

**Court No. - 45**

**WWW.LIVELAW.IN**

**Case :- HABEAS CORPUS WRIT PETITION No. - 457 of 2021**

**Petitioner :-** Raj Kesharwani Through His Mother Suman Kesharwani

**Respondent :-** State Of U.P. And 2 Others

**Counsel for Petitioner :-** Ritesh Srivastava

**Counsel for Respondent :-** C.S.C.

**Hon'ble Pritinker Diwaker,J.**

**Hon'ble Samit Gopal,J.**

Present special Bench has been constituted on Sunday, i.e. 11.7.2021 by the order of Hon'ble Acting Chief Justice.

Heard Sri Ritesh Srivastava, learned counsel for the petitioner on telephone and Sri M C Chaturvedi, learned Additional Advocate General, assisted by Sri S Ali Murtaza, learned AGA for the State.

Present petition is being registered on the basis of an application dated 10.7.2021 of Suman Kesharwani, stating therein that her son, namely, Raj Kesharwani has been abducted on 7.7.2021 at 8:00 PM from the main gate of the house for which, information was given to the Station House Officer, Police Station Dhoomanganj, District Prayagraj in writing, but no action was taken by the said officer. The petitioner has further stated that on search she came to know on 8.7.2021 that her son has been kept in illegal detention in a torture room within the premises of Police Station Cantt, District Prayagraj since 7.7.2021. On further enquiry about the same, Police failed to give any satisfactory reply regarding causing illegal detention. On 10.7.2021, she requested the police to produce her son before the concerned Magistrate in accordance with law, but no heed was paid to the said grievance. Even an information was given on Dial 112 and in response thereof, concerned Police Team made an enquiry, but no reply was given regarding ground of arrest. The Station House Officer, Civil Lines also came to Police Station Cantt. and apparently pretended as Station House Officer, Police Station Cantt. and then he was requested for producing her son before the concerned Magistrate, then he replied that he is not the Incharge of Police Station Cantt. and that the detenu/her son would be dealt with by the concerned officers of Police Station who have brought him. It is further stated in the letter petition that neither the Police has shown any First Information Report being lodged against her son nor has produced him before the concerned

Magistrate in accordance with law. Hence, detention of her son is illegal and a colourable exercise of power and as such, intervention of this Court has been sought. The said letter was treated as a petition; has been registered so and placed before this Bench.

Counsel for the petitioner has argued that the petitioner has been detained illegally for four days and there is no provision under the law of detaining any person in a Police Station without any reason and even the detention and the ground of arrest have not been disclosed either to the family members or friends as per law. It is further argued that no provision of Cr PC regarding arrest has been followed by the Police while causing arrest of Raj Kesharwani and as such, his detention is illegal. It is also argued that the boy has even been tortured by the Police for many days and was not produced before the concerned Magistrate.

Per contra, learned State Counsel has informed this Court that he has been given an advance copy of the letter petition by the office of this Court and he has taken instructions upon the same. It is stated that as per instructions received from the concerned Police Station, it is disclosed that an FIR, being Crime No.0562 of 2021 under Section 392 of IPC, Police Station Civil Lines, District Prayagraj, has been registered against unknown persons on 30.6.2021 in which, during investigation, complicity of the boy/petitioner has surfaced on the basis of CCTV footage by the SOG and as such, he was arrested and has also been produced before the concerned Magistrate on 11.7.2021 in the morning, after being arrested on 10.7.2021 at about 1:30 PM. It is argued that further relevant evidence has also been collected against him. State Counsel further submits that other relevant documents, like producing before the concerned Magistrate and the order of Magistrate would be filed along with counter affidavit.

State Counsel also prays for time to file counter affidavit.

Considering the submissions made by counsel for the petitioner and the State, we are of the view that, *prima facie*, it cannot be said that the petitioner is in illegal detention.

Looking to the urgency of the matter, two days' time is granted to the learned State Counsel to file counter affidavit, after serving it to the counsel for the petitioner.

List this matter on 14.7.2021, as fresh before the appropriate Bench having roster.

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Instructions and the relevant documents which have been produced by the learned State Counsel are taken on record.

**Order Date :-** 11.7.2021

RKK/-