



**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE SUSHRUT ARVIND DHARMADHIKARI

&

HON'BLE SMT. JUSTICE ANURADHA SHUKLA

ON THE 19th OF NOVEMBER, 2024

WRIT PETITION No. 21746 of 2024

GYASUDDIN ANSARI

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri Rohini Prasad Kanojia – Advocate for petitioner.

Shri Abhijeet Awasthi – Deputy Advocate General for respondents/State.

ORDER

Per: Justice Sushrut Arvind Dharmadhikari

This petition under Article 226 of the Constitution of India has been filed seeking issuance of writ in the nature of *habeas corpus* or any other suitable writ/order or direction for the following reliefs:-

- 7.1.** To Summon entire relevant record from the Respondents for its kind perusal.
- 7.2.** To issue writ in the nature of Habeus Corpus to direct the respondents to take necessary action for producing the Corpus (daughter Sifa Bano) before this Hon'ble Court.
- 7.3.** To issue writ in the nature of mandamus to direct the respondents to take necessary action for producing corpus.
- 7.4.** Any other relief Which this Hon'ble Court may deem fit.



7.5. Cost of litigation.

2- Learned counsel for the petitioner submitted that petitioner is a labour. In the morning of 7/6/2024 he left for his work. His wife, son and daughter (corpus) were at home. At about 11:00 AM his wife found that the corpus is not inside the room, therefore, she searched her at the nearby places and when could not find the corpus, she informed the petitioner about the same. Petitioner immediately went to his house and tried to search the corpus at all possible places, but as the corpus was not traceable, therefore, the petitioner immediately rushed to the Police Station and narrated the whole story, but the police officials merely took the application of the petitioner and failed to take any proactive action in this regard. Moreover, instead of registering an FIR, the police lodged a missing person report, but till date no action has been taken on that behalf. Hence, this petition.

3- Shri Awasthi, learned Deputy Advocate General raised a preliminary objection with regard to maintainability of this petition contending that the writ of *habeas corpus* cannot be issued in this matter as there is no allegation that the corpus is in illegal confinement of any private respondent. Besides, multiple reliefs, which are not at all in congruence, with the subject matter of this petition have been claimed. As such, on this count alone the petition is liable to be rejected at the threshold.

4- Having heard the learned counsel for the parties, the question that is germane to the controversy in hand is “as to whether a writ of habeas corpus can be issued in respect of a missing person?”

5- On perusal of the pleadings, which are on affidavit, it can be seen that there is no allegation of illegal confinement by any of the private respondents. It is a condition precedent that there must be an illegal



detention or at least there must be some substantiated grounds regarding suspicion. In the absence of any such contention, no *habeas corpus* petition can be entertained under Article 226 of the Constitution of India. *Habeas Corpus* is a writ in the nature of an order calling upon the person who has detained another to produce the latter before the Court, in order to let the Court know on what ground he has been confined and to set him free if there is no legal jurisdiction for the imprisonment. The special nature of a *habeas corpus* petition is to produce the body or person, for that purpose it must be established that a person is in illegal detention. The fundamental right and liberty is to be protected, only if there is an illegal detention, either by State or by a private individual.

6- A Constitution Bench judgment of the Supreme Court in the matter of **Kanu Sanyal v. District Magistrate, Darjeeling and others ((1973) 2 SCC 674)**, traced the history, nature and scope of the writ of *habeas corpus*. It has been held by Their Lordships that it is a writ of immemorial antiquity whose first threads are woven deeply "within the seamless web of history and untraceable among countless incidents that constituted a total historical pattern of Anglo-Saxon jurisprudence". Their Lordships further held that the primary object of this writ is the immediate determination of the right of the applicant's freedom and that was its substance and its end. Their Lordships further explaining the nature and scope of a writ of *habeas corpus* held as under: -

"The writ of *habeas corpus* 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 the order that appropriate judgment be rendered on judicial enquiry into the alleged unlawful restraint". But the writ is primarily designed to give a person restrained of his liberty a speedy and effective remedy for having the legality of his detention enquired into and determined and if the detention is found to be unlawful, having himself discharged and freed from such restraint. The most characteristic element of the writ is its peremptoriness. The essential and leading theory of the whole procedure is the immediate determination of the right to the applicant's freedom and his release, if the detention is found to be unlawful. That is the primary purpose of the writ, that is its substance and end. The production of the body of the person alleged to be wrongfully detained is ancillary to this main purpose of the writ. It is merely a means for achieving the end which is to secure the liberty of the subject illegally detained."

7- In the matter of **Union of India v. Yunnam Anand M. alias Bocha alias Kora alias Suraj and another ((2007) 10 SCC 190)**, while explaining the nature of writ of *habeas corpus*, Their Lordships of the Supreme Court held that though it is a writ of right, it is not a writ of course and the applicant must show a *prima facie* case of his unlawful detention. Paragraph 7 of the report states as under: -

"7. Article 21 of the Constitution having declared that no person shall be deprived of life and liberty except in accordance with the procedure established by law, a machinery was definitely needed to examine the question of illegal detention with utmost promptitude. The writ of habeas corpus is a device of this nature. Blackstone called it "the great and efficacious writ in all manner of illegal confinement". The writ has been described as a writ of right which is grantable *ex debito justitiae*. Though a writ of right, it is not a writ of course. The applicant must show a *prima facie* case of his unlawful detention. Once, however, he shows such a



cause and the return is not good and sufficient, he is entitled to this writ as of right."

- 8- A writ of *habeas corpus* is not to be issued as a matter of course. Clear grounds must be made out for issuance of such writ. (**Dushyant Somal v. Sushma Somal** ((1981) 2 SCC 277), referred to).
- 9- In the matter of **Usharani v. The Commissioner of Police, Bangalore and others** (ILR 2014 Kar 3312), the writ of *habeas corpus* has been defined very lucidly as under:-

"The claim (for habeas corpus) has been expressed and pressed in terms of concrete legal standards and procedures. Most notably, the right of personal liberty is connected in both the legal and popular sense with procedures upon the Writ of habeas corpus. The writ is simply a judicial command directed to a specific jailer directing him or her to produce the named prisoner together with the legal cause of detention in order that the legal warrant of detention might be examined. The said detention may be legal or illegal. The right which is sought to be enforced by such a writ is a fundamental right of a citizen conferred under Article 21 of the Constitution of India.

11. The ancient prerogative writ of habeas corpus takes its name from the two mandatory words "habeas" and "corpus". "Habeas Corpus" literally means "have his body". The general purpose of these writs as their name indicates was to obtain the production of the individual before a Court or a Judge. This is a prerogative process for securing the liberty of the subject by affording an effective relief of immediate release from unlawful or unjustifiable detention, whether in prison or in private custody. This is a writ of such a sovereign and transcendent authority that no privilege of power or place can stand against it. It is a very powerful safeguard of the subject against arbitrary acts not only of private individuals but also of the executive, the greatest safeguard for personal liberty, according to all constitutional jurists. The writ is a prerogative one obtainable by its own procedure. ... In our country, it



is this prerogative writ which has been given a constitutional status under Articles 32 and 226 of the Constitution. Therefore, it is an extraordinary remedy available to a citizen of this country, which he can enforce under Article 226 or under Article 32 of the Constitution of India."

10- Thus, the writ of *habeas corpus* is a process by which a person who is confined without legal justification may secure a release from his confinement. The writ is, in form, an order issued by the High Court calling upon the person by whom a person is alleged to be kept in confinement to bring such person before the court and to let the court know on what ground the person is confined. If there is no legal justification for the detention, the person is ordered to be released {See *Kanu Sanyal (supra)*.}

11- The High Court of Karnataka, Gulbarga Bench in the case of **Sudharani Vs. The State of Karnataka (ILR 2016 KAR 731)** has held as under:-

5. We find there is absolutely no occasion to issue a writ of habeas corpus, as the writ petitioners do not allege or aver in the petition that the police or any third party has held the missing person in illegal custody.

6. A writ of habeas corpus 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.

(Emphasis supplied)

12- The High Court of Calcutta, in the case of **Swapan Das vs. The State of West Bengal & others**, in W.P.No.17965(W) of 2013 dated 28.06.2013, made an observation, which reads as follows:

“A habeas corpus writ is to be issued only when the



person concerning whose liberty the petition has been filed is illegally detained by a respondent in the petition. On the basis of a habeas corpus petition the power under art.226 is not to be exercised for tracing a missing person engaging an investigating agency empowered to investigate a case under the Code of Criminal Procedure, 1973. The investigation, if in progress, is to be overseen by the criminal court. Here the petitioner is asking this court to direct the police to track down his missing son.

For these reasons, we dismiss the WP. No costs.
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(Emphasis supplied)

13- In the backdrop of the aforesaid legal conspectus on the point in issue, it transpires that the condition precedent for instituting a petition seeking writ of *habeas corpus* is that the person for whose release, the writ of *habeas corpus* is sought must be in detention and he must be under detention by the Authorities or by any private individual. Such writ is available only against any person who is suspected of detaining another unlawfully. In the present case, the petitioner has not arrayed any of the suspects as party respondent. The only assertion that the corpus has been abducted by some unknown miscreants, is not sufficient to invoke the extraordinary jurisdiction of this Court for issuance of writ of *habeas corpus*, which though a writ of right, is not a writ of course. Needless to reiterate that the criminal law has already been triggered in motion by lodging of missing person report. Accordingly, the question formulated above is answered in the negative.

14- Now, advertent to the multifarious reliefs claimed in the petition, it can easily be discerned that they are completely tangential and incongruous with the subject matter of this *habeas corpus* petition and cannot be acceded to.

15- The petition *sans* merit and is, accordingly, **dismissed**. However,



this Court comprehends the flummoxed state of the petitioner due to missing of his daughter and, accordingly, directs the respondents/Police Authorities to bring the investigation pursuant to the missing person report, to its logical end, as expeditiously as possible.

(SUSHRUT ARVIND DHARMADHIKARI)
JUDGE

(ANURADHA SHUKLA)
JUDGE

Arun*