

IN THE HIGH COURT OF JUDICATURE AT PATNA

Md. Khalik @ Abdul Khalik

vs.

The State Of Bihar Through The Secretary Department Of Home,

Govt. Of Bihar, Patna, District- Patna

Criminal Writ Jurisdiction Case No.694 of 2023

21 August 2023

(Hon'ble Mr. Justice Sudhir Singh Hon'ble Mr. Justice Chandra Prakash Singh)

Issue for Consideration

Whether the respondent no. 9 is in the unlawful detention, which necessitates this Court for the issuance of a writ in the nature of 'Habeas Corpus' expedient under Article 226 of the Constitution of India?

Headnotes

Constitution of India, 1950—Article 226—Habeas Corpus—Respondent no. 10 were in love with petitioner, she left her home with petitioner willingly and lived as a married couple—father of respondent no.10 lodged an FIR against the petitioner and two others—police found the respondent no.10, and recorded her statement under Section 161 of the Cr.P.C. where she confirmed her willingness to accompany the petitioner—petitioner and father of respondent no.10 both expressed their willingness for her release in their favour—Counter Affidavit was filed by respondent no. 10, stated that she is not the legally wedded wife of the petitioner, she was a minor during the incident and is now an adult, refuting any detention by her father—her contented life with her parents eliminates claims of detention—also stated that the application filed by the petitioner is merely an attempt to escape the pending criminal case.

Held: writ of Habeas Corpus is an order calling upon the person, who has detained/confined another to produce the latter before the Court, in order to let the Court know on what ground he/she has been detained/confined and to set him free, if there is no legal jurisdiction for such confinement/detention—applicant must show a prima facie case of unlawful detention—respondent no. 10's counter affidavit effectively undermines the petitioner's claims—she stated her current contented life as an adult under her parents' care, countering any notion of detention by respondent no.9, especially considering her as not a legally wedded wife of the petitioner—insufficient basis to establish a credible instance of wrongful confinement or custody by respondent no. 9, who is the father of respondent no. 10—writ petition disposed off with observation and direction. **(Paras 4, 6 to 8)**

Case Law Cited

Kanu Sanyal vs. District Magistrate, Darjeeling, (1973) 2 SCC 674; Home Secretary (Prison) and others vs. H. Nilofer Nisha, (2020) 14 SCC 161—Relied Upon.

List of Acts

Constitution of India, 1950.

List of Keywords

Habeas Corpus; detention; confinement; criminal case; legally wedded wife; minor.

Case Arising From

From a Writ of Habeas Corpus.

Appearances for Parties

For the Petitioner: Mr. Birendra Kumar, Advocate.

For the Respondents: Mr. P. K. Shahi, A.G.

Headnotes Prepared by Reporter: Abhas Chandra, Advocate

Judgment/Order of the Hon'ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.694 of 2023

Arising Out of PS. Case No.-157 Year-2022 Thana- SHYAMPUR BHATHAN District-
Sheohar

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Md. Khalik @ Abdul Khalik, Son of Md. Seraj @ Serajul, Resident of
village- Uday Chhapra, P.S.- Shyampur Bhataha, District- Sheohar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Department of Home, Government of Bihar, Patna, District- Patna.
2. The Director General of Police, Bihar, Patna, District- Patna.
3. The Inspector General of Police, Muzaffarpur.
4. The Superintendent of Police, Sheohar.
5. The Deputy Superintendent of Police, Sheohar.
6. The Inspector of Police, Shyampur Bhataha Police Station, District- Sheohar.
7. The S.H.O., Shyampur Bhataha Police Station, Sheohar.
8. The Investigating Officer, Shyampur Bhataha Police Station, Sheohar.
9. Md. Reyaj, Son of Md. Badud
10. Rajiya Khatoon, wife of Md. Khalik @ Abdul Khalik, daughter of Md. Reyaj, Both residents of Village- Udai Chhapra, P.S.- Shyampur Bhataha, District- Sheohar.

... .. Respondent/s

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Appearance :

For the Petitioner : Mr.Birendra Kumar, Advocate
For the Respondents : Mr.P K Shahi, A.G.

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CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
and
HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH
C.A.V. ORDER

(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

5 21-08-2023 Heard learned counsel for the petitioner and learned
counsel for the State.

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



“(i) For issuance of appropriate writ/ writs/ direction/directions/order/orders in the nature of habeas corpus for directing the respondent concern to recover/rescue the respondent no. 10 from the captive of respondent no. 9 who is legally married wife of this petitioner but the respondent no. 9 kept confined in his house itself.

(ii) For issuance of appropriate writ/ writs/ direction/directions/order/orders for commanding the official respondent to recover the wife of this petitioner and handed over him to lead his conjugal life and grant liberty to this petitioner to lead his life as granted by the constitution of India.

(iii) For any other relief/reliefs to which the petitioner may be found entitled in the facts and circumstances of the case.”

3. The petitioner's version states that he and respondent No. 10, Rajiya Khatoon, were in love. On 21.08.2022, respondent No. 10 left her home with Md. Khalik willingly and lived as a married couple. respondent no. 9, who is the father of the respondent no. 10, lodged an FIR bearing Shyampur Bataha P.S. Case No. 157 of 2022 dated 06.09.2022 against the petitioner and two others under Sections 363, 366(A), 34 of the Indian Penal Code. The police found the victim (respondent No.



10) on 19.09.2022 and recorded her statement under Section 161 of the Cr.P.C., where she confirmed her willingness to accompany the petitioner. The petitioner's plea for her release was denied by the court of Additional Chief Judicial Magistrate I, Sheohar on 26.12.2022. Respondent no. 9 also sought his daughter's release on the same day, leading the learned A.C.J.M.-1, Sheohar, to rule that the C.W.C. holds the final authority to release the victim.

4. Respondent no. 10 submitted a counter affidavit on 04.08.2023, where she asserted that the reliefs sought by the petitioner lack merit. She stated that she is not the legally wedded wife of the petitioner, she was a minor during the incident and is now an adult, refuting any detention by respondent no. 9. Her contented life with her parents eliminates claims of detention. She also stated that the application filed by the petitioner is merely an attempt to escape the pending criminal case.

5. Upon hearing the submissions advanced on behalf of the parties and perusal of the entire materials available on the record, the core issue that arises for consideration in the present case is:

“Whether the respondent no. 9 is in the unlawful detention, which necessitates this



Court for the issuance of a writ in the nature of 'Habeas Corpus' expedient under Article 226 of the Constitution of India?".

6. It is settled legal position that the writ of Habeas Corpus is an order calling upon the person, who has detained/confined another to produce the latter before the Court, in order to let the Court know on what ground he/she has been detained/confined and to set him free, if there is no legal jurisdiction for such confinement/detention. The applicant must show a prima facie case of unlawful detention. The objective underlying the writ is to safeguard the freedom of the citizen against arbitrary and illegal detention. The term 'illegality' includes a violation of the Constitutional right by the order of arrest or detention or by the law under which the order purports to have been made. The writ of Habeas Corpus is a great constitutional privilege and provides a prompt and effective remedy against illegal detention. It can be issued only in those cases where a person is deprived of his personal liberty by means of unlawful or unjustified detention by some other individual. In the case of ***Kanu Sanyal V. District Magistrate, Darjeeling*** reported in (1973) 2 SCC 674, it was held that habeas corpus was essentially a procedural writ dealing with



machinery of justice. The object underlying the writ is to secure the release of a person who is illegally deprived of his liberty. The writ of habeas corpus is a command addressed to the person who is alleged to have another in unlawful custody requiring him to produce the body of such person before the Court.

In the case of *Home Secretary (Prison) and others Versus H. Nilofer Nisha*, reported in *(2020) 14 SCC 161*, it has been held in para no. 16 that:

“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 detenue is under detention without any authority of law.”

7. In light of the evidence presented, it becomes apparent that respondent no. 10's counter affidavit effectively undermines the petitioner's claims. She stated her current contented life as an adult under her parents' care, countering any notion of detention by respondent no.9, especially considering her as not a legally wedded wife of the petitioner. Consequently, there is insufficient basis to establish a credible instance of wrongful confinement or custody by respondent no. 9, who is the father of



respondent no. 10. In the facts and circumstances of the given case, we are of the considered view that the writ of the Habeas Corpus will not lie in the facts of the present case. Hence, no writ of ‘*Habeas Corpus*’ can be issued.

8. With the aforesaid observation and direction, the present writ application stands disposed of.

(Sudhir Singh, J)

(Chandra Prakash Singh, J)

Narendra/- AFR

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