

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

D.B. Habeas Corpus Petition No.290/2025

Smt. Babita W/o Shri Mukesh, Aged About 30 Years, R/o Village- Poora Ki Dhani, Sadar Jhunjhunu, District- Jhunjhunu (Raj.)

----Petitioner

Versus

1. State Of Rajasthan, Through Principal Secretary, Department Of Home, Govt. Of Rajasthan, Secretariat, Jaipur.
2. The Additional Director General Of Police, Anti Human Trafficing Unit, Jaipur.
3. The Superintendent Of Police, Jhunjhunu (Raj.)
4. The Station House Officer, Police Station Kotwali, District Jhunjhunu (Raj.)

----Respondents

For Petitioner(s) : Mr.Arun Sharma, Adv.

For Respondent(s) : Mr.Rajesh Choudhary, GA-cum-AAG.
Mr.Manvendra Singh Shekhawat, Dy. GA.

**HON'BLE MR. JUSTICE AVNEESH JHINGAN
HON'BLE MR. JUSTICE BALJINDER SINGH SANDHU**

Order

24/09/2025

AVNEESH JHINGAN, J :-

This petition in the nature of Habeas Corpus is filed seeking directions to produce the brother of the petitioner (hereinafter referred to as 'corpus').

2. The facts are that the corpus is Constable in CRPF and on 02nd March, 2025 proceeded on leave to his native place. The corpus got extended the medical leave and on 09.04.2025 left his native place for joining the duties at Greater Noida (U.P.). The corpus failed to join the duties. A Missing

Person Report (MPR) was submitted on 11.04.2025 by the petitioner.

3. Learned counsel for the petitioner submits that the corpus is missing and no effective steps are being taken on the MPR dated 11.04.2025.

4. The status report dated 23.09.2025 filed by learned Government Advocate-cum-Additional Advocate General is taken on record.

5. As per the status report filed, the CRPF Authorities have declared the corpus as absconder and arrest warrants have been issued.

6. Learned GA-cum-AAG contends that the corpus is wanted by the CRPF authorities and police is also making efforts in this regard. It is stated in the status report that the corpus was located moving around freely at Metro Station Dhaula Kuan, New Delhi and thereafter at Tirupati.

7. From the status report, pleadings in petition and submissions made, it is forthcoming that there is no illegal detention of the corpus.

8. A legal issue arises as to whether a petition in the nature of Habeas Corpus lies where there is no illegal detention, and sole purpose is to seek supervision of the investigation of an MPR.

9. The Supreme Court in ***Kanu Sanyal v. District Magistrate, Darjeeling and Others*** reported in **(1973) 2 SCC 674** held that the writ in nature of Habeas Corpus can be issued where there is a prima facie case of illegal detention,

whether by the State or by a private party. The relevant para of the judgment is quoted:-

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 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 Be Division of our High Court of Justice 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 sing 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 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 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.

(emphasis)

9.1 The unlawful detention is the sine qua non for issuance of writ of habeas corpus. In the case of **Home**

Secretary (Prison) and others v. H. Nilofer Nisha reported in **(2020) 40 SCC 161** the scope of the Habeas Corpus petition was considered and it was held:-

“12. 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.

13. 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.

14. 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 Justice Hidayatullah (as he then was) held; “The writ of habeas corpus issues not only for release from detention by the State but also for release from private detention”. 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.”

(emphasis)

9.2 In the case of **Union of India Vs. Yumnam Anand M. alias Bocha alias Kora alias Suraj and Another** reported

in **(2007) 10 SCC 190** it is held that the a prima facie case of unlawful detention must be shown. The relevant para of the judgment is reproduced 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."

(emphasis)

9.3 The Division Bench of Madhya Pradesh High Court in the case of **Sulochana Bai v. State of M.P.** reported in **[(2008) 1 MPLJ 339]** considered the scope of Habeas Corpus in a matter of missing report lodged with the police in respect of corpus. It was held:-

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.

(emphasis)

9.4 The Orissa High Court in the case of **Nimananda Biswal vs. State of Odisha and Others** reported in

[(2023) SCC Online Ori 5628] has considered the issue of issuance of writ of Habeas Corpus in respect of a missing person and held :-

“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.”

(emphasis)

10. In the case in hand there is no pleading or allegation of an illegal detention of the corpus, and one of the basic requisite for writ of Habeas Corpus is of illegal detention. Present is a case where the grievance is against the manner of investigation of MPR.

11. The Supreme Court in **Sakiri Vasu vs State Of U.P** reported in **[(2008) 2 SCC 409]** held that the power to supervise the investigation lies with the Magistrate. The relevant paras are quoted below:-

“11. In this connection we would like to state that if a person has a grievance that the police station is not registering his FIR under Section 154 Cr.P.C., then he can approach the Superintendent of Police under Section 154(3) Cr.P.C. by an application in writing. Even if that does not yield any satisfactory result in the sense that either the FIR is still not registered, or that even after registering it no proper

investigation is held, it is open to the aggrieved person to file an application under Section 156 (3) Cr.P.C. before the learned Magistrate concerned. If such an application under Section 156 (3) is filed before the Magistrate, the Magistrate can direct the FIR to be registered and also can direct a proper investigation to be made, in a case where, according to the aggrieved person, no proper investigation was made. The Magistrate can also under the same provision monitor the investigation to ensure a proper investigation."

12. Thus in *Mohd. Yousuf vs. Smt. Afaq Jahan & Anr.* JT 2006(1) SC 10, this Court observed:

The clear position therefore is that any judicial Magistrate, before taking cognizance of the offence, can order investigation under Section 156(3) of the Code. If he does so, he is not to examine the complainant on oath because he was not taking cognizance of any offence therein. For the purpose of enabling the police to start investigation it is open to the Magistrate to direct the police to register an FIR. There is nothing illegal in doing so. After all registration of an FIR involves only the process of entering the substance of the information relating to the commission of the the cognizable offence disclosed by the complaint because that police officer could take further steps contemplated in Chapter XII of the Code only thereafter.

24. In view of the above mentioned legal position, we are of the view that although Section 156(3) is very briefly worded, there is an implied power in the Magistrate under Section 156(3) Cr.P.C. to order registration of a criminal offence and /or to direct the officer in charge of the concerned police station to hold a proper investigation and take all such necessary steps that may be necessary for ensuring a proper investigation including monitoring the same. Even though these powers have not been expressly mentioned in Section 156(3) Cr.P.C., we are of the opinion that they are implied in the above provision.

27. As we have already observed above, the Magistrate has very wide powers to direct registration of an FIR and to ensure a proper investigation, and for this purpose he can monitor the investigation to ensure that the investigation

is done properly (though he cannot investigate himself). The High Court should discourage the practice of filing a writ petition or petition under Section 482 Cr.P.C. simply because a person has a grievance that his FIR has not been registered by the police, or after being registered, proper investigation has not been done by the police. For this grievance, the remedy lies under Sections 36 and 154(3) before the concerned police officers, and if that is of no avail, under Section 156(3) Cr.P.C. before the Magistrate or by filing a criminal complaint under Section 200 Cr.P.C. and not by filing a writ petition or a petition under Section 482 Cr.P.C.

(emphasis)

11.1 The Madras High Court in the case of **Selvaraj Vs. State and Others** reported in **(2018) 3 MLJ (Criminal) 712**

held :-

"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."

(emphasis)

12. The Chhattisgarh High Court in the case of **Smt. Jaymati Sahu vs. State Of Chhattisgarh** reported in **2022 SCC Online Chh 737** held:-

"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."

(emphasis)

13. The writ of Habeas Corpus is to secure release of person illegally detained either by State or a private individual. A prima facie case of illegal detention has to be made out for invoking the writ of Habeas Corpus. The scope of Habeas Corpus has been enlarged with time, but there cannot be straitjacket formula for interference in writ in the nature of Habeas Corpus. It is a trite law that in ordinary course the high court should not interfere in writ jurisdiction, if there is an alternative remedy available. The writ jurisdiction in the case of a missing person cannot be invoked as a matter of routine to know the status of the investigation or on being dissatisfied with the manner of investigation. Criminal procedure law provides remedies for supervision of investigation and if required, for issuance of direction for effective investigation and such matters are to be dealt with by the competent court of law.

14. No case is made out for invoking writ jurisdiction, the petition is dismissed.

(BALJINDER SINGH SANDHU),J

Himanshu Soni/Tanisha/68

(AVNEESH JHINGAN),J

Reportable:- **Yes**