

HIGH COURT OF CHHATTISGARH, BILASPUR
WPHC No. 8 of 2019

- Smt. Jaymati Sahu W/o Late Shyamkishore Sahu Aged About 46 Years R/o Qtr. No. 1-07, Guru Ghasidas Awasiya Parisar, Police Station - Koni, Tahsil And District - Bilaspur Chhattisgarh., District : Bilaspur, CG

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Home Department, Mahanadi Bhawan, Mantralaya, Naya Raipur Chhattisgarh., District : Raipur, CG
2. Collector Bilaspur, District - Bilaspur Chhattisgarh., District : Bilaspur, CG
3. Inspector General Of Police Police Range, Bilaspur District - Bilaspur Chhattisgarh., District : Bilaspur, CG
4. Superintendent Of Police District - Bilaspur CG, District : Bilaspur, CG
5. Station House Officer Police Station Koni, District - Bilaspur Chhattisgarh., District : Bilaspur, CG
6. Station House Officer Police Station - Mahila Thana, District - Bilaspur Chhattisgarh., District : Bilaspur, CG
7. Prakash Sahu S/o Vishram Sahu aged about 30 Years R/o village Semartal, Gandhi Chowk, Police Station Koni, District - Bilaspur CG, District : Bilaspur, CG
8. Juhi Sahu W/o Prakash Sahu aged about 27 Years R/o village Semartal, Gandhi Chowk, Police Station - Koni, Distt Bilaspur CG, District : Bilaspur, CG

---- Respondents

(Cause-title taken from Case Information System)

For petitioner	: Mr. Yogesh Chandra Sharma, Sr. Counsel
For Respondents No. 1 to 6.	: Mr. H.S. Ahluwalia, Dy. Adv. General

Reserved on : 17-2-2022

Order delivered on : 22-4-2022

Hon'ble Mr. Arup Kumar Goswami, Chief Justice
Hon'ble Mr. N.K. Chandravanshi, Judge

CAV ORDER

Per N.K. Chandravanshi, J.

1. This writ petition has been filed by the petitioner for issuance of a writ in the nature of habeas corpus, directing the respondents/authorities to produce her missing daughter, Juhi Sahu, before this Court.
2. The petitioner has filed this writ petition stating *inter alia* that Juhi Sahu is her daughter, her marriage was solemnized with respondent No. 7 in the year 2011 because of love affair between them. They were blessed with a female child, but after some time, respondent No. 7 and his family members



started raising suspicion upon Juhi Sahu alleging that she is suffering from evil soul. Therefore, they used to torture her physically and mentally. Juhi Sahu always informed about such incidents to the petitioner. On 8-12-2018, Juhi Sahu made a complaint before Mahila Police Thana, Bilaspur, against her husband and family members. During counselling, respondent No. 7 agreed to take her with him and keep her peacefully. On 10-2-2019, respondent No. 7 took her to his house at about 12.00 noon, but from that day onwards, there is no information about the well being of Juhi Sahu. Respondent No. 7 also did not communicate anything to the petitioner. Even, he did not inform the police in this regard. On the basis of information given by the petitioner, missing report No. 6/2019 has been registered by the police. The petitioner has apprehension that her daughter might have been killed by the respondent No. 7 and his family members. Despite the complaint made by the petitioner to the Superintendent of Police, Bilaspur and the Inspector General of Police, Bilaspur, the police has not taken any action for search of Juhi Sahu, and therefore, the petitioner has filed the present writ petition.

3. On being noticed, the respondents No. 1 to 6 (State authorities) have filed their reply, in which, they have stated that while investigating the missing report of Juhi Sahu, police interrogated the respondent No. 7 (husband of missing person) and his other relatives. Statements of relatives of both the sides of the missing person were recorded, but nothing substantive was found with regard to her whereabouts. During investigation, it was found that there was dispute between respondent No. 7 and his wife Juhi Sahu. Respondent No. 7 has also stated that after birth of their child, mental condition of his wife was not stable and she was facing Neuro-psychiatric problem, and therefore, she was under treatment for the same. Respondent No. 7 has also stated that his wife Juhi Sahu was in the habit of leaving home without informing family members. On 10-2-2019 at about 12.00 pm, she left



the house, stating that she is going to deliver some dress to Jyoti madam at Mahila Police Station and, thereafter, she went missing. It has been further pleaded by the respondents that all possible attempts have been made to trace out the daughter of the petitioner, but nothing could be found. In call details also, nothing fruitful could be found. The matter is still being investigated by official respondents with all due diligence to trace out Juhi Sahu.

4. Respondent No. 7 has also filed his return, wherein he has stated that he has made complaint in the Police Station, Koni, Distt. Bilaspur on 11-2-2019 regarding missing of his wife Juhi Sahu from 10-2-2019. Since nothing was informed by the police regarding whereabouts of his wife Juhi Sahu, therefore, on 19-2-2019 and again on 18-3-2019, he made complaint to the Inspector General of Police, Bilaspur and Superintendent of Police, Bilaspur. He published missing person information of his wife Juhi Sahu in newspaper also. He has tried his best and has taken all recourse to trace his wife, but his all efforts have gone in vain.

5. The petitioner has also filed an application being I.A. No. 2/2019, praying for handing over the investigation to the Central Bureau of Investigation (for short, 'CBI'), wherein she has stated that she suspects foul play on the part of respondents and also suspects that police officials are hand in glove with respondent No. 7, and therefore, they are deliberately diluting the investigation to help respondent No. 7. Accordingly, it has been prayed to hand over the investigation of the instant case to the CBI.

6. We have heard learned counsel for the parties, considered the submissions made on their behalf, and also perused the record.

7. A perusal of record would show that during the course of hearing, this Court issued various directions in respect of investigation to trace

out the missing person Juhi Sahu, and in compliance of orders dated 2-5-2019, 14-5-2019, 8-7-2019, 13-1-2021, 29-10-2021 and 31-1-2022, respondents No. 1 to 6/ police officials have filed various status reports / affidavit in respect of investigation of the matter, in which, they have categorically stated that despite their all possible efforts, they were not able to trace out the missing Juhi Sahu.

8. The petitioner has filed this writ petition for issuance of a writ in the nature of habeas corpus. The writ of habeas corpus is an effective means of immediate release from the unlawful detention, whether in prison or in private custody. Physical confinement is not necessary to constitute detention. Control and custody are sufficient. For issuance of a writ of habeas corpus, the applicant must show a *prima facie* case of unlawful detention of the subject.

9. While dealing with a petition of habeas corpus, a Constitution Bench of the Hon'ble 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 in paragraph 4 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 enquired into, or to put it differently, "in the order that appropriate judgment be rendered on judicial enquiry into the alleged unlawful restrain". 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."

10. In the matter of **Union of India v. Yumnam 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 unlawful detention. Paragraph 7 of the decision 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.”

11. A Division Bench of this Court also had an occasion to deal with such a matter in the case of **Smt. Nirmala Patel -v- State of Chhattisgarh and others** [WP (HC) No. 13/2016 decided on 28-2-2017, reported in **MANU/CG/0291/2017**]. The Division Bench observed that in the writ petition, which was filed seeking appropriate writ of habeas corpus for direction to respondents to produce husband of petitioner before Court, the petitioner had not made any averment in entire petition that her husband had been illegally detained by official respondents, and accordingly, held that the writ of habeas corpus is not to be issued as a matter of course and clear grounds must be made out for issuance of writ of habeas corpus. As the petitioner had failed to plead and establish necessary ingredients for issuance of a writ of habeas corpus, this Court dismissed the petition.

12. The High Court of Calcutta, in the case of **Swapan Das v. State of West Bengal and 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. Certified xerox."

13. The High Court of Madhya Pradesh, in the case of **Sulochana Bai v. State of Madhya Pradesh and Others** [2008 (2) MPHT 233], made an observation, which reads as follows:

"12. We have referred to the aforesaid decisions only to highlight that the writ of habeas corpus can only be issued when there is assertion of wrongful confinement. In the present case what has been asserted in the writ petition is that her father-in-law has been missing for last four years and a missing report has been lodged at the Police Station. What action should have been taken by the Police that cannot be the matter of habeas corpus because there is no allegation whatsoever that there has been wrongful confinement by the police or any private person. In the result, the writ petition is not maintainable and is accordingly dismissed."

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 Indian Penal Code 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. Averments 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.

16. So far as the prayer of the petitioner to hand over the case to the CBI for proper investigation is concerned, though High Court's jurisdiction to order CBI probe cannot be doubted, but such power is to be exercised, keeping in mind the fact that the premier investigating agency is authorised to investigate corruption matters, the matters of national importance and some other sensitive matters, which the Court deems fit to be enquired into by the CBI. We are of the opinion that this is not a case to be handed over to the CBI for investigation. Accordingly, I.A. No. 2/2019, is rejected.

17. In view of the aforesaid discussion, in the opinion of this Court, it is not a fit case for issuance of a writ of habeas corpus. Therefore, we decline to exercise the jurisdiction for issuance of writ of habeas corpus, and dismiss the writ petition, leaving it open to the petitioner and respondents to proceed in accordance with law.

Sd/-

Sd/-

(Arup Kumar Goswami)
Chief Justice

(N.K. Chandravanshi)
Judge