

(1999) 02 CAL CK 0020
In the Calcutta High Court
Case No : Writ Petition No. 9175 (W) of 1998

Smt. Chhabi Khanra and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 01-02-1999

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 161
Penal Code, 1860 (IPC) — Section 364

Citation : (1999) CriLJ 2184

Hon'ble Judges : Gitesh Ranjan Bhattacharjee, J

Bench : Single Bench

Advocate : Ajit Kr. Panja and Supriya Roy Chowdhury, for the Appellant; Sudipto Moitra and N.C. Betal and Biplab Mitra and A. Roy Chowdhury, for the Respondent

Final Decision : Dismissed

Judgement

Gitesh Ranjan Bhattacharjee, J.—This is an application under Article 226 for a writ in the nature of Habeas Corpus for the production of the body of one Prasenjit Khanra, the son of the petitioners who is untraced since 14-12-1995 and also for a writ in the nature of mandamus directing the investigating authorities to proceed in accordance with law and complete the investigation in the Belgharia P.S. case No. 20 dated 24-1 1996 u/s 364, I.P.C. regarding missing and kidnapping of said Prasenjit Khanra. The respondents in this writ petition include the officer-in-charge, Missing Persons Squad, Lal Bazar, the Superintendent of Police, Criminal Investigations Department, Bhabani Bhavan, West Bengal, the Officer-in-charge, Belgharia Police Station, the Deputy Inspector General of Police, Criminal Investigation Department, West Bengal, several other police officials and also three private persons whose involvement in the matter is suspected by the petitioners.

2. Prasenjit Khanra has been missing since 14th December, 1995. After obtaining degree of Bachelor of Mechanical Engineering (BME) from Jadavpur University in

1995, he joined Hindusthan Gas and Industries in Gujarat on being selected in campus interview, but he returned in September, 1995 and thereafter sent an application intimating his unwillingness to continue in the said industry. The petitioners reside in village Chandrakona Road, P. S. Garbetain the district of Midnapore. It is the petitioners' case that after returning from Gujarat Prasenjit used to stay at room No. 13 in "D" Block of Jadavpur Main Hostel as guest of one Rajib Banerjee and Amalesh Maji who were regular students of Jadavpur University, Engineering Branch and he was preparing for competitive examinations. He used to go to meet his parents at Chandrakona Road usually once in a month during his study as a student of Jadavpur and after coming back from Gujarat while he used to stay as guest of Rajib and Amalesh, he used to come to Chandrakona Road at an interval of 15 days and also on the occasions of principal festivals. Kakali is the elder sister of Prasenjit. She also passed Bachelor of Engineering from Bengal Engineering College, Shibpur in 1994. At the material time she used to stay as paying guest in the house of one Monoj Ghosh at 1/C, Lake Temple Road, Calcutta-29. On 2nd December, 1995 Prasenjit came to his parents at Chandrakona Road and returned to Jadavpur Main Hostel on 4th December, 1995. In the writ petition it is stated by the petitioners that on 13th December, 1995 Prasenjit went to the house of Monoj Ghosh to meet his elder sister Kakali and he again went there on the 14th December, 1995 and intimated Kakali that he had arranged another room for Kakali for her staying as paying guest and both of them would go to visit the said room in the evening and it was also intimated to her by Prasenjit that he had been invited for lunch by his friend Rajib Chowdhury (the respondent No. 9 herein) at noon on 14th December, 1995 and he would go to the house of Rajib Chowdhury at 60/1, Feeder Road (Phoolbagan), Belgharia, Cal. 56. However Prasenjit did not come back to Kakali in the evening of the 14th December, 1995. As Prasenjit did not enquire about Kakali till 19th December, 1995 she went to the Jadavpur Main Hostel to meet Prasenjit on 20-12-1995 and came to learn from Jadavpur Main Hostel through her boy friend Chandan Gupta who accompanied her there that the room-mates of Prasenjit intimated him that Prasenjit left the hostel for the house of Rajib Chowdhury on 14-12-1995 and did not return to the hostel since then. In paragraph 14 of the writ petition it is stated that on query made by Chandan, one Rajib Banerjee, the room-mate of Prasenjit informed him that there were other friends of Prasenjit from whom something could be known and the said friends were named as Sanjoy Das alias Bhanjo and Rana Saha, respondent Nos. 11 and 10 respectively. According to the writ petition Rajib Banerjee, the roommate of Prasenjit accompanied Chandan to the other block of the hostel where Sanjoy Das alias Bhanjo used to stay and there Sanjoy told Rajib to note down the address of Rana Saha on a paper which was collected by the Rajib Banerjee from the floor of the room where Sanjoy used to stay. The address of Rana Saha as told by Sanjoy was written on that paper which was collected from the floor of the room and it was found that the said paper was a letter addressed to Bhanjo (alias Sanjoy Das) written by Rana and in that letter it was stated that Khanra was missing since last Thursday and he had not returned to the hostel,

and as such Bhanjo was asked to contact Rajib and it was further stated that Rana would take information over telephone from the hostel. The said letter is Annexure-D to the writ petition. The last sentence of that letter is "happy X-mas (war is over)." On 21-12-1995 Kakali obtained, over phone from Rajib Chowdhury, the description of the wearing apparel of Prasenjit which he was wearing when he went to the house of Rajib Chowdhury on 14-12-1995 and on that date, namely, 21-12-1995 Kakali and Chandan went to the Jadavpur Police Station, but Jadavpur police refused to accept any complaint and also refused to record any general dairy. However subsequently at the intervention of one Chittaranjan Pan, an officer of the Home (Personnel) Department at Writers' Buildings, Calcutta a G.D. Entry being G.D. Entry No. GDE-1323 dated 21-12-1995 was registered at the Jadavpur police station and on that very date a written complaint was also lodged with the Officer-in-charge, Missing Persons Squad, Lalbazar. It is stated by Kakali Khanra in her complaint dated 21-12-1995 addressed to the Officer-in-charge, Missing Persons Squad, Lalbazar, Calcutta that her brother Prasenjit was missing since the preceding Thursday, the 14th December, 1995 afternoon and on that date he had gone to his friend Rajib Chowdhury's house at Belgharia and after taking lunch there he left the place and took a bus (No. 234) to come to his sister's place at Lake Temple Road at about 3.15 p.m. and since then there was no trace of him. On 23-12-1995 the petitioner No. 2, Ranjit Khanra, the father of Prasenjit also lodged a complaint with the Officer-in-charge, Missing Persons Squad, Lalbazar stating that on 14-12-1995 Prasenjit went to Rajib Chowdhury's house at Belgharia on an invitation for lunch and thereafter he did not come back to the hostel. In that complaint mention had also been made of the letter purportingly written by Rana Saha to Sanjoy Das containing the expression "waris over" which according to the petitioners is a suspicious expression. In the written complaint the petitioner No. 2 has expressed his impression that Prasenjit was missing from Belgharia and Rajib Chowdhury, Rana Saha and Sanjoy Das alias Bhanjo might have kidnapped him for some illegal purpose. On 25-12-1995 the petitioner No. 2 also lodged a complaint with the Officer-in-charge, Belgharia Police Station about the missing of his son Prasenjit and about the suspected involvement of Rajib, Rana and Sanjoy. As Prasenjit was not traced out the petitioner No. 2, the father of Prasenjit lodged an FIR on 24-1-1996 at the Belgharia Police Station suspecting the involvement of Rajib Chowdhury and Rajib's friends Rana Saha and Sanjoy Das alias Bhanjo in the matter of kidnapping Prasenjit for some illegal purpose. On the basis of the said FIR a case was started by the police being Belgharia P.S. Case No. 20 dated 24-1-1996 u/s 364, I.P.C. and the said investigation is still pending and the petitioners' grievance is that the investigation is not been properly conducted by the police and that is why the present writ petition has been filed. It is also averred in the writ petition at pages 23, 24 and 25 that after the missing of Prasenjit an advertisement was made in the Statesman on 10-1-1996 in the missing persons column and thereafter one Dr. A. Ahmed, a registered practitioner of Manipur wrote a letter to the petitioner No. 2 (Annexure-G) that he had come to learn that Prasenjit was alive and in distress

and that it would be better to go to Fakir Baba with the help of one Swapan Dey at Socio-Economic Development Centre, Kamal Nath Nagar, Bettiah 855438, West Champaran. In response to the said letter dated 24-2-1996 of Dr. A. Ahmed the petitioner No. 2 intimated Dr. Ahmed by a letter that he would be obliged if the telephone No. of Fakir Baba was sent to him for making contact with Fakir Baba regarding the whereabouts of his son Prasenjit. A similar letter was also sent to Swapan Dey. It appears that no reply was received from Dr. Ahmed or from Swapan Dey. Police also wrote a letter to Dr. Ahmed which also has not been responded.

3. Respondent No. 9 Rajib Chowdhury has entered appearance in this proceeding through his learned Advocate, but he has not affirmed any affidavit-in-opposition and it is submitted by the learned Advocate appearing for the respondent No. 9 that he is not going to affirm any affidavit in this writ proceeding as that might prejudice his interest and stand in the pending criminal investigation wherein his involvement in the matter has been suspected by the petitioners. Since the present writ proceeding itself is directly related to the pending criminal investigation and is biased on the grievance that the criminal investigation is not being properly conducted by the police evidently a suspect should not be compelled to affirm affidavit in this writ proceeding which is intended to obtain an impact on the pending criminal investigation. Indeed the police have recorded the statements of the suspects u/s 161, Cr. P.C. However an affidavit has been affirmed on behalf of the respondents Nos. 1 to 8 who are the police authorities. In that affidavit-in-opposition the allegation that the investigation is not being properly conducted has been denied and the steps taken in the investigation have been also adumbrated. The case diary also has been produced. It is however not considered desirable to discuss in detail in this order the materials in the CD. as the investigation is still pending.

4. It is however to be considered whether habeas corpus proceeding is appropriate in the matter as it stands. A writ of habeas corpus would ordinarily lie, when a person is in illegal detention or is held in illegal custody, for commanding the detaining authority or the person having custody of the person held in illegal detention to produce such person. There is no doubt of course that a writ of habeas corpus may lie not only against the State authorities but also against private individual in appropriate circumstances. It is indeed true that the petitioner was not staying in the Jadavpur University hostel as an authorised boarder but that by itself may not be a very relevant factor because a writ of habeas corpus may issue against an authority if some person has been illegally detained by such authority, irrespective of the question whether such person was legally entitled to go to a particular place or stay there. What is relevant is the nature of the detention, namely, whether such detention by such authority is authorised by law or not. In the present case however it is not the case of the petitioners that Prasenjit was detained by the hostel authorities or by any one in the University hostel. On the other hand the specific complaint, as we have seen, is that on 14-12-1995 Prasenjit went to the house of his friend Rajib Chowdhury

at Belgharia on invitation at lunch and thereafter took a particular bus (i.e. bus of route No. 234) at Belgharia for returning either to the hostel or to the place of his sister Kakali and since then he has remained untraced. It is thus not a case that Prasenjit has been detained by any particular authority or by any particular person. It is rather a case that he has been missing. A writ of habeas corpus may lie only against the person or authority who might have been illegally detaining a particular person, for the production of the body of that person. An authority or person who is not detaining the concerned person obviously cannot be directed by a writ of habeas corpus to produce the body of that person. In the present case any direction upon any of the official respondents by a writ of habeas corpus to produce the body of the concerned person will not be an appropriate writ because it is not that they have kept the missing person under custody or have detained him. It is also not that any particular identified private individual has kept the missing person under detention so that such identified person could be directed by a writ of habeas corpus to produce the body of such person kept under his detention. Therefore so far as the formal aspect of the matter is concerned this is not a fit case where this Court can appropriately deal with the matter in its writ jurisdiction regarding habeas corpus. Secondly, this very matter is under a criminal investigation and the criminal investigation has to proceed in accordance with the procedure of law. It is true that the petitioners have suspected that their son Prasenjit has been kidnapped, and they have also suspected some persons to be involved in the matter of kidnapping Prasenjit. If ultimately the investigation results in submission of final report instead of charge-sheet against anyone in that event under the law as it now stands in view of the Supreme Court decisions in Bhagwant Singh Vs. Commissioner of Police and Another, , Union Public Service Commission Vs. S. Papaiah and others, , Mrs. Rupan Deol Bajaj and another Vs. Kanwar Pal Singh Gill and another, , the Magistrate will have to give a notice to the complaint before accepting the final report and at that time the complainant may raise his grievance before the Magistrate and in that event the Magistrate will be required to consider the matter threadbare and thereafter he may either accept the final report or take cognizance on the basis of the materials obtained in the investigation against any person involved in the matter or may direct further investigation as may be considered fit and proper. But it would be inappropriate how far this Court in its writ jurisdiction to assume a supervisory involvement in the matter of the continuing investigation. We therefore consider it not a fit case for interference of the writ Court in the matter at this stage, particular in a proceeding for habeas corpus. We would only however record that the investigating agency should work out without any further delay the information given by Dr. A. Ahmed of Manipur by sending a team of officers to Dr. Ahmed at Manipur and also by contacting Swapan Dey at Kamal Nath Nagar, Bettiah, West Champaran and Fakir Baba as mentioned in the letter of Dr. Ahmed. A team of officers should be sent to the concerned places at Manipur and West Champaran for working out the information given by Dr. Ahmed. With these observations, which are of advisory nature, we dispose of the present writ petition by holding that writ for habeas

corpus is not appropriate in the matter as it stands.

Nure Alam Chowdhury, J.

5. I agree.