corpus is with the mother-petitioner no.1 and they wants to settle matter after taking huge amount. He further states that they have hidden himself, so how do we bring the corpus. ""वो खुद छिपाये है तो हम कैसे लाये"".

From the perusal of the compliance affidavit filed by Superintendent of Police, Fatehpur, dated 15.03.2022, it is evident that in paragraph 8 of the affidavit, that the accused persons have kept the victim at Gujarat and thus the team went to Gujarat on 07.01.2022, which returned on 24.01.2022 but the whereabouts of the victim could not be ascertained. Vide G.D. entry no.17 dated 06.02.2022. annexed as Annexure-3 to the compliance affidavit dated 15.03.2022, it is clear from the parcha no.12 that the corpus was living with the accused-respondent no.4 Happy Singh @ Shiv Singh upto 09.01.2022 i.e. during the period when Happy Singh @ Shiv Singh was suffering from COVID-19 Pandemic and it is very surprising that once the corpus did not left him during the difficult time, then how the corpus will left the respondent no.4 in good days."

This Court in paragraph no.3 of the order dated 13.04.2022 observed as under:-

During the course of arguments, it has brought to the notice of this Court that on 11.03.2021 one unidentified dead body was recovered from the road side of Kanspur Gagoli however, the incident is of date 23.02.2021 and with regard to the said incident the F.I.R. was not lodged by the concerned Police Officer which is in violation of Rule 5 of The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rule 1995. Rule 5 (3) of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act 1989 as amended by the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act 2018, read as under:-

(3) Any person aggrieved by a refusal on the part of an officer in-charge of a police station to record the information referred to in sub-rule (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who after investigation either by himself or by a police officer not below the rank of Deputy Superintendent of Police, shall make an order in writing to the officer in-charge of the concerned police station to enter the substance of that information to be entered in the book to be maintained by the police station."

When the case was taken up on the last date i.e. 05.05.2022, the State counsel during the course of argument had orally made submission that they will undergo for the DNA test of an unidentified dead body recovered as they were of the

opinion, that the unidentified dead body may be of the corpus and prays to grant ample time, thus the case was directed to be listed on 04.07.2022 i.e. about two months time was granted to the State authorities.

Today when the case was taken up, affidavit of compliance on behalf of Inspector General of Police, Prayagraj Range, Prayagraj as well as Affidavit along with progress report filed by Investigating Officer/Circle Officer, Jafarganj, District Fatehpur have been filed which are taken on record.

Perusal of Annexure-1 to the affidavit filed in support of affidavit dated 04.07.2022, sworn by Sri Anil Kumar, Investigating Officer/Circle Officer Jafarganj, District Fatehpur, which is a report of Forensic Science Laboratory, Bhopal shows that the DNA Test of unknown recovered dead body was conducted with the sample of Smt. Kalawati-petitioner-first informant and that sample did not match with each other, thus the petitioner no.1-informant-Kalawati is not the biological mother of unidentified female dead body recovered by the police.

The progress report which has been provided to this Court contains the details of S.C.D.No. 24 to S.C.D. No. 64. It appears from the perusal of the S.C.D. No. 60 that there is sufficient material to resolve the controversy involved in the instant case, inspite of same, no substantial efforts have been made by the Investigating Officer of the case.

Today the State authorities came up with a different story that they will undergo for NARCO test of the accused persons, without any concrete evidence only to mislead the Court. When the Court was not satisfied with the arguments advanced by the State and was referring the matter to the C.B.I. for investigation in the matter, again time was sought by the State Counsel.

Considered the prayer of the State to grant time. As a last opportunity, time is granted to the State Authorities to bring on record a report specifically mentioning therein the action taken in the investigation with regard to the recovery of the corpus.

List this matter on 19.07.2022 for further hearing by which time, the aforesaid report shall be filed before this Court.

The Inspector General of Police, Prayagraj Region, Prayagraj, Investigating Officer/ Circle Officer, Jafarganj, District Fatehpur as well as Tej Bahadur Yadav, S.I.T member shall remain present before this Court on the date fixed."

12. When the matter was taken up on 19.07.2022, the progress report was filed and this Court after perusing the same was of the view that the said progress report was nothing but a synchronization of the efforts earlier made by the investigating agency. The Court took note of the fact that inspite of several opportunities granted to the Inspector General of Police, Prayagraj Region, Prayagraj, under whose supervision investigation was going on since April 2022, no fruitful result could be obtained. The queries put by the Court were also not satisfactorily answered, rather twisted and unambiguous reply was furnished on account of which the Court was left with no option but to direct the Director General of Police, State of U.P. to look into the matter and to supervise the investigation by issuing appropriate guidelines to recover the corpus, fixing the matter for 19.07.2022, on which date, on the prayer of State, the matter was fixed for 02.11.2022.

13. On 02.11.2022, sealed envelop containing report dated 28.10.2022 issued by the Deputy Director, Directorate of Forensic Science Sector 18A, Gandhinagar, Gujarat State as well as report of Director General of Police, State of U.P. dated 30.10.2022 was also placed wherein it has been stated that on the basis of NARCO test, steps for recovery of the corpus were being taken, therefore, the Court had fixed the matter for 07.03.2023. The relevant paragraphs of the order dated 02.11.2022 is quoted below:

"Today, a sealed envelop containing a progress report has been produced before this Court. The sealed has been opened in the Court and after perusal of the report, the report has been kept in the said envelop and sealed again and is kept as a part of the record.

The aforesaid envelop contains the report dated 28.10.2022 issued by Deputy Director, Directorate of Forensic Science, Sector-18A, Gandhinagar, Gujarat State, The envelop also contains the report of the Director General of Police, State of U.P. dated 30.10.2022, wherein it has been stated that on the basis of NORCO test, steps for recovery of the corpus are being taken.

The Director General of Police, State of U.P. is directed to go through the NORCO test and shall personally issue guidelines to the team for recovery of the corpus and shall submits its report to the effect that what is the outcome of the investigation as to whether the corpus is traceable or not, so that the investigation may reach to its logical end."

14. Thereafter, the case was taken up on 05.05.2023, on which date, time was further granted and the case was adjourned to 14.09.2023 but on 14.09.2023, again further time was sought, which was granted fixing the matter for 18.10.2023. On 18.10.2023, learned A.G.A-I, sought further time to bring the investigation to its logical end, which was granted and the matter was posted for 03.02.2024.

15. Today, Sri Amit Kumar Nagar, Additional Superintendent of Police, S.T.F. U.P., Sri Anil Kumar, Circle Officer Jafarganj/ S.I.T. Member and Sri Tej Bahadur Singh, S.I., S.I.T. Member are present before this Court, pursuant to the earlier order of this Court dated 18.10.2023. Progress report has also been filed before this Court.

16. Heard learned counsel for the petitioners, Sri Rupak Chaubey, learned A.G.A.-I for the State and perused the progress report filed on behalf of the State.

17. The matter is pending since 24.11.2021 before this Court. Since the filing of the instant petition, the State authorities have been seeking time on one pretext or the other and on their request sufficient time were granted but they failed to recover the corpus. It appears that the act and conduct of the State Authorities is that they are protecting the dolphins by twisting the matter before this Court.

18. The progress report of the Director General of Police dated 29.1.2024 has been placed today. After perusing the same, this Court made certain queries from the State but no satisfactory reply could be furnished to this Court. Surprisingly, the last point of the progress report contains the recommendation to the effect while tracing the corpus by the Special Investigation Team, investigation has been recommended to be closed, which has also been duly approved by the Director General of Police. That fact itself demonstrates that the State authorities have failed to perform their duties up to the expectation and to recover the corpus even today. They have shown utmost callous attitude as is reflected in the recommendation and approval of the S.I.T.. The last point of the progress report is in the following terms:-

"जिस पर एस०आई०टी० के द्वारा अपहृता रितु देवी की तलाश जारी रखते हुये विवेचना समाप्त करने की संस्तुति की गयी। जिस पर मेरे द्वारा सहमति प्रदान की गयी है।"

19. This Court further takes a serious note of the fact that prompt F.I.R. has not been lodged by the concerned Station House Office, even when the mother of the corpus, approached the Superintendent of Police, Fatehpur for lodging of the F.I.R. Thereafter, a complaint dated 04.03.2021 was sent to Chairman SC/ST Commission, as well as State Movement Commissioner, U.P. Lucknow and a complaint was also lodged on the concerned portal of the State Government and lastly when a reminder letter dated 15.03.23021 was sent to the Superintendent of Police, Fatehpur, the police in collusion with the respondent nos. 4, 5 and 6 instead of lodging the F.I.R. made an entry about missing of the petitioner no.2 in GD No.040 dated 03.04.2021. It is very sorry state of affairs that mother of a wretched victim who has been abducted, left no stone unturned to know the whereabouts of her daughter, has been left in the lurch. Thus, under the compelled circumstances, the petitioner no.1 filed the instant Habeas Corpus Writ petition since the Habeas Corpus jurisdiction is the most valuable writ as

it determines the right to freedom and personal liberty. After an individual is detained, he can appeal to the court for the issuance of writ of Habeas Corpus. The order from the Court to the detaining authority/person to produce the detained individual before it is to examine whether the person has been detained legally or not. If the Court is certain that the individual is unlawfully detained, it can issue orders for his/her release and in the instant case, there is specific allegations against the respondent nos. 4 to 6 who have abducted the corpus and that corpus was seen in the custody of the accused-respondent no.4 Happy Singh long back, in the State of Gujarat. In spite of same, the corpus could not be recovered till date, therefore, the objective of writ of Habeas Corpus has miserably failed in the instant case.

20. The Hon'ble Apex Court in the matter of ***State of West Bengal and others Vs. The Committee for Protection of Democratic Rights, West Bengal and others, reported in 2010 (3) SCC 571*** has observed in 12, 13, 14, 32, 33, 44, 45 as under:-

"12. It is manifest that in essence the objection of the appellant to the CBI's role in police investigation in a State without its consent, proceeds on the doctrine of distribution of legislative powers as between the Union and the State Legislatures particularly with reference to the three Lists in the Seventh Schedule of the Constitution and the distribution of powers between the said three organs of the State.

13. In order to appreciate the controversy, a brief reference to some of the provisions in the Constitution [1965] 1 S.C.R. 413 (1980) 3 SCC 625 (1981) 1 SCC 568 (1993) 2 SCC 746 (1997) 3 SCC 261 [1965] 3 S.C.R. 536 would be necessary. The Constitution of India is divided into several parts, each part dealing in detail with different aspects of the social, economic, political and administrative set up. For the present case, we are mainly concerned with Part III of the Constitution, which enumerates the fundamental rights guaranteed by the State primarily to citizens and in some cases to every resident of India and Part XI thereof, which pertains to the relations between the Union and the States.

14. Bearing in mind the basis on which the correctness of the impugned direction is being questioned by the State of West Bengal, we shall first notice the scope and purport of Part XI of the Constitution. According to Article 1 of the Constitution, India is a 'Union' of States, which means a Federation of States. Every federal system requires division of powers between the Union and State Governments, which in our Constitution is effected by Part XI thereof. While Articles 245 to 255 deal with distribution of legislative powers, the distribution of administrative powers is dealt with in Articles 256 to 261. Under the Constitution, there is a three-fold distribution of legislative powers between the Union and the States, made by the three Lists in the Seventh Schedule of the Constitution. While Article 245 confers the legislative powers upon the Union and the States, Article 246 provides for distribution of legislative powers between the Union and the States. Article 246, relevant for our purpose, reads as follows:

246. Subject-matter of laws made by Parliament and by the Legislatures of States -- (1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the "Union List").

(2) Notwithstanding anything in clause (3), Parliament and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List").

(3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the 'State List').

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List."

32. The Constitution of India expressly confers the power of judicial review on this Court and the High Courts under Article 32 and 226 respectively. Dr. B.R. Ambedkar described Article 32 as the very soul of the Constitution the very heart of it the most important Article. By now, it is well settled that the power of judicial review, vested in the Supreme Court and the High Courts under the said Articles of the Constitution, is an integral part and essential feature of the Constitution, constituting part of its basic structure. Therefore, ordinarily, the power of the High Court and this Court to test the Constitutional validity of legislations can never be ousted or even abridged. Moreover, Article 13 of the Constitution not only declares the pre- constitution laws as void to the extent to which they are inconsistent with the fundamental rights, it also prohibits the State from making a law which either takes away totally or abrogates in part a fundamental right. Therefore, judicial review of laws is embedded in the Constitution by virtue of Article 13 read with Articles 32 and 226 of our Constitution. It is manifest from the language of Article 245 of the Constitution that all legislative powers of the Parliament or the State Legislatures are expressly made subject to other provisions of the Constitution, which obviously would include the rights conferred in Part III of the Constitution. Whether there is a contravention of any of the rights so conferred, is to be decided only by the Constitutional Courts, which are empowered not only to declare a law as unconstitutional but also to enforce fundamental rights by issuing directions or orders or writs of or "in the nature of" mandamus, certiorari, habeas corpus, prohibition and quo warranto for this purpose. It is pertinent to note that Article 32 of the Constitution is also contained in Part III of the Constitution, which enumerates the fundamental rights and not alongside other Articles of the Constitution which define the general jurisdiction of the Supreme Court. Thus, being a fundamental right itself, it is the duty of this Court to ensure that no fundamental right is contravened or abridged by any statutory or constitutional provision. Moreover, it is also plain from the expression "in the nature of" employed in clause (2) of Article 32 that the power conferred by the said clause is in the widest terms and is not confined to issuing the high prerogative writs specified in the said clause but includes within its ambit the power to issue any directions or orders or writs which may be appropriate for enforcement of the fundamental rights. Therefore, even when the conditions for issue of any of these writs are not fulfilled, this Court would not be constrained to fold its hands in despair and plead its inability to help the citizen who has come before it for judicial redress. (per P.N. Bhagwati, J. in *Bandhua Mukti Morcha Vs. Union of India & Ors.*<sup>23</sup>).

33. In this context, it would be profitable to make a reference to the decision of this Court in *Nilabati Behera (supra)*. The Court concurred with the view expressed by this Court in *Khatri & Ors. (II) Vs. State of Bihar & Ors.*<sup>24</sup> and *Khatri & Ors. (IV) Vs. State of Bihar & Ors.*<sup>25</sup>, wherein it was said that the Court is not helpless to grant relief in a case of violation of the right to life and personal liberty, and it should be prepared "to forge new tools and devise new remedies" for the purpose of vindicating these precious fundamental rights. It was also indicated that the procedure suitable in the facts of the case must be adopted for conducting the enquiry, needed to ascertain the necessary facts, for

granting the relief, as may be available mode of redress, for enforcement of the guaranteed fundamental rights. In his concurring judgment, Dr. A.S. Anand, J. (as His Lordship then was), observed as under:

"35. This Court and the High Courts, being the protectors of the civil liberties of the citizen, have not only the power and jurisdiction but also an obligation to grant relief in exercise of its jurisdiction under Articles 32 and 226 of the Constitution to the victim or the heir of the victim whose fundamental rights under Article 21 of the (1984) 3 SCC 161 (1981) 1 SCC 627 (1981) 2 SCC 493 Constitution of India are established to have been flagrantly infringed by calling upon the State to repair the damage done by its officers to the fundamental rights of the citizen, notwithstanding the right of the citizen to the remedy by way of a civil suit or criminal proceedings. The State, of course has the right to be indemnified by and take such action as may be available to it against the wrongdoer in accordance with law - through appropriate proceedings."

44. Thus, having examined the rival contentions in the context of the Constitutional Scheme, we conclude as follows:

(i) The fundamental rights, enshrined in Part III of the Constitution, are inherent and cannot be extinguished by any Constitutional or Statutory provision. Any law that abrogates or abridges such rights would be violative of the basic structure doctrine. The actual effect and impact of the law on the rights guaranteed under Part III has to be taken into account in determining whether or not it destroys the basic structure.

(ii) Article 21 of the Constitution in its broad perspective seeks to protect the persons of their lives and personal liberties except according to the procedure established by law. The said Article in its broad application not only takes within its fold enforcement of the rights of an accused but also the rights of the victim. The State has a duty to enforce the human rights of a citizen providing for fair and impartial investigation against any person accused of commission of a cognizable offence, which may include its own officers. In certain situations even a witness to the crime may seek for and shall be granted protection by the State.

(iii) In view of the constitutional scheme and the jurisdiction conferred on this Court under Article 32 and on the High Courts under Article 226 of the Constitution the power of judicial review being an integral part of the basic structure of the Constitution, no Act of Parliament can exclude or curtail the powers of the Constitutional Courts with regard to the enforcement of fundamental rights. As a matter of fact, such a power is essential to give practicable content to the objectives of the Constitution embodied in Part III and other parts of the Constitution. Moreover, in a federal constitution, the distribution of legislative powers between the Parliament and the State Legislature involves limitation on legislative powers and, therefore, this requires an authority other than the Parliament to ascertain whether such limitations are transgressed. Judicial review acts as the final arbiter not only to give effect to the distribution of legislative powers between the Parliament and the State Legislatures, it is also necessary to show any transgression by each entity.

Therefore, to borrow the words of Lord Steyn, judicial review is justified by combination of "the principles of separation of powers, rule of law, the principle of constitutionality and the reach of judicial review".

(iv) If the federal structure is violated by any legislative action, the Constitution takes care to protect the federal structure by ensuring that Courts act as guardians and interpreters of the Constitution and provide remedy under Articles 32 and 226, whenever there is an attempted violation. In the circumstances, any direction by the Supreme Court or the High Court in exercise of power under Article 32 or 226 to uphold the Constitution and maintain the rule of law cannot be termed as violating the federal structure.

(v) Restriction on the Parliament by the Constitution and restriction on the Executive by the Parliament under an enactment, do not amount to restriction on the power of the Judiciary under Article 32 and 226 of the Constitution.

(vi) If in terms of Entry 2 of the List II of the Seventh Schedule on the one hand and Entry 2 A and Entry 80 of the List I on the other investigation by another agency is permissible subject to grant of consent by the State concerned, there is no reason as to why, in an exceptional situation, court would be precluded from exercising the same power which the Union could exercise in terms of the provisions of the Statute. In our opinion, exercise of such power by the constitutional courts would not violate the doctrine of separation of powers. In fact, if in such a situation the court fails to grant relief, it would be failing in its constitutional duty.

(vii) When the Special Police Act itself provides that subject to the consent by the State, the CBI can take up investigation in relation to the crime which was otherwise within the jurisdiction of the State Police, the court can also exercise its constitutional power of judicial review and direct the CBI to take up the investigation within the jurisdiction of the State. The power of the High Court under Article 226 of the Constitution cannot be taken away, curtailed or diluted by Section 6 of the Special Police Act. Irrespective of there being any statutory provision acting as a restriction on the powers of the Courts, the restriction imposed by Section 6 of the Special Police Act on the powers of the Union, cannot be read as restriction on the powers of the Constitutional Courts. Therefore, exercise of power of judicial review by the High Court, in our opinion, would not amount to infringement of either the doctrine of separation of power or the federal structure.

45. In the final analysis, our answer to the question referred is that a direction by the High Court, in exercise of its jurisdiction under Article 226 of the Constitution, to the CBI to investigate a cognizable offence alleged to have been committed within the territory of a State without the consent of that State will neither impinge upon the federal structure of the Constitution nor violate the doctrine of separation of power and shall be valid in law. Being the protectors of civil liberties of the citizens, this Court and the High Courts have not only the power and jurisdiction but also an obligation to protect the fundamental rights, guaranteed by Part III in general and under Article 21 of the Constitution in particular, zealously and vigilantly.

21. It is well settled that powers vested under habeas corpus writ jurisdiction have to be exercised to secure the ends of justice where there is violation of the right to life and personal liberty, depending upon the facts of given case. In the instant case, it appears that there is miscarriage of justice. Considering the fact that the corpus is found missing for the last more than two years as well as considering the fact that the State authorities failed to recover the corpus and also keeping in mind the recommendation made by the S.I.T. for closure of the investigation duly accepted by the Director General of Police, and relying upon the Judgement of Hon'ble Apex Court in the matter of State of West Bengal and others (supra) as well as in the interest of justice and to protect the personal life and liberty of the corpus this Court has no option but to exercise its parens patriae jurisdiction to direct the investigation to be conducted by the C.B.I for the purpose of recovery of the corpus at the earliest.

22. Accordingly, the C.B.I. is directed to investigate the matter, so as to enable it, to recover the corpus and to submit its report by the next date of listing.

23. Let the matter be listed before the appropriate Court on 21.08.2024. This matter shall not be treated as tied up or part heard to this bench.

24. Let a copy of this order be provided to Sri Gyan Prakash, learned Senior Counsel/Deputy Solicitor General for the C.B.I. assisted by Sri Sanjay Kumar Yadav, learned counsel for the C.B.I. through Registrar Compliance of this Court.

25. Personal appearance of Sri Amit Kumar Nagar, Additional Superintendent of Police, S.T.F. U.P., Sri Anil Kumar, Circle Officer Jafarganj/ S.I.T. Member and Sri Tej Bahadur Singh, S.I., S.I.T. Member is dispensed with, unless otherwise directed by the Court in future."

**10.** It is undisputed fact that compliance of the order dated 05.02.2024 the C.B.I. has taken over investigation of the matter and investigation is continuing and the C.B.I. is to file its progress report in the said Habeas Corpus Writ Petition as stated by learned counsel for the C.B.I.

**11.** In the meantime, a First Information Report was lodged on 10.12.2021 by Smt. Kalawati Devi under Sections 366, 504, 506, 120B I.P.C. and Section 3(2)(V) of S.C./S.T. Act, against the appellant/Happy Singh and Rahi Singh alleging therein that her daughter aged about 22 years had come from her matrimonial house and on 23.02.2021 at about 12:00 pm, the accused/Happy Singh with an intention to have physical relationship with her and to humiliate her, allured and enticed her daughter in which co-accused Rahi Singh helped them. Later on, Happy Singh returned back to the village without her daughter, on which she and her husband Bhagwan Deen inquired from him about her daughter, on which he used caste related abuses and both accused persons abused them and threatened them with life. They searched for their daughter but did not get any clue. Her report be lodged and she be helped.

**12.** The matter was investigated and a charge sheet under Sections 366, 504, 506, 120B I.P.C. and Section 3(2)(V) of S.C./S.T. Act was submitted against the appellant/Happy Singh@Shiv Pratap Singh, Rahi Singh@Anuj Singh and Sanjay Singh, on which the court concerned took cognizance and summoned them vide order dated 11.02.2022. Subsequently under the

order dated 05.02.2024 passed by a co-ordinate Bench of this Court investigation of the matter was transferred to the C.B.I.

**13.** Learned counsel for the appellant submitted that the appellant has been falsely implicated in the present case. It is submitted that the first informant/Kalawati Devi gave a missing report to the police which was recorded in G.D. No. 040 dated 03.04.2021 at 17:59 hours at Police Station Kalyanpur, District Fatehpur with the allegation that her daughter has gone missing from the house since 23.2.2021 at 12:00 p.m. She has been searched a lot but could not be traced. The information be recorded and action be taken. It is submitted that the appellant is not named in the said missing report. It is further submitted that there is no evidence, at all, to connect the appellant in the present matter. It is submitted that investigation by the police has concluded and a charge sheet was submitted on which the court concerned has taken cognizance but subsequently due to transfer of investigation to the C.B.I. under the orders of this Court, investigation by the C.B.I. is still under progress. It is submitted that the allegation against the appellant in the F.I.R. is on the basis of suspicion only. It is submitted that the prosecution story is false and frivolous. It is submitted that the appellant is having no criminal history as stated in para-23 of the affidavit and he is in jail since 18.12.2021.

**14.** Learned counsel for the first informant opposed the prayer and submitted that the appellant is named in the F.I.R. and role has been assigned to him. It is submitted that the victim and daughter of the first informant is still missing and has not been traced. It is submitted that investigation by the C.B.I. is also under progress and even in the investigation by the local police the appellant was found to be involved in the matter and hence, charge sheet was submitted against him and two other accused persons on which the court concerned has taken cognizance.

**15.** Learned counsel for the C.B.I. also opposed the appeal and prayer for bail and submitted that investigation in the present matter is going on and the victim is not yet traceable. Learned counsel has placed para-14 of the counter affidavit dated 22.5.2024 and has submitted that it has revealed during investigation that on 23.02.2021 the appellant/Happy Singh in conspiracy with co-accused Sanjay Singh and Rahi Singh kidnapped the victim from the house of her mother Smt. Kalawati Devi and took her to Surat, Gujarat. The accused persons have also threatened the complainant with castiest remarks. There is ample oral and documentary evidence to prove the charges against the accused/appellant.

It is next submitted that there is no denial or rebuttal of the averments of the counter affidavit since learned counsel for the appellant has stated that he does not propose to file any rejoinder affidavit to the same and as such the allegations stand un-rebutted and should be considered. It is submitted that the present appeal is devoid of any merits and be dismissed.

**16.** After having heard learned counsels for the parties and perusing the records, it is evident that with regards to missing of a lady, her mother initially filed a Habeas Corpus Writ Petition before this Court. She then lodged an F.I.R. against the appellant and one other co-accused person. The said matter was investigated and a charge sheet was submitted against the appellant and two other co-accused persons on which the court concerned has taken cognizance. A missing report was given by the mother of the victim informing the police about the victim going missing. Another Bench of this Court in Habeas Corpus Writ Petition filed by the first informant and mother of the victim to seek a direction for producing the corpus, directed initially for production of the victim before this Court, but subsequently looking to the matter, the case was entrusted to the C.B.I. for investigation. The said investigation by the C.B.I. still is said to be under progress. Counter affidavit of the C.B.I. states of ample evidence against the appellant and other co-accused persons. The averments in the counter affidavit stand unrebutted. The victim and daughter of the first informant is still untraceable.

**17.** Looking to fact and circumstances of the case, nature of evidence and gravity of offence, no ground exists to enlarge the appellant on bail.

**18.** Accordingly, the present appeal and the prayer for bail in appeal are rejected.

(Samit Gopal,J.)

**Order Date :-** 16.12.2024

Naresh