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W.P. No. 18472/2021

HIGH COURT OF MADHYA PRADESH,
BENCH AT GWALIOR

W.P. No.18472/2021

Smt. Chhaya Gurjar

Vs.

State of M.P. & Others

Coram:

Hon. Shri Justice S.A.Dharmadhikari

Shri Anil Mishra, Advocate for the petitioner.
Shri Jitesh Sharma, G.A. for the
respondents/State.

ORDER

PASSED ON THIS 4th DAY OF OCTOBER, 2021

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:-

"(I) The, respondent authorities may kindly be directed to produce the corpus persons i.e. sister-in-law (Nanad) Aarti and niece Kajal (Aarti's daughter) before the Hon'ble High Court, furthermore, the direction for higher authorities to take punitive action against the abductee may kindly be issued in the interest of justice.

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(II) That, the Investigation Officer of the Crime No.241/2021 registered at Police Station Civil Line, Morena may kindly be changed or the investigation may kindly be conducted by any of the superior authorities in the interest of justice.

(III) That, the order of declaring absconder and Reward of Rs.5000/- issued against the present petitioner's husband may kindly be set aside in the interest of justice.

(IV) That, the respondent authorities may kindly be directed to provide Police Protection Or Personal Guard to the petitioner to ensure the safety of the life and liberty of the petitioner and her family members in the interest of justice.

(V) That, the respondent authorities may kindly be directed to take the medical documents of the petitioner's husband on record in the interest of justice.

(VI) That, the respondent authorities may kindly be directed to act upon the complaints may by the petitioner's mother-in-law as early as possible in the interest of justice.

(VII) That, the respondent authorities may kindly be directed to provide the compensation of the destroyed crop of the petitioner in the interest of justice.

(VIII) That, the respondent authorities may kindly be directed to take punitive action against the responsible officer, who are in due collusion of the accused persons of the Crime No.241/2021 in the interest of justice.

(IX) That, cost of the petition may kindly be awarded to the petitioner.”

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2. Learned counsel for the petitioner submitted that certain miscreants have abducted sister-in-law of the petitioner namely Aarti, as well as, Aarti's daughter Kajal from the campus of High Court. It is alleged that the respondent-Authorities are having all the information in respect of both of them, but are not providing any information. It is contended that when mother-in-law of corpus Aarti had come to High Court in connection with some case, the accused persons abducted Aarti and her daughter Kajal. Thereafter, mother-in-law of the corpus lodged a missing person report at Police Station University, Gwalior, but till date no action has been taken in that behalf. Hence, this petition.

3. Shri Sharma, learned Government Advocate 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 and her daughter are in illegal confinement of any private respondent. Petitioner has not impleaded any suspect as party 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

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a writ of habeas corpus can be issued against an unknown abductor 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

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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* holding 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."

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7. 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 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: -

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"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

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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

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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 have 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, adverting to the multifarious reliefs claimed in the petition, it can easily be discerned that they are completely

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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 abduction of her sister-in-law and, accordingly, directs the respondents/Police Authorities to bring the investigation pursuant to missing persons report lodged by mother-in-law of Aarti, to its logical end, as expeditiously as possible.

(S.A.Dharmadhikari)
Judge

(and)