



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

**HON'BLE SHRI JUSTICE SANJEEV SACHDEVA
&
HON'BLE SHRI JUSTICE VINAY SARAF**

ON THE 28th OF JANUARY, 2025

WRIT PETITION No. 16475 of 2023

SIMMI BAI

Versus

SHRIMAAN POLICE MAHANIRIKSHAK MAHODAYA AND OTHERS

Appearance:

Shri N.P.Rathore - Advocate for petitioner.

Dr. Siddharth Singh Chouhan - Government Advocate for respondents/State.

ORDER

Per: Justice Vinay Saraf

1. Shri Samar Verma, Additional Superintendent of Police (ASP), Jabalpur (M.P.) and Shri Sunil Nema, City Superintendent of Police (CSP), Section - Bargi, Jabalpur are personally present in the Court.

2. An application for exemption is made for the personal presence of the Superintendent of Police on the ground that an incident had taken place on account of which he is engaged in urgent official duties. It is stated that the



status report that is being filed today has been vetted by the Superintendent of the Police and the entire efforts have been personally supervised by him.

3. The statement is taken on record.

4. In view thereof, the personal presence of Superintendent of Police, Jabalpur is dispensed with.

5. This petition has been preferred by mother of the corpus on the ground that the corpus is missing from Pune, Maharashtra. Petitioner has lodged missing person report at Police Thana - Shahpura, Distt. Jabalpur on 05.04.2023 that her daughter along with two children are missing and they have been wrongfully confined by Dileep Choudhary and Kavita Choudhary of village Kantora Tehsil - Patan Distt. Jabalpur. Upon the same missing person report, police started investigation. Being dissatisfied with the investigation, present writ petition (Habeas Corpus) has been preferred by the petitioner under Article 226 of the Constitution of India seeking direction to the Police Authorities to search the daughter of the petitioner and her children and produce them before the Court.

6. This Court vide order dated 25.07.2023 issued notices to the official respondents and called for the status report.



7. First status report was submitted on 09.08.2023, wherein Police Officers informed the Court that after registration of missing person report, intensive steps were taken to search the corpus and her minor children aged about 11 years and 8 years, but could not be traced out. Investigation teams had searched the corpus in Odisha, Karnatika, Chhatisgarh and Jabalpur.

8. Direction was issued to intensify the efforts, thereafter the case was fixed on several times. On 17.01.2024 third status report was filed on behalf of the respondent wherein, it is stated that the corpus along with her minor children visited the place of her parents on 03.12.2023. Panchnama was also prepared to that effect, wherein they specifically stated that corpus along with her children visited at village Raiyakheda on 03.12.2023, where the petitioner resides. Time to time directions were issued in this matter to trace out the corpus and children.

9. On the last date of hearing, considering the fact that petition is pending since 25.07.2023, a direction was issued to Superintendent of Police, Jabalpur to take over the investigation personally and produce the corpus on the next date of hearing. In compliance of the aforesaid order Superintendent of Police, Jabalpur had taken the investigation in his hands



NEUTRAL CITATION NO. 2025:MPHC-JBP:5189

and intensified the efforts for searching the corpus and her children. During the course of investigation they recorded the statement of the petitioner and other family members wherein, they stated that on 03.12.2023, the corpus visited village Raiyakheda on her own will along with her children. Documents have been placed along with status report on record.

10. On 17.01.2025, the Investigating Officer recorded the statement of the petitioner Simmi Bai who stated that the corpus along with her children came to her maternal village Raiyakheda on 03.12.2023 at 11:30 am with a boy on motorcycle and met to her neice - Roshni Choudhary intimating her that she was going to village Karmeta and will stay there till evening and if they want to meet her they may come there. The Investigating Officer recorded the statement of Roshni Choudhary who also stated on 17.01.2025 that at 10:00 am on 03.12.2023 corpus Sheela visited at her maternal house along with her children Kartik and Keerti with a boy and asked her to call all the family members. She further stated that as the family members were not present at home the corpus intimated her that she was going to village Karmeta and they may come there to meet her. Similar statement was given by Arjun Singh Choudhary, brother of the corpus and sister-in-law Smt. Reshma Choudhary w/o Arjun Singh Choudhary. When Police Officers



NEUTRAL CITATION NO. 2025:MPHC-JBP:5189

received the information regarding the corpus on the same date on 03.12.2023 at 17:30 they visited at village Karmeta and searched the corpus there and prepared a memorandum (panchnama) wherein this fact was verified by the villagers that the corpus visited there and had gone on motorcycle with a boy along with children as per her own wish. Police has prepared a memorandum at 16:00 on 03.12.2023 in village- Raiyakheda also from the Status report submitted by the Investigating Officer today, it appears that the corpus had gone on her own wish.

11. It is apparent that the corpus is not in any wrongful confinement and she has gone on her own along with minor children. The present petition is preferred as habeas corpus and this petition is maintainable only in case, the corpus is wrongfully confined by any authority or private persons. Writ of Habeas Corpus is an effective means of immediate release from an unlawful detention. Physical confinement is not necessary to constitute detention, however control or custody are sufficient for issuance of writ of Habeas Corpus. Petitioner must show a prima facie case of unlawful detention of the corpus. Constitution Bench of the Hon'ble Supreme Court considered the scope of writ of habeas corpus in the matter of **Kanu Sanyal V. District**



Magistrate, Darjeeling and others, (1973) 2 SCC 674 has held in paragraph 4 as under:-

*4..... the writ of habeas corpus that it 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 order that appropriate judgment be rendered on judicial enquiry into the alleged unlawful restraint”. The form of the writ employed is “We command you that you have in the King's Bench Division of our High Court of Justice — immediately after the receipt of this our writ, the body of A.B. being taken and detained under your custody — together with the day and cause of his being taken and detained — to undergo and receive all and singular such matters and things as our court shall then and there consider of concerning him in this behalf”. The italicized words show that 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 and, as pointed out by Lord Halsbury, L.C., in *Cox v. Hakes* “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.....*

12. In the matter of **Union of India v. Yumnam Anand M. alias Bocha alias Kora alias Suraj and another, (2007) 10 SCC 190** Supreme Court while explaining the nature of writ of habeas corpus has held that the



petitioner must show a prima facie case of unlawful detention. Paragraph 7 of the judgment reads 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.

13. A writ of habeas corpus is not maintainable in respect of person who is simply missing and not in unlawful detention. Unlawful detention is the *sine qua non* for issuance of writ of habeas corpus. The Apex Court in the matter of **Home Secretary (Prison) and others v. H. Nilofer Nisha, (2020) 40 SCC 161** has considered the scope of the habeas corpus petition.

The relevant paras are reads as under:-

11. We feel that a quietus has to be given to this matter and the legal issue must be decided. As far as the objection of selective filing of petitions by the State against orders of release by the High Court is concerned, that objection is meaningless. We are not aware of the other orders and, in any event, there can be no claim of negative discrimination under Article 14 of the Constitution of India.

12. Article 226 of the Constitution of India empowers the High Courts to issue certain writs including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any right conferred under Part III of the Constitution dealing with the fundamental rights. In this case, we are concerned with the scope and ambit of the jurisdiction of the High Court while dealing with the writ of habeas corpus.



13. *It is a settled principle of law that a writ of habeas corpus is available as a remedy in all cases where a person is deprived of his/her personal liberty. It is processual writ to secure liberty of the citizen from unlawful or unjustified detention whether a person is detained by the State or is in private detention. As Hidayatullah, J. (as he then was) held: (SCC p. 1630, para 12)*

“12. ... The writ of habeas corpus issues not only for release from detention by the State but also for release from private detention”[Mohd. Ikram Hussain v. State of U.P., AIR 1964 SC 1625 : (1964) 2 Cri LJ590] .At the same time, the law is well established that a writ of habeas corpus will not lie and such a prayer should be rejected by the Court where detention or imprisonment of the person whose release is sought is in accordance with the decision rendered by a court of law or by an authority in accordance with law.

14. *According to Dicey, “if, in short, any man, woman, or child is, or is asserted on apparently good grounds to be, deprived of liberty, the Court will always issue a writ of habeas corpus to anyone who has the aggrieved person in his custody to have such person brought before the Court, and if he is suffering restraint without lawful cause, set him free.” [A.V. Dicey,Introduction to the Study of the Law of the Constitution, Macmillan and Co. Ltd., p. 215 (1915).]*

15. *In Halsbury's Laws of England, a writ of habeas corpus is described as “a remedy available to the lowliest subject against the most powerful”[Halsbury's Laws of England (4th Edn.), Vol. 11, para 1454, p. 769.] . It is a writ of such a sovereign and transcendent authority that no privilege of person or place can stand against it [V.G. Ramachandran's Law of Writs, revised by Justice C.K. Thakker & M.C. Thakker, EasternBook Company, p. 1036, 6th Edn. (2006).] .*

16. *A writ of habeas corpus can only be issued when the detention or confinement of a person is without the authority of law. Though the literal meaning of the Latin phrase habeas corpus is “to produce the body”, over a period of time production of the body is more often than not insisted upon but legally it is to be decided whether the body is under illegal detention or not. Habeas corpus is often used as a remedy in cases of preventive detention because in such cases the validity of the order detaining the detenu is not subject to challenge in any other court and it is only writ jurisdiction which is available to the aggrieved party. The scope of the petition of habeas corpus has over a period of time been expanded and this writ is commonly used when a spouse claims that his/her spouse has been illegally detained by the parents. This*



NEUTRAL CITATION NO. 2025:MPHC-JBP:5189

writ is many times used even in cases of custody of children. Eventhough, 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 detenu is under detention without any authority of law.

14. Division Bench of this Court in the matter of **Sulochana Bai v. State of M.P., (2008) 1 MPLJ 339** considered the scope of habeas corpus in a matter of missing report lodged with the police in respect of corpus. The Division Bench has held as under:-

13. 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.

15. Division Bench of Orissa High Court in the matter of **Nimananda Biswal vs. State of Odisha and others, (2023) SCC Online Ori 5628** has considered the issue of issuance of writ of habeas corpus in respect of a missing person and has held as under:-

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.

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 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. 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".

17. Coming to the case in hand the petitioner fails to establish a prima facie case of unlawful detention of her daughter and two minor children by any particular person, rather it is revealed from the status report that the



corpus along with her minor children has gone to unknown place as per her own wish and she is not in any wrongful confinement. Therefore, we are of the considered view that a petition seeking the issuance of writ of habeas corpus cannot be entertained to trace out the missing person and for such purpose the petitioner can pursue other effective remedy.

18. From the materials submitted with the status report, it appears that the corpus is not in any wrongful confinement and, therefore, we disposed of this petition with a direction to the respondents to continue the search of the corpus and her minor children in accordance with law in furtherance of missing person report lodged by petitioner.

19. With the aforesaid, present petition is disposed of.

(SANJEEV SACHDEVA)
JUDGE

(VINAY SARAF)
JUDGE

VPA