

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.205 of 2026

Arising Out of PS. Case No.-4 Year-2026 Thana- ROSERA District- Samastipur

Sahana Khatun @ Sahana Khatoon W/o Md. Safik Miya Resident of Ward
No. 05, Dharampur Jairam, P.O and P.S.- Rahua, District Samastipur

... .. Petitioner/s

Versus

1. The State of Bihar, through the Additional Chief Secretary, Deptt. of Home (Police), Bihar Sardar Patel Bhawan, Nehru Marg Patna, Bihar
2. The Additional Chief Secretary (ACS Home), Deptt. of Home (Police), Bihar Sardar Patel Bhawan, Nehru Marg Patna
3. The Director General of Police, Sardar Patel Bhawan, Nehru Marg, Patna, Bihar
4. The Additional Director General of Police, Bihar, Patna, Sardar Patel Bhawan Nehru Marg, Bihar, Patna
5. The Additional Director General of Police, Bihar, Patna, Sardar Patel Bhawan, Nehru Marg, Bihar, Patna
6. The Additional Director General of Police, Criminal Investigation Deptt. (CID), Bihar, Patna Sardar Patel Bhawan Nehru Marg, Bihar
7. The Inspector General of Police, Darbhanga Range, Darbhanga
8. The Deputy Inspector General of Police, Darbhanga Range, Patna
9. The Superintendent of Police, Samastipur, Bihar
10. The Additional Superintendent of Police, Samastipur, Bihar
11. The Deputy Superintendent of Police, Legal, Samastipur, Bihar
12. The Sub Divisional Police Officer Rosera, I Samastipur, Bihar
13. The Sub Divisional Police Officer Rosera, II Samastipur, Bihar
14. The Station House Officer, Rosera, Police Station, Samastipur, Bihar
15. The Investigation Officer, Rosera, (Rosera Police Station Case no. 4 of 2026), P.S. Samastipur, Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Manish Kumar No. 13, Advocate Mr. Rohit Kumar, Advocate Mrs. Shreya, Advocate
For the Respondent/s	:	Mr. A.C to A.G.

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
and
HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER



(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

2 04-02-2026 Heard learned counsel for the petitioner and learned
counsel appearing for the State.

2. This writ in the nature of *Habeas Corpus* has been
preferred seeking the following reliefs:-

*“(I) For issuance of a writ, in the nature of
WRIT OF HABEAS CORPUS directing the Superintendent
of Police, Samastipur to take the Victim girl from the
custody of miscreants, who has illegally detained the victim
girl in their custody.*

*(II) For issuance of a writ of mandamus
directing the Superintendent of Police, Samastipur to
produce the victim girl in the Hon’ble Court and be
released the victim girl from the custody of the miscreant,
and be handed over her to parents and it is further be
pleased to take necessary legal steps against miscreant
accordance with law.*

*(III) For issuance of any other writ/writs, for
granting any other relief/reliefs for which petitioners are
found entitled to the facts and circumstances of the present
case.”*

3. The brief facts of the case, as per the petitioner, are
that on 05.01.2026, a minor girl, namely Soni Kumari, aged
about 17 years, daughter of Devendra Das, resident of village
Rahua, Police Station-Rosera, District-Samastipur, left her
house for attending school and did not return thereafter.
Subsequently, on the basis of a written complaint lodged by her
father, Rosera (Samastipur) P.S. Case No. 04/2026 dated



09.01.2026 was registered under Section 96 of the Bharatiya Nyaya Sanhita against Mohammad Salman, son of the petitioner, alleging his involvement in the offence of kidnapping/procurement of a minor girl and apprehension of human trafficking.

4. The petitioner, who is the mother of the accused named in the aforesaid F.I.R., has alleged that prior to registration of the said case, her minor son, aged about 16 years, had himself gone missing on 05.01.2026 and that despite repeated representations including written complaints and emails, no F.I.R. was registered regarding his disappearance. It is asserted that neither the minor girl nor the petitioner's son has been traced till date and that the implication of her son in the F.I.R. is arbitrary and without due application of mind.

5. Upon perusal of the pleadings and submissions advanced on behalf of the parties, the core issue that arises for consideration in the present case is: *Whether the petitioner, being the mother of the accused, named in F.I.R. i.e. Rosera (Samastipur) P.S. Case No. 04/2026, has the locus standi to maintain a writ petition in the nature of Habeas Corpus for recovery of the victim girl(of said F.I.R.), when the natural guardians of the victim girl are conscious of the facts, and have*



already instituted the said F.I.R., and investigation pursuant thereto is going on.

6. The writ of *Habeas Corpus* is a prerogative and extraordinary constitutional remedy available under Article 226 of the Constitution of India to secure the liberty of a person who is alleged to be under illegal or unlawful detention. The essential condition for issuance of such writ is the existence of detention without authority of law. Though the scope of the writ has expanded over time, its foundational object remains the protection of personal liberty and not adjudication of disputes arising out of criminal accusations.

7. The Supreme Court in ***Kanu Sanyal v. District Magistrate, Darjeeling***, reported in (1973) 2 SCC 674, has authoritatively explained the true nature, scope and object of a writ of *Habeas Corpus*. Paragraph 4 of the said judgment, reads as follows:

“4..It will be seen from this brief history of the writ of habeas corpus that it is essentially a procedural writ. It deals with the machinery of justice, not the substantive law. The object of the writ is to secure release of a person who is illegally restrained of his liberty. The writ is, no doubt, a command addressed to a person who is alleged to have another person unlawfully in his custody requiring him to bring the body of such person before the Court, but the production of the body of the person detained is directed in order that the circumstances of his detention may be inquired into, or to put it differently, ‘in order that appropriate



judgment be rendered on judicial enquiry into the alleged unlawful restraint'..."

8. In the opinion of this Court, a *Habeas Corpus* petition may, in appropriate cases, be filed not only by the detinue but also by a third person. However, such locus is confined to persons who have a close, legitimate and *bona fide* interest in the liberty of the detinue, such as parents, spouse or lawful guardians, particularly where the detinue is a minor or is incapable of approaching the Court. The locus so recognized is not unqualified and cannot be extended to persons whose interest is unknown to the detinue or aligned with an accused in a criminal case relating to the alleged detention.

9. Applying the aforesaid principles to the facts of the present case, it is evident that the natural guardians of the victim girl, namely her parents are fully conscious of the facts and circumstances. They have already invoked the criminal law machinery by lodging an F.I.R. alleging kidnapping and human trafficking, and investigation pursuant thereto is admittedly pending. Despite being fully aware of the alleged disappearance of their minor daughter, they have not approached this Court seeking a writ of *Habeas Corpus*.

10. The petitioner, on the other hand, is the mother of the accused named in the F.I.R. and seeks issuance of a writ for



recovery of the alleged victim girl. *Prima facie*, the relief sought does not appear to be aimed at securing the liberty of the victim, but rather seems to be an indirect attempt to undermine or neutralize the allegations forming the subject matter of the pending criminal investigation and to protect the petitioner's son.

11. This Court also finds that in the present petition the petitioner has failed to demonstrate that the victim girl is under illegal detention of any named respondent or authority. Mere allegation of disappearance or dissatisfaction with the pace or outcome of investigation cannot furnish a valid ground for issuance of a writ of Habeas Corpus.

12. The Supreme Court in ***Home Secretary (Prison) v. H. Nilofer Nisha***, reported in ***(2020) 14 SCC 161***, has categorically held that a writ of Habeas Corpus cannot be issued unless the Court arrives at a clear conclusion that the detainee is under detention without authority of law. Para 16 of the said judgment reads as follows:-

“16. A writ of habeas corpus can only be issued when the detention or confinement of a person is without the authority of law. Though the literal meaning of the Latin phrase habeas corpus is “to produce the body”, over a period of time production of the body is more often than not insisted upon but legally it is to be decided whether the body is under illegal detention or not. Habeas corpus is often used as a remedy in cases of



preventive detention because in such cases the validity of the order detaining the detenu is not subject to challenge in any other court and it is only writ jurisdiction which is available to the aggrieved party. The scope of the petition of habeas corpus has over a period of time been expanded and this writ is commonly used when a spouse claims that his/her spouse has been illegally detained by the parents. This writ is many times used even in cases of custody of children. Even though, the scope may have expanded, there are certain limitations to this writ and the most basic of such limitation is that the Court, before issuing any writ of habeas corpus must come to the conclusion that the detenu is under detention without any authority of law.”

13. In view of the above discussion, this Court finds that the petitioner is neither the victim nor the lawful guardian of the victim. The natural guardians of the victim have already invoked the criminal law in motion and have not chosen to invoke the jurisdiction of this Court by filing a writ of *Habeas Corpus*. The petitioner's interest appears to be directly aligned with that of the accused and, therefore, the present petition prima facie appears to be an abuse of process of law.

14. Accordingly, the issue framed is answered in negative. The petitioner, being the mother of the accused named in the F.I.R., has no *locus standi* to maintain the present writ petition in the nature of *Habeas Corpus* for recovery of the victim girl.

15. Accordingly, the present writ petition stands dismissed as not maintainable.



16. It is, however, clarified that this order shall not prejudice the ongoing investigation or any other remedy available to the parties in accordance with law.

17. Pending application(s), if any, shall also stand disposed of.

(Sudhir Singh, J)

(Rajesh Kumar Verma, J)

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