AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPHC No.6 of 2024

- Khilendra Chauhan, S/o Ranjeet Bhai Chauhan, Aged About 54 Years, Permanent R/o Village Mudipara, P.S. Somni, Distt. Rajnandgaon (C.G.)

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Home,department, Mantralaya, Atal Nagar, Nava Raipur, Distt.- Raipur (C.G.)
2. The Superintendent Of Police, Raigarh , Distt.- Raigarh (C.G.)
3. Incharge Of Station House, Police Station - City Kotwali, Raigarh, Distt.Raigarh (C.G.)
4. Priyanka Chauhan, W/o Khilendra Chauhan, Aged About 44 Years, R/o Village Mudipara, P.S. Somni, Distt.- Rajnandgaon (C.G.), Present R/o Vikash Nagar, Gali No.03, Ward No.40, Raigarh, P.S. City Kotwali, Raigarh, Distt.Raigarh (C.G.)

---- Respondents

For Petitioner — Mr. P. K. Patel, Advocate
For Respondent-State — Mr. R. S. Marhas, Addl. AG

Hon'ble Mr. Ramesh Sinha, Chief Justice

Hon'ble Smt. Justice Rajani Dubey

Judgment on Board

Per Ramesh Sinha, Chief Justice

03.05.2024

1. Heard Mr. P. K. Patel, learned counsel for the petitioner and Mr. R. S. Marhas, learned Addl. Advocate General for the State.

2. The present writ petition (habeas corpus) has been filed by the petitioner praying for the following reliefs:-

> “10.1 That, this Hon'ble Court, may kindly call for the

entire record which relates to the case of the petitioner.

10.2 That, this Hon'ble Court, may kindly be pleased to issue a writ in the nature of habeas corpus, command and direct therein to the respondent authorities, to produce Smt. Priyanka Chauhan, respondent no. 4, before this Hon'ble High Court, in the interest of justice.

10.3 That, any other relief, this Hon'ble Court, deem fit and proper may also kindly be granted to the petitioner, in the interest of justice."

3. The case of the prosecution in brief is that the petitioner is the husband of the respondent No.4 Priyanka Chouhan and their marriage was solemnized way back in the year 1999. On 08.08.2023, the petitioner lodged a missing report to the Police Station City Kotwali, Raigarh alleging that his wife respondent No.4 is missing from Raigarh since 06.04.2023, upon which Missing Report No.63/2023 was registered and thereafter he also filed complaint before the SP, Raigarh, but the wife of the petitioner could not be traced. Hence, this petition has been filed.

4. Learned counsel for the petitioner submits that the respondent No.4 is the wife of the petitioner having the two children and she is missing from Raigarh since 06.04.2023, which is the matrimonial place of the respondent No.4. The petitioner has also lodged missing report of his wife, but despite missing report being lodged by him, the concerned respondent authorities are not properly inquiring the matter and till date respondent No.4 has not been found. The action of the respondent authorities is illegal, erroneous and contrary to the law. Therefore, the respondent authorities may kindly be directed to produce the respondent

No.4.

5. Learned State counsel submits that the last mobile location of the respondent No.4 was traced at Udaypur, Rajasthan, as such the best possible efforts are being made to search the respondent No.4.

6. We have heard learned counsel for the parties and perused the material available on record.

7. 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 petitioner must show a prima facie case of unlawful detention of the subject.

8. 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."

9. 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.”

10. The 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.

11. 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."

12. 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."

13. The High Court of Orissa at Cuttack in the matter of **Nimananda Biswal vs State of Odisha and others**, reported in 2023 SCC Online Ori 5628, held in para 10 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."

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 to be seen in the instant case that the petitioner has not made any averment in the entire writ petition that her wife Priyanka Chauhan, the respondent No.4 has been illegally detained either by the official respondents or by someone else. The averments made in the writ petition, as a whole, do not disclose the illegal detention of respondent No.4 by the official respondents or

someone else and the unlawful detention of the petitioner's wife, either by private person or custody / control / detention by the official respondents is not pleaded, established or urged before this Court, only direction has been sought to respondent authorities to search her missing wife, but 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 himself that her wife is missing since 06.04.2023.

16. 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.

17. Accordingly, the writ petition is dismissed. However, the petitioner is at liberty to approach the appropriate forum in accordance with law.

Sd/-
(**Rajani Dubey**)
Judge

Sd/-
(**Ramesh Sinha**)
Chief Justice

Nirala

HEAD NOTE

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.

बंदी प्रत्यक्षीकरण की रिट नियमित रूप से जारी नही की जा सकती है एवं बंदी प्रत्यक्षीकरण की रिट जारी करने के लिए स्पष्ट आधार होने चाहिए।