
(2007) 06 AHC CK 0033

In the Allahabad High Court

Case No : Habeas Corpus Petition No. 59116 of 2006

Madhav Das Agrawal and Another

APPELLANT

Vs

State of U.P.and Others

RESPONDENT

Date of Decision : 26-06-2007

Acts Referred:

Citation : (2007) 06 AHC CK 0033

Hon'ble Judges : Vinod Prasad, J

Final Decision : Dismissed

Judgement

Vinod Prasad, J.—Madhav Das Agarwal has filed this Habeas Corpus Petition in this Court with the prayer that a writ of habeas corpus be issued commanding respondents No. 4 to 8 to appear and produce detenu petitioner No. 2 Sandeep Garg, his son aged about 27 years and this Court should set the detenu free. Further relief which is sought in this writ petition is that the respondent Nos. 1 to 3 be directed to recover the detenu from the illegal detention of rest of the respondents or their associates, whosoever they may be.

2. The short narration of facts are that Sandeep Garg, the detenu, Petitioner No. 2, son of petitioner No. 1 Madhav Das Agarwal, left his house on 26/9/2006 at about 10 a.m. with a cheque of Rs. 10 lacs. He tried to get that cheque encashed at Canara Bank, Holi Gali Mathura but as the bank did not had sufficient funds with it the said cheque could not be encashed by it. In lien Canara Bank took the cheque and issued a banker's cheque drawn on SBI, Main Branch, Mathura to the detenu. Meanwhile it seems that the manager of Canara Bank telephoned to the house of Sandeep Garg regarding issuing of Banker's Cheque. On the telephone the family members some how sensed the kidnapping of Sandeep Garg and so they called on SB Main Branch and requested them to stop payment of the Banker's Cheque. Sandeep Garg did not return back and the petitioner No. 1 started receiving threats on phone from unknown sources for stopping payment of cheque and a ransom of Rs. 20 lacs was also demanded from him. Petitioner No. 1 gave a written report at the police station Kotwali by hand and

also sent a telegramme (Annexure No. 1) to the police station on 27/9/2006. Police however did nothing in the matter but petitioner No. 1 on his own came to know that respondents No. 4 and 5 are involved in the conspiracy in sending the detenu with Km. Shalini, sister-in-law of respondent No. 5 to an unknown place and are detaining him illegally under pressure of drugs etc.

3. Mother of Km. Shalini also lodged a report (Annexure No. 2) that her daughter Km. Shalini is missing with the detenu since 25/9/2006. Shalini also gave a mobile message that she has solemnised a Court marriage with the detenu.

4. Petitioner No. 1 gave a report to the Chief Minister and then his FIR was registered as Crime Number 584 of 2006 under Section 364A IPC against respondent No. 4 on 11/10/2006 vide Annexure No. 4.

5. On such facts since the police is taking the matter lightly being a love affair case that the petitioner No. 1 has filed this habeas corpus petition.

6. I have heard Sri D. K. Dewan in support of this habeas corpus petition.

7. Sri Diwan submitted that since petitioner No. 2 is under illegal detention this habeas corpus is maintainable. He contended that the police is not recovering the detenu and are taking the matter lightly as a love affair case.

8. AGA on the other hand contended that this Habeas Corpus Petition is not maintainable.

9. I have considered the contentions raised by the rival sides. In this case the FIR of the Petitioner No. 1 has been registered at the police station. The petitioner, therefore, has a remedy in appropriate forum in getting his FIR investigated and bring culprits to books. In every case of kidnapping or abduction in which FIR has been registered the proper remedy is to get the FIR investigated and not the habeas corpus petition. No doubt writ is an extraordinary remedy and alternative remedy is no bar in exercising power under Article 226 of The Constitution of India but that does not mean that alternative remedy be completely ignored all together and this Court should deal every matter under Article 22 of the Constitution.

10. This habeas corpus petition is dismissed. Petitioner may seek remedy in appropriate forum if he so desires.