

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.47 of 2025

Arising Out of PS. Case No.- Year-0 Thana- District- Araria

Md. Anaruddin, male, aged about 55 yeas, S/o- Late Md. Unus @ Late Md. Yunus, Village- Latahari, W.No-6, P.S.- Bausi, Dist- Araria

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary of Home Department, Bihar, Patna
2. The DGP Apradh Anushandhan Vibhag, Patel Bhawan Patna, Bihar
3. The Superintendent of Police, Araria
4. The Dy. S.P, Araria
5. The Officer-Incharge of Bausi Police Station
6. Bablu, male, aged about 40 yeas, Village- Dhalory, P.S.- Bhagwangala, Dist- Mursidabad, West Bengal

... .. Respondents

Appearance :

For the Petitioner	:	Mr. Pintu Kumar Patel, Advocate
For the Respondents	:	Mr. Prabhu Narayan Sharma, AC to AG

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

4 13-02-2025 Heard Mr. Pintu Kumar Patel, learned counsel for the petitioner and Mr. Prabhu Narayan Sharma, learned AC to AG appearing on behalf of the Respondent-State.

2. Learned counsel for the petitioner seeks permission to amend in the memo of the petition in course of the day.

3. Permission, as prayed for, is granted.

4. The petitioner has filed the present petition in which



the petitioner has prayed for the following relief(s):-

“(i) For issuance of a writ in the nature Habeas Corpus to the concerned authority in order to redeem and recover the minor son of the petitioner from the custody of the private respondent no.06 had kidnapped him (minor son namely Md. Rahamatulla of the petitioner) by calling through mobile which bearing Mobile no. 7200267122 with the pretension of doing labour for wage in Chennai and subsequently sent him along with his (Respondent no. 06) ancillary to Goa.”

(ii) For issuance of a writ in the nature of Mandamus to the concerned authority specially the respondent no.05 to institute the First Information Report against the Private Respondent no.06 who had kidnapped the minor son of the petitioner by making pretension of doing labour for wage.

(iii) For issuance of any other writ/writs direction/directions to the respondent authorities to grant the relief/reliefs to the petitioner for which he is found to be entitled.”

5. Learned counsel for the petitioner has referred the averments made in the memo of the petition and thereafter submitted that the son of the petitioner was called by respondent no.06 through mobile phone on 30th of August, 2024 to Chennai. The son of the petitioner was called at Chennai by giving assurance that work will be provided to him. It is submitted that thereafter the son of the petitioner, who was residing in the territorial jurisdiction of the State of Bihar, went to Chennai.



Learned counsel further submitted that thereafter the son of the petitioner stayed at Chennai for 15 days. However, respondent no.6 did not provide him the work. It is further stated that thereafter respondent no.6 sent the son of the petitioner to Goa with assurance that work will be provided at Goa. It is also contended that thereafter on 15.09.2024, his son had talked with the petitioner. Details of mobile phones are also mentioned in the memo of the petition. The grievance of the petitioner is that thereafter mobile phone of his son found to be switch off and later on, on 17.09.2024, son of the petitioner called his elder brother, i.e., another son of the petitioner on his mobile phone, at about 01:50 P.M. At that time, the son of the petitioner, who was at Goa, told him that he is kidnapped by respondent no.6 and his companion and he is taken into the deep of the forest. It is also submitted that thereafter the petitioner called respondent no.6 on his mobile phone. However, respondent no.6 gave threats to the petitioner. It is also stated that on 08.10.2024, cousin brother of the petitioner called the son of the petitioner who is at Goa. However, he could not contact him. Learned counsel, therefore, submitted that as the son of the petitioner is not traceable and he has been kidnapped by respondent no.6, who is situated at Chennai and his son is kidnapped at Goa, he filed written



application to SHO, Bausi through the speed post. However, it has been contended that the concerned respondent Police authority did not register the FIR. It is further submitted that on 10.10.2024, the petitioner also sent written application/complaint to Dy.SP, Araria as well as Superintendent of Police, Araria and D.G.P., Goa for taking appropriate action. However, no action has been taken by respondent nos.1 to 5 pursuant to the written complaint submitted by the present petitioner.

6. Learned counsel, therefore, urged that the respondent Police authorities be directed to lodge the FIR against respondent no.6. Learned counsel for the petitioner has also urged that the respondent-authority be directed to recover the minor son of the petitioner from the custody of private-respondent no.6.

7. Learned counsel has placed reliance upon the decision rendered by Hon'ble Supreme Court in the case of ***Kusum Ingots & Alloys Ltd. vs. Union of India and Another.*** reported in 2004 (6) SCC 254.

8. On the other hand learned Government counsel has vehemently opposed the prayer made by learned counsel for the petitioner by contending that the present petition is not maintainable before this Court as the cause of action has not



arisen within the territorial jurisdiction of this Court. It is contended that from the averments made by the petitioner in the memo of the petition, it is revealed that son of the petitioner was not kidnapped from the territorial jurisdiction of this Court and, in fact, the son of the petitioner left the State of Bihar voluntarily and went to Chennai for getting work. It is further submitted that for 15 days, the son of the petitioner stayed at Chennai. At that place also, it is not alleged that the son of the petitioner was kidnapped and illegally confined at Chennai. Learned Government counsel would further submit that from the averments made in the memo of the petition, it further transpires that the son of the petitioner was sent from Chennai to Goa and he stayed for few days at Goa and thereafter, it is alleged that from Goa, he was kidnapped and sent to forest and thereafter, son of the petitioner is not traceable. Learned Government counsel, therefore, submitted that the cause of action has arisen within the territorial jurisdiction of Court at Goa and, therefore, merely because the petitioner is residing in the State of Bihar, it is not open for him to file the petition under Article 226 of the Constitution of India before this Court. Learned counsel, therefore, urged that the present petition be dismissed only on this ground.



9. Learned Government counsel has placed reliance upon the following decisions:-

(i) *AIR 1961 SC 532 reported in Lt. Col. Khajoor Singh vs. Union of India and Anr, (2004) 6 SCC 254,*

(ii) *(2004) 6 SCC 254 reported in Kusum Ingots & Alloys Ltd. vs. Union of India and Another and*

(iii) *K. Padmaja vs. Union of India Writ Petition No. 5252 of 2023* passed by Hon'ble Telangana High Court.

10. We have considered the submission canvassed by learned counsels appearing for the parties. We have also perused the averments made in the memo of the writ petition. At the outset, it is pertinent to note that the petitioner specially averred in the memo of the petition in paragraph 4 that private-respondent no.6 had called his son through the mobile phone on 30th of August, 2024 to Chennai for giving work and about 15 days, the son of the petitioner stayed at Chennai. However, no work was provided to him. Thereafter, respondent no.6 sent the son of the petitioner to Goa and from Goa also, son of the petitioner talked from his mobile phone to the petitioner on 15.09.2024. Once again, telephone call was made on 17.09.2024 by the son of the petitioner to his elder brother and thereafter, it is alleged that he was kidnapped in Goa and he was taken into



deep of the forest. Thus, from the aforesaid averments made in the memo of the petition, it can be said that the cause of action arises either at Chennai or at Goa. It is not the case of the petitioner that his son was kidnapped from the State of Bihar. It is specific allegation in the written complaint given by the petitioner to the various authorities, copy of which has been annexed with the petition that his son has been kidnapped from Goa.

11. At this stage, it is also relevant to note that in the present petition, the petitioner has prayed that the respondent-authority be directed to recover the son of the petitioner from the custody of respondent no.6 and the petitioner also prayed that respondent no.5 be directed to lodge the FIR against respondent no.6.

12. At this stage, we would like to examine the averments made in the memo of the petition. The petitioner has not levelled any allegation in the memo of the petition that respondent no.6 has illegally detained the minor son of the petitioner. In fact, it is a specific case and averment of the petitioner in the memo of the petition that respondent no.6 is residing at Chennai. Respondent no.6 called the son of the petitioner at Chennai. Son of the petitioner stayed at Chennai for



a period of 15 days. Thereafter, respondent no.6 sent the son of the petitioner to Goa. It is specific case in the written complaint given by him to the respondent Police authority that his son has been kidnapped at Goa. Thus, it can be said that no cause of action has arisen within the territorial jurisdiction of this High Court. Further, respondent no.6 is also residing at Chennai and, as per the statements made in the memo of petition, respondent no.6 sent the son of the petitioner to Goa at which place associates of respondent no.6 were residing.

13. The petitioner has also prayed that respondent Police authority be directed to register the F.I.R. for the alleged incident of kidnapping of his son at Goa. We are of the view that the said prayer cannot be entertained in the present petition which is primarily filed for issuance of writ of Habeas Corpus. We are, therefore, of the view that the present petition with regard to the said prayer before Division Bench of this Court is misconceived.

14. At this stage, we would like to refer the decision upon which the reliance is placed by learned counsels appearing for the parties in the case of ***Lt. Col. Khajoor Singh (supra)***, the Hon'ble Supreme Court has observed in paragraph 13 as under:-

“13. This brings us to the first question, namely, whether the Government of India as such can be said



to be located at one place, namely, New Delhi. The main argument in this connection is that the Government of India is all-pervasive and is functioning throughout the territory of India and therefore every High Court has power to issue a writ against it, as it must be presumed to be located within the territorial jurisdiction of all State High Courts. This argument in our opinion confuses the concept of location of a Government with the concept of its functioning. A Government may be functioning all over a State or all over India; but it certainly is not located all over the State or all over India. It is true that the Constitution has not provided that the seat of the Government of India will be at New Delhi. That, however, does not mean that the Government of India as such has no seat where it is located. It is common knowledge that the seat of the Government of India is in New Delhi and the Government as such is located in New Delhi. The absence of a provision in the Constitution can make no difference to this fact. What we have to see, therefore, is whether the words of Article 226 mean that the person or authority to whom a writ is to be issued has to be resident in or located within the territories of the High Court issuing the writ? The relevant words of Article 226 are these—

“Every High Court shall have power ... to issue to any person or authority ... within those territories...”.

So far as a natural person is concerned, there can be no doubt that he can be within those territories only if he resides therein either permanently or temporarily. So far as an authority is concerned, there can be no doubt that if its office is located



therein it must be within the territory. But do these words mean with respect to an authority that even though its office is not located within those territories it will be within those territories because its order may affect persons living in those territories? Now it is clear that the jurisdiction conferred on the High Court by Article 226 does not depend upon the residence or location of the person applying to it for relief; it depends only on the person or authority against whom a writ is sought being within those territories. It seems to us therefore that it is not permissible to read in Article 226 the residence or location of the person affected by the order passed in order to determine the jurisdiction of the High Court. That jurisdiction depends on the person or authority passing the order being within those territories and the residence or location of the person affected can have no relevance on the question of the High Court's jurisdiction. Thus if a person residing or located in Bombay, for example, is aggrieved by an order passed by an authority located, say, in Calcutta, the forum in which he has to seek relief is not the Bombay High Court though the order may affect him in Bombay but the Calcutta High Court where the authority passing the order is located. It would, therefore, in our opinion be wrong to introduce in Article 226 the concept of the place where the order passed has effect in order to determine the jurisdiction of the High Court which can give relief under Article 226. The introduction of such a concept may give rise to confusion and conflict of jurisdictions. Take, for example, the case of an order passed by an authority in Calcutta, which affects six brothers living, say, in Bombay, Madras, Allahabad, Jabalpur, Jodhpur and



Chandigarh. The order passed by the authority in Calcutta has thus affected persons in six States. Can it be said that Article 226 contemplates that all the six High Courts have jurisdiction in the matter of giving relief under it? The answer must obviously be “No”, if one is to avoid confusion and conflict of jurisdiction. As we read the relevant words of Article 226 (quoted above) there can be no doubt that the jurisdiction conferred by that Article on a High Court is with respect to the location or residence of the person or authority passing the order and there can be no question of introducing the concept of the place where the order is to have effect in order to determine which High Court can give relief under it. It is true that this Court will give such meaning to the words used in the Constitution as would help towards its working smoothly. If we were to introduce in Article 226 the concept of the place where the order is to have effect we would not be advancing the purposes for which Article 226 has been enacted. On the other hand, we would be producing conflict of jurisdiction between various High Courts as already shown by the illustration given above. Therefore, the effect of an order by whomsoever it is passed can have no relevance in determining the jurisdiction of the High Court which can take action under Article 226. Now, functioning of a Government is really nothing other than giving effect to the orders passed by it. Therefore it would not be right to introduce in Article 226 the concept of the functioning of Government when determining the meaning of the words “any person or authority within those territories”. By introducing the concept of functioning in these words we shall be creating the same conflict which would arise if the concept of the



place where the order is to have effect is introduced in Article 226. There can, therefore, be no escape from the conclusion that these words in Article 226 refer not to the place where the Government may be functioning but only to the place where the person or authority is either resident or is located. So far therefore as a natural person is concerned, he is within those territories if he resides there permanently or temporarily. So far as an authority (other than a Government) is concerned, it is within the territories if its office is located there. So far as a Government is concerned it is within the territories only if its seat is within those territories.”

15. From the observation made by the Hon’ble Supreme Court in the aforesaid decision, it can be said that the jurisdiction conferred on the High Court by Article 226 of the Constitution of India does not depend upon the residence or location of the person applying to it for relief. It depends only on the person or authority against whom a writ is sought being within those territories.

16. In the case of ***Kusum Ingots & Alloys Ltd.*** (*supra*), the Hon’ble Supreme Court has observed in paragraph nos.10, 13, 16 & 18 as under:-

“10. Keeping in view the expressions used in clause (2) of Article 226 of the Constitution of India, indisputably even if a small fraction of cause of action accrues within the jurisdiction of the Court, the Court will have jurisdiction in the matter.

13. This Court in Oil and Natural Gas Commission



case [(1994) 4 SCC 711] held that all necessary facts must form an integral part of the cause of action. It was observed : (SCC p. 719, para 8)

“So also the mere fact that it sent fax messages from Calcutta and received a reply thereto at Calcutta would not constitute an integral part of the cause of action.”

16. In Union of India v. Adani Exports Ltd. [(2002) 1 SCC 567] it was held that in order to confer jurisdiction on a High Court to entertain a writ petition it must disclose that the integral facts pleaded in support of the cause of action do constitute a cause so as to empower the Court to decide the dispute and the entire or a part of it arose within its jurisdiction.

18. The facts pleaded in the writ petition must have a nexus on the basis whereof a prayer can be granted. Those facts which have nothing to do with the prayer made therein cannot be said to give rise to a cause of action which would confer jurisdiction on the Court.”

17. From the aforesaid decision rendered by the Hon’ble Supreme Court, it is clear that even a part of the cause of action accrues within the jurisdiction of the Court, the Court will have jurisdiction in the matter and the petition can be entertained. However, it is further clear that in order to confer jurisdiction on a High Court to entertain a writ petition, it must disclose that the integral facts pleaded in support of the cause of action do constitute a cause so as to empower the Court to decide the dispute and the entire or a part of it arose within its



jurisdiction. Further, the facts pleaded in the writ petition must have a nexus on the basis whereof a prayer can be granted.

18. At this stage, we would like to refer the provisions contained in under Article 226(2) of the Constitution of India which provides as under:-

“The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.”

19. Keeping in view of the aforesaid decisions rendered by the Hon'ble Supreme Court once again, the averments made by the petitioner in the memo of petition are required to be examined. It is the specific case of the petitioner in the memo of the petition as well as in the written complaint given by him to the respondent-police authorities that his son has been kidnapped at Goa. If that is the case, we are of the view that the present petition before this Court under Article 226 for issuance writ of Habeas Corpus is not maintainable. This High Court has no territorial jurisdiction to issue such a writ.

20. Thus, we are of the view that in the present case



even a small part of cause of action has not arisen within the territorial jurisdiction of this Court. We are, therefore, of the view that the present petition before this Court is not maintainable and the same cannot be entertained.

21. Accordingly, the petition stands dismissed.

22. At this stage, it is clarified that we have not gone into the merits of the case of the petitioner and with regard to the allegation levelled by him against respondent no.6. It is further clarified that it is always open for the petitioner to file the petition before appropriate forum having territorial jurisdiction for the grievances made by him in the present petition.

(Vipul M. Pancholi, J.)

(Alok Kumar Pandey, J.)

Gaurav Kumar/-

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