

**HON'BLE SRI JUSTICE K. LAKSHMAN**  
**AND**

**HON'BLE SMT JUSTICE K. SUJANA**

**WRIT PETITION No.606 of 2023**

**ORDER:** (*per Hon'ble Sri Justice K. Lakshman*)

Heard Sri Ravi Kumar Vadlakonda, learned counsel appearing for the petitioner and Sri G. Malleshham, learned Assistant Government Pleader representing learned Additional Advocate General. Perused the record.

2. This Writ Petition is filed to issue Writ of *Habeas Corpus* to direct the respondents to produce Mr.Rasamalla Ravi Kumar, S/o.Lingaiah before this Court, who is victim in F.I.R.No.127 of 2021 dated 27-06-2021 pending on the file of respondent No.4.

3. Petitioner herein lodged a complaint with respondent No.4 on 27-06-2021 stating that her brother was murdered by his wife and others. On receipt of the said complaint, Police, Luxettipet Police Station have registered a case in Crime No.127 of 2021 for the offences punishable under Sections 302 and 201 r/w.34 of IPC. On

completion of investigation, they have laid charge sheet against Smt.Rasamalla Shailaja, wife of deceased, Mr.Medi Gangaraju and Mr.Kodi Sai Kumar for the aforesaid offences. The same was taken on file vide S.C.No.201 of 2022.

4. Sri Ravi Kumar Vadlakonda, learned counsel appearing for the petitioner would contend that the Investigating Officer in the aforesaid Crime has filed charge sheet without conducting proper investigation and without recovering the body. He has not made any effort to recover the body. The Investigating Officer conducted investigation in collusion with accused and he has not properly conducted investigation. Therefore, investigation may be entrusted to the Commissioner of Police, Ramagundam, Peddapalli District.

5. Whereas, respondent No.4 filed counter affidavit and additional counter affidavit narrating the entire efforts made by the Investigating Officer in tracing out the body and also the investigation conducted in F.I.R.No.127 of

2021. List of witnesses, etc., was also specifically mentioned.

6. As discussed supra, this Court has to decide whether there is any illegal detention of the detenu. In the present case, there is no illegal detention of any detenu. It is the specific allegation of the petitioner that the Investigating Officer filed charge sheet without tracing the body of the deceased. Investigation was not conducted in a fair and transparent manner. Therefore, petitioner cannot file Writ of Habeas Corpus. In fact, she has to file appropriate writ seeking a direction to the Investigating Officer or higher officials to conduct investigation in a fair and transparent manner. She cannot file Writ of Habeas Corpus.

7. Habeas Corpus is a latin term meaning thereby “you must have the body”. This facet of the writ of Habeas Corpus makes it a writ of the highest constitutional importance being a remedy available to the lowliest citizen against the most powerful authority. That is why it has been said that the writ of Habeas Corpus is the key that

unlocks the door to freedom. It is called as 'the great and efficacious writ in all manner of illegal confinement'. One of the authors in his Constitutional History of England described writ of Habeas Corpus as 'the first security of civil liberty'.

8. Proceedings in Writ of Habeas Corpus are summary in nature. This Court has to decide the same basing on the affidavits filed by the parties. In a Writ of Habeas Corpus this Court has to decide whether there is any detention much less illegal detention of the victim. Writ of Habeas Corpus is a prerogative writ. Therefore, petitioner must show *prima facie* case of unlawful detention. The Hon'ble Apex Court in ***Union Of India vs Yumnam Anand M. @ Bocha @ Kora @ Suraj and another***<sup>1</sup> held as follows:

*"[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.*

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<sup>1</sup> (2007) 10 SCC 190

*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."*

9. Likewise, in ***The Home Secretary (Prisons) and others v. H. Nilofer Nisha***<sup>2</sup>, the Hon'ble Apex Court held as under:

*"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*

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<sup>2</sup> (2020) 14 SCC 161

*the parents. This writ is many times used even in cases of custody of children. 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 detenu is under detention without any authority of law.”*

10. In ***Sulochana Bai vs State Of M.P. And others***<sup>3</sup>, a Division Bench of Madhya Pradesh High Court held as follows:

*“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.”*

11. In the case of ***Selvaraj -Vrs.- State and others***<sup>4</sup>, a Division Bench of Madras High Court held as follows:

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<sup>3</sup> 2008 (2) MPHT 233

<sup>4</sup> (2018) 3 MLJ (Criminal) 712

*“19. 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 be restrained in entertaining such Habeas Corpus petition, where there is no allegation of "illegal detention" or suspicion about any such "illegal detention", Man/Women, missing cases cannot be brought under the provision of the Habeas Corpus petition. Man/Women missing cases 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 Man/Women Missing cases.”*

12. In **Smt. Jaymati Sahu vs. State Of Chhattisgarh**<sup>5</sup>, a Division bench of Chattsgarh High Court held as follows:

*“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*

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<sup>5</sup> 2022 SCC Online Chh 737

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.”*

13. In **Samir Kumar Paul v. State and others**<sup>6</sup>, wherein a Division Bench of Calcutta High Court examining the facts of the case therein where father filed Writ Petition seeking issuance of Habeas Corpus to trace out his 10 years old missing daughter held that in Habeas Corpus proceedings the Court is required to consider the legality or otherwise of the detention of a particular person and since such a situation was not involved in the case, writ in the nature of habeas corpus cannot be issued as prayed for. It was further held that the writ petition is not maintainable.

14. It is also relevant to note that Writ of Habeas Corpus is festinum remedium and power can be exercised in clear

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<sup>6</sup> MANU/WB/0139/2004

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.

15. In the present case, it is not the case of the petitioner that her brother – deceased was detained or abducted by the Police or any person. She has suspicion over her sister-in-law i.e., Smt.Rasamalla Shailaja / A-1 in the aforesaid Sessions Case. Petitioner herein did not make her as party to the present writ petition. In a Writ of Habeas Corpus, this Court cannot direct the Investigating Officer to conduct proper investigation and investigation in a particular manner.

16. Writ of Habeas Corpus cannot be issued directing the Investigating Officer to conduct investigation in a particular case in a particular manner or in fair and transparent manner. Writ of Habeas Corpus also cannot

be issued to produce dead body and trace out the dead body or to trace out missing man / woman.

17. Thus, the power under Article 226 of the Constitution of India is not to be exercised for tracing a missing person or dead body engaging an investigating agency empowered to investigate a case under Cr.P.C.

18. As discussed supra, in the present case, petitioner herein failed to establish *prima facie* case of un-lawful detention which is sine qua non to maintain the writ of Habeas Corpus. In fact, petitioner filed this writ of Habeas Corpus seeking a direction to the respondents to trace out dead body of her deceased brother.

19. Therefore, viewed from any angle the present writ petition is not maintainable and it is liable to be dismissed.

20. Accordingly, this Writ Petition is dismissed. However, liberty is granted to the petitioner to take steps, in accordance with law. There shall be no order as to costs.

As a sequel, the miscellaneous petitions, if any, pending in the Writ Petition shall stand closed.

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**K. LAKSHMAN, J**

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**K. SUJANA, J**

**September 14, 2023**

Note: L.R. Copy to be  
marked. B/o.PN

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