

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1625 of 2024

Arising Out of PS. Case No.-9 Year-2024 Thana- DANAPUR District- Patna

Kanchan Devi W/O Late Raj Kumar Paswan R/O Sultanpur,Near Shiv
Mandir,PS-Danapur,Distt-Patna

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Secretary, Dept. of Home and Police, Bihar, Patna
3. The Director General of Police, Bihar, Patna
4. The Senior Superintendent of Police, Bihar, Patna
5. The Sub Divisional Police Officer, Danapur, Patna
6. The Officer Incharge, Danapur Police Station, Danapur, Patna
7. A.S.I. Investigation Officer, Danapur P.S., Danapur, Patna
8. Sadhana Devi W/O Late Ajay Paswan R/O Sultanpur Bhattha Par,Near Shiv
Mandir,PS-Danapur,Distt-Patna

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Anuj Dilbar Krishna, Advocate
For the State	:	Mr. Nagendra Prasad, S.C.-23

CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL JUDGMENT

Date : 02-07-2026

The present petition has been preferred by the petitioner seeking proper investigation in the subject FIR bearing Danapur P.S. Case No. 9 of 2024 dated 02.01.2024, registered for the offences punishable under Sections 363 and 366-A of the Indian Penal Code and recovery of the victim of offence of kidnapping, who is a 13 years old girl.

2. It is informed by learned counsel for the petitioner at bar that in this case, charge-sheet has been submitted and trial



bearing Sessions Trial No. 1991 of 2025 is going on, pending in the Sessions Court, Danapur, Patna. However, the victim-girl is still not recovered by the police.

3. Learned counsel for the State submits that despite best efforts, the police could not recover the victim-girl so far.

4. However, learned counsel for the petitioner submits that there is still scope of recovery, because the required steps have not been taken by the police to recover the victim-girl.

5. Now question is whether such writ petition should be entertained by this Court or the petitioner should be given liberty to move an appropriate application before Jurisdictional Magistrate for further investigation to ensure the recovery of the victim-girl.

6. Here, it would be pertinent to mention that Section 97 Cr.PC/Section 100 B.N.S.S. which empowers the Judicial Magistrate to issue search warrant to recover any person if he has reason to believe that such person is confined under such circumstances that the confinement amounts to an offence and if the person is recovered, he shall be immediately taken before a Magistrate.

7. Search and recovery of the victim of any offence is part of investigation and police is duty bound to do proper



investigation, if required. The Jurisdictional Magistrate can issue search warrant for recovery of the victim and he can even monitor the efforts being taken by the police to search and recover the victim.

8. In Showkat Ahmad Mir vs. Nighat Begum case, High Court of Jammu and Kashmir and Ladakh at Srinagar in Case No. CRM(M) No. 240 of 2022, has held as follows:-

"8) A perusal of the aforesaid provision reveals that a Magistrate of the first class is vested with power to issue a search warrant in respect of a person who is confined under such circumstances that his/her confinement amounts to an offence. After the production of confined person before the Magistrate, an order, as is deemed proper by the Magistrate in the circumstances, has to be passed.

9) Thus, two things are essential before a Magistrate can issue a search warrant under Section 97 of Cr. P. C; one is that a person should be confined and second is that the confinement of such person should amount to an offence."
(Emphasis supplied)

9. In Jaishree v. State of U.P., (2024 SCC OnLine All 162), High Court of Allahabad has held as follows:-

"9. The power to direct search for persons wrongfully confined is provided under Section 97 of the Criminal Procedure Code, 1973 whereas Section 98 provides the procedure to compel restoration of abducted females. In a situation where the husband seeks to assert that the wife, without reasonable cause, is refusing to return to her matrimonial home, it would be open for him to seek the remedy of restitution of conjugal rights under Section 9 of the Hindu Marriage Act, 1955. The recourse to the latter remedy may be sought where the detention does not amount to an offence and to the former if it does. While invoking either of these remedies, all the issues relating to facts can be agitated and examined, whereas a writ of habeas corpus may not be issued where facts are disputed



or are not clearly established.

10. The exercise of the extraordinary jurisdiction for issuance of writ of habeas corpus would be dependent on the jurisdictional fact where the petitioner establishes a *prima facie* case that the detention is unlawful, which apparently is not demonstrated from the facts which are on record in the present case.

11. In view of the other remedies available for the purpose, under criminal and civil law, exigence of a writ of habeas corpus at the behest of a husband to regain his wife would be rare and may not be available as a matter of course and the power in this regard may be exercised only when a clear case is made out."

(Emphasis supplied)

10. Here, it would also profitable to refer to some judgments delivered by some High Courts where victims were missing but there was no allegation of any illegal confinement. Here, the High Courts have held that in such circumstances, the writ of habeas corpus is not maintainable and such missing cases are required to be registered under penal provisions as well as Code of Criminal Procedure to be dealt with as regular cases by the competent Court of Law and the extraordinary jurisdiction of Constitutional Courts cannot be invoked for the purpose of dealing with such cases.

11. In Selvaraj v. State, (2018 SCC OnLine Mad 14215), High Court of Madras has held as follows:-

"13. The Courts are frequently witnessing that Man/Women Missing cases are mostly converted as Habeas Corpus Petitions under Article 226 of the Constitution of India. Mainly, two aspects are to be considered in such cases. Right of every citizen for free



movement is also enshrined in Part III of the Constitution as a fundamental right. Personal liberty means that any person on attaining the age of majority is at liberty to move to a place of his choice. It is not necessary that a person has to inform each and every one of his desire or decision to his kith and kin or to the other persons. Way of life is also a part of personal liberty and a citizen of this Country shall choose a path or way of his own choice for leading his life as per his own mind set and wishes. Merely because a person was not found in his usual dwelling place, that does not mean that always an element of “illegal detention” is involved. For establishing an “illegal detention”, it is necessary that substantial materials are to be furnished by the person, who approaches the Courts by filing Habeas Corpus Petitions. Thus, the personal liberty includes free movement of a citizen of his own choice and no other person has got any right to interfere with the right of a person to move freely anywhere at his own choice. A Man/Women voluntarily moving from their dwelling house to any other place of his/her own choice, then his/her family members or other person concerned with such a person can file a case for Man missing and on receipt of any such complaint, the Police having jurisdiction has to investigate the matter in the manner known to law. Under these circumstances, question of entertaining a Habeas Corpus Petition by the High Courts would not arise at all. Thus, it is a condition precedent that a person filing a Habeas Corpus Petition should establish that there is a prima facie case of “illegal detention” or atleast a strong and reliable suspicion in respect of such “illegal detention”. In the absence of any of these illegal ingredients, no Habeas Corpus petition can be entertained under Article 226 of the Constitution of India.

.....
20. The constitutional Courts across the country predominantly held in catena of judgments that establishing a ground of “illegal detention” and a strong suspicion about any such “illegal detention” is a condition precedent for moving a Habeas Corpus petition and the Constitutional Courts shall be restrained in entertaining such Habeas Corpus petition, where there is no allegation of “illegal detention” or suspicion about any such “illegal detention”. Man/Women missing cases cannot be brought under the provision of the Habeas Corpus petition. Man/Women missing cases are to be registered under the regular provisions of the Penal Code, 1860 and the Police officials concerned are bound to investigate the same in



the manner prescribed under the Code of Criminal Procedure. Such cases are to be dealt as regular cases by the competent Court of Law and the extraordinary jurisdiction of the Constitutional Courts cannot be invoked for the purpose of dealing with such Man/Women Missing cases "

(Emphasis supplied)

12. In Mamonikakoty v. State of Assam, (2021 SCC OnLine Gau 2584), Gauhati High Court has held as follows:-

"15. On overall consideration of the cases referred herein before, it appears that the Constitutional Courts across the Country have held that establishing a ground of illegal detention and a strong suspicion about any such illegal detention is a condition precedent for moving a habeas corpus petition. Thus, the legal proposition would be that the Constitutional Courts would not entertain habeas corpus petitions where there is no allegation of illegal detention or suspicion regarding illegal detention. Thus, missing person cases would not come within the ambit of a habeas corpus petition, but such cases are required to be registered under the regular provisions of the Penal Code, 1860 and the police and other investigating agencies would investigate the same in the manner prescribed under the Code of Criminal Procedure. "

(Emphasis supplied)

13. In Jaymati Sahu v. State of Chhattisgarh, (2022 SCC OnLine Chh 737), High Court of Chhattisgarh at Bilaspur has held as follows:-

"14. Thus, the constitutional Courts across the country predominantly held in catena of judgments that establishing a ground of "illegal detention" and a strong suspicion about any such "illegal detention" is a condition precedent for moving a Habeas Corpus petition and the Constitutional Courts shall not entertain a Habeas Corpus petition, where there is no allegation of "illegal detention" or suspicion about any such "illegal detention". Cases of missing persons cannot be brought under the provision of the Habeas Corpus petition. Cases of missing persons are to be registered under the regular provisions of the Penal Code, 1860 and the Police officials concerned are bound



to investigate the same in the manner prescribed under the Code of Criminal Procedure. Such cases are to be dealt as regular cases by the competent Court of Law and the extraordinary jurisdiction of the Constitutional Courts cannot be invoked for the purpose of dealing with such cases of missing persons.

15. It is seen in the instant case that the petitioner has not made any averment in the entire writ petition that her daughter Juhi Sahu has been illegally detained either by the official respondents or by the respondent No. 7. Averment made in the writ petition, as a whole, do not disclose the illegal detention of Juhi Sahu by private or official respondents. The petitioner only apprehends that the respondent No. 7 and his family members might have murdered Juhi Sahu. As such, unlawful detention of the petitioner's daughter, either by private person or custody/control/detention by the respondents is not pleaded, established or urged before this Court, only apprehension of alleged criminal act by respondent No. 7 and his family members has been expressed. As already observed in the above-stated paragraphs, a writ of habeas corpus is not to be issued as a matter of course and clear grounds must be made out for issuance of a writ of habeas corpus. In the instant case, the petitioner has miserably failed to plead and establish the necessary ingredients for issuance of the writ of habeas corpus and as such, the extraordinary writ cannot be issued at the instance of the petitioner for production of a missing person, as it is the case of the petitioner herself that her daughter is missing since 10-2-2019."

(Emphasis supplied)

14. In Nimananda Biswal v. State of Odisha, (2023

SCC OnLine Ori 5628), High Court of Orissa at Cuttack

has held as follows:-

"10. Writ of habeas corpus cannot be issued in a casual and routine manner. Though it is a writ of right, it is not a writ of course. The writ of habeas corpus is festinum remedium and power can be exercised in clear case. Illegal confinement is a pre-condition to issue a writ of habeas corpus. It cannot be issued in respect of any and every missing person more so when no named person is alleged to be responsible for the 'illegal detention' of the person for whose production before the Court, a writ is to



be issued. On the basis of a habeas corpus petition, the power under Article 226 of the Constitution of India is not to be exercised for tracing a missing person engaging an investigating agency empowered to investigate a case under Cr. P.C.

11. In this case, the petitioner has not established a prima facie case of 'unlawful detention' of his daughter by any particular person, rather it is submitted on his behalf that his daughter has been missing. Therefore, we are of the considered view that a petition seeking the issuance of the writ of habeas corpus cannot be entertained to trace out a missing person and for such purpose, the petitioner can pursue other effective remedy."

(Emphasis supplied)

15. In Simmi Bai v. State, (2025 SCC OnLine MP 893), High Court of Madhya Pradesh has held as follows:-

"16. Cases of missing persons cannot be brought under the provision of the Habeas Corpus petition. Cases of missing persons are to be registered under the regular provisions of the Penal Code, 1860 and the Police officials concerned are bound to investigate the same in the manner prescribed under the Code of Criminal Procedure. Such cases are to be dealt as regular cases by the competent Court of law and the extraordinary jurisdiction of the Constitutional Courts cannot be invoked for the purpose of dealing with such cases of missing persons. Thus, the constitutional Courts across the country predominantly held in catena of judgments that establishing a ground of "illegal detention" and a strong suspicion about any such "illegal detention" is a condition precedent for moving a habeas corpus petition and the constitutional Courts shall not entertain a habeas corpus petition, where there is no allegation of "illegal detention" or suspicion about any such "illegal detention".

(Emphasis supplied)

16. In Babita v. State of Rajasthan, (2025 SCC OnLine Raj 5227), High Court of Rajasthan has held as follows:-

"13. The writ of Habeas Corpus is to secure release of



person illegally detained either by State or a private individual. A prima facie case of illegal detention has to be made out for invoking the writ of Habeas Corpus. The scope of Habeas Corpus has been enlarged with time, but there cannot be a trite formula for interference in writ in the nature of habeas Corpus. It is a trite law that in ordinary course the high court should not interfere in writ jurisdiction, if there is an alternative remedy available. The writ jurisdiction in the case of a missing person cannot be invoked as a matter of routine to know the status of the investigation or on being dissatisfied with the manner of investigation. Criminal procedure law provides remedies for supervision of investigation and if required, for issuance of direction for effective investigation and such matters are to be dealt with by the competent court of law."

(Emphasis supplied)

Availability of Efficacious Alternative Remedy And Entertainability/Maintainability of Writ Petition Under Article 226 Of The Constitution.

17. Now question arises, whether the writ petition is maintainable in view of the availability of the efficacious alternative remedy to the Petitioner. Here, it may be pointed out that maintainability and entertainability of a writ petition are distinct concepts. The objection as to maintainability goes to the root of the matter and if such objection is found to be of substance, the Court is rendered incapable of even receiving the writ for adjudication. However, the question of entertainability is entirely within the realm of discretion of the High Court, as writ remedy is discretionary. Writ Petition, despite being maintainable may be not entertained by a High Court for many reasons or relief could even be refused to the Petitioner, despite setting up a sound legal point, if grant of the claimed relief



would not further public interest. It may be further pointed out that availability of efficacious alternative remedy is not an absolute bar to maintainability of a writ petition. However, the Court can still refuse to entertain the writ petition, if the Petitioner has efficacious alternative remedy as held by Hon'ble Supreme Court in **Godrej Sara Lee Ltd. Vs. Excise and Taxation Officer-cum-Assessing Authority and Others** as reported in **(2023) SCC OnLine SC 95**. Relevant paragraph of the judgment reads as follows:

“4. Before answering the questions, we feel the urge to say a few words on the exercise of writ powers conferred by article 226 of the Constitution having come across certain orders passed by the High Courts holding writ petitions as "not maintainable" merely because the alternative remedy provided by the relevant statutes has not been pursued by the parties desirous of invocation of the writ jurisdiction. The power to issue prerogative writs under article 226 is plenary in nature. Any limitation on the exercise of such power must be traceable in the Constitution itself. Profitable reference in this regard may be made to article 329 and ordainments of other similarly worded articles in the Constitution. Article 226 does not, in terms, impose any limitation or restraint on the exercise of power to issue writs. While it is true that exercise of writ powers despite availability of a remedy under the very statute which has been invoked and has given rise to the action impugned in the writ petition ought not to be made in a routine manner, yet, the mere fact that the petitioner before the High Court, in a given case, has not pursued the alternative remedy available to him/it cannot mechanically be construed as a ground for its dismissal. It is axiomatic that the High Courts (bearing in mind the facts of each particular case) have a discretion whether to entertain a writ petition or not. One of the self-imposed restrictions on the exercise of power under article 226 that has evolved through judicial precedents is that the High Courts should normally not entertain a writ petition, where



an effective and efficacious alternative remedy is available. At the same time, it must be remembered that mere availability of an alternative remedy of appeal or revision, which the party invoking the jurisdiction of the High Court under article 226 has not pursued, would not oust the jurisdiction of the High Court and render a writ petition "not maintainable". In a long line of decisions, this court has made it clear that availability of an alternative remedy does not operate as an absolute bar to the "maintainability" of a writ petition and that the rule, which requires a party to pursue the alternative remedy provided by a statute, is a rule of policy, convenience and discretion rather than a rule of law. Though elementary, it needs to be restated that "entertainability" and "maintainability" of a writ petition are distinct concepts. The fine but real distinction between the two ought not to be lost sight of. The objection as to "maintainability" goes to the root of the matter and if such objection were found to be of substance, the courts would be rendered incapable of even receiving the lis for adjudication. On the other hand, the question of "entertainability" is entirely within the realm of discretion of the High Courts, writ remedy being discretionary. A writ petition despite being maintainable may not be entertained by a High Court for very many reasons or relief could even be refused to the petitioner, despite setting up a sound legal point, if grant of the claimed relief would not further public interest. Hence, dismissal of a writ petition by a High Court on the ground that the petitioner has not availed the alternative remedy without, however, examining whether an exceptional case has been made out for such entertainment would not be proper.

(Emphasis supplied)

18. It has been also held by Hon'ble Supreme Court in **Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Ors.** as reported in (1998) 8 SCC 1 that power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. The High Court has discretion to entertain or not to entertain a writ petition and the High Court has imposed upon



itself certain restrictions, one of which is that if an effective and efficacious alternative remedy is available to the Petitioner, the High Court would not normally exercise its jurisdiction. However, this restriction is not an absolute bar to maintainability of the writ petition. The High Court can entertain the writ petition in the following three contingencies, namely the writ petition has been filed for enforcement of any of the Fundamental Rights or where there has been any violation of Principle of Natural Justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. The relevant paragraph of the judgments reads as follows:

“14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for “any other purpose”.

15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the



vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.”

(Emphasis supplied)

19. In Radha Krishan Industries vs. State of Himachal Pradesh and Others as reported in (2021) 6 SCC 771, Hon’ble Supreme Court has further held as follows after referring to relevant Judicial precedents:

“27. The principles of law which emerge are that:

27.1. The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well.

27.2. The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person.

27.3. Exceptions to the rule of alternate remedy arise where : (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged.

27.4. An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law.

27.5. When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion.

27.6. In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the



exercise of its writ jurisdiction, such a view would not readily be interfered with.

28. These principles have been consistently upheld by this Court in Chand Ratan v. Durga Prasad, (2003) 5 SCC 399, Babubhai Muljibhai Patel v. Nandlal Khodidas Barot, (1974) 2 SCC 706] and Rajasthan SEB v. Union of India, (2008) 5 SCC 632] among other decisions.”

Present Case

20. Coming to the case on hand, I find that the victim-girl of the alleged offence is still traceless and the police has not been able to recover her. However, the petitioner is showing some scope for taking further steps to recover the victim-girl.

21. Under such facts and circumstances, it would be desirable for the petitioner to move an appropriate application for proper and further investigation to ensure that the police makes its best efforts to recover the victim-girl.

22. Accordingly, the present writ petition is disposed of with liberty to the petitioner to move an appropriate application before Jurisdictional Magistrate. In case, such application is moved, the concerned Magistrate is duty bound to pass order as per law, monitoring further investigation.

(Jitendra Kumar, J)

shoaib/-

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