

**AFR**

Neutral Citation No. - 2024:AHC:8706

**Court No. - 78**

**Case :-** HABEAS CORPUS WRIT PETITION No. - 1041 of 2023

**Petitioner :-** Jaishree And Another

**Respondent :-** State Of U.P. And 3 Others

**Counsel for Petitioner :-** Mohd. Monis, Bhanu Kumar Ratnakar

**Counsel for Respondent :-** G.A.

**Hon'ble Dr. Yogendra Kumar Srivastava, J.**

1. Heard Sri Mohd. Monis, learned counsel for the petitioners and Sri Pankaj Saxena, learned AGA-I appearing for the State-respondents.

2. The present petition has been filed for a writ of habeas corpus alleging that the petitioner no.1, wife of the petitioner no.2, is under illegal detention of the respondent no.4, who is stated to be the maternal uncle of petitioner no.1.

3. The case as set up in the petition indicates that, on 24.07.2023, the petitioner no.1 left the house of petitioner no.2 alongwith some cash and jewellery. It is further averred that consequent to filing of a complaint at the police station, the petitioner no.1 agreed to come back to her matrimonial home; however, on 27.11.2023, she again left the house of petitioner no.2 alongwith her maternal uncle i.e. respondent no.4.

4. It is sought to be asserted that subsequently despite efforts being made by the petitioner no.2 (husband), the petitioner no.1 (wife) is not willing to come back to her matrimonial home.

5. Learned AGA-I submits that from the pleadings in the writ petition it is apparent that petitioner no.1 has left her matrimonial home on her own and there is no material to suggest that she is under illegal detention.

6. Accordingly, it is submitted that in the aforesaid circumstances, the petition seeking a writ of habeas corpus would not be maintainable. Reliance in this regard is placed upon the judgment of this Court in **Soniya and another Vs. State of UP and others**<sup>1</sup>.

7. The writ of habeas corpus is a prerogative writ and an extraordinary remedy. It is a writ of right and not a writ of course and may be granted only on reasonable ground or probable cause being shown.

8. The writ of habeas corpus has been held as a *festinum remedium* and accordingly the power would be exercisable in a clear case. The remedy of writ of habeas corpus at the instance of a person seeking to obtain possession of someone whom he claims to be his wife would therefore not be available as a matter of course.

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1 2021 (145) ALR 773

9. The power to direct search for persons wrongfully confined is provided under Section 97 of the Code of Criminal Procedure, 1973 whereas Section 98 provides the procedure to compel restoration of abducted females. In a situation where the husband seeks to assert that the wife, without reasonable cause, is refusing to return to her matrimonial home, it would be open for him to seek the remedy of restitution of conjugal rights under Section 9 of the Hindu Marriage Act, 1955. The recourse to the latter remedy may be sought where the detention does not amount to an offence and to the former if it does. While invoking either of these remedies, all the issues relating to facts can be agitated and examined, whereas a writ of habeas corpus may not be issued where facts are disputed or are not clearly established.

10. The exercise of the extraordinary jurisdiction for issuance of writ of habeas corpus would be dependent on the jurisdictional fact where the petitioner establishes a *prima facie* case that the detention is unlawful, which apparently is not demonstrated from the facts which are on record in the present case.

11. In view of the other remedies available for the purpose, under criminal and civil law, exigence of a writ of habeas corpus at the behest of a husband to regain his wife would be rare and may not be available as a matter of course and the power in this

regard may be exercised only when a clear case is made out.

12. The aforementioned legal position has been stated in a recent decision of this Court in **Soniya and another Vs. State of UP and others**<sup>1</sup> and subsequently reiterated in **Manjita Devi and another Vs. State of UP and others**<sup>2</sup> and **Mohd. Ahmad and another Vs. State of UP and others**<sup>3</sup>.

13. In the facts of the present case, the petitioner no.1 having left her matrimonial home, on her own volition, and there being no material to establish the *factum* of illegal detention, the petition seeking writ of habeas corpus at the behest of the petitioner no.2 (husband), would not be entertainable.

14. It would be open to the petitioner no.2 to avail the appropriate legal remedies, under the civil and criminal law, as he may be advised.

15. Subject to the aforesaid observations, the petition stands **dismissed**.

**Order Date :- 18.1.2024**  
Shahroz

(Dr. Y.K. Srivastava,J.)

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1 2021 (145) ALR 773  
2 2021 (2) AWC 1055  
3 2021 (148) ALR 118