



HIGH COURT OF JUDICATURE AT ALLAHABAD

HABEAS CORPUS WRIT PETITION No. - 3929 of 2018

Shiv Kumar (Corpus) And Another

.....Petitioner(s)

Versus

State Of U.P. And 5 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Hemant Kumar Rai
Counsel for Respondent(s)	:	G.A., Jitendra Kumar

Court No. - 44

HON'BLE J.J. MUNIR, J.

HON'BLE SANJIV KUMAR, J.

The detainee, in this case, was arrested by the Police in connection with Case Crime No. 68 of 2018 under Section 363 IPC, Police Station- Paikaulia, District- Basti. He had eloped with a girl and the First Information Report was apparently lodged against an unknown offender by the girl's brother. The petitioner was detained by the Police of Police Station- Paikaulia in connection with the said First Information Report and taken into custody. The detainee's father went to the police station where he was informed by the Police Inspector that the detainee would be released as soon as the victim's statement under Section 164 Cr.P.C. was recorded. The girl's statement under Section 164 Cr.P.C was recorded long ago.

Whatever were the liabilities, arising from the First Information Report giving rise to Case Crime No. 68 of 2018, based on the victim's statement before the Judicial Magistrate or other proceedings in investigation, action could have been taken against the detainee. But, this did not happen.

Soft peddling with the Police and buying the ready-made argument that any action against the Police would demoralize them, in many cases, turns

a particular section of the force or a few officers amongst them into outlaws. This is precisely what appears to have happened in this case. The detainee does not appear to have been produced for remand by the Police before the Magistrate and remanded to proper custody, be it police or judicial. He just disappeared from the police station.

In the circumstances, this habeas corpus petition was filed with a prayer that the respondent Police Establishment at Basti, which includes the Superintendent of Police, Basti and the two named policemen from Police Station- Paikaulia, District- Basti, be ordered to produce the detainee before this Court and he be set at liberty.

On 29.11.2018, a Division Bench of this Court passed the following order:

"This is a habeas corpus writ petition filed on behalf of the corpus Shiv Kumar through his father Mahesh with the contention that in pursuance of an FIR filed under Sections 363 and 366 IPC, the boy and the girl both were recovered and they were taken into custody by the police authorities.

When the father of corpus went to the Police station, he was informed by the police Inspector concerned that the boy will be released as soon as the statement of the girl is recorded.

Now the statement of the girl under Section 164 Cr.P.C. has been recorded, a copy has been annexed on page 13 and 13-A of the habeas corpus writ petition., the contents of which are self explicit.

It had been contended that the boy who was taken into custody by the police authority is untraceable even as on date and in spite of repeated applications and efforts in approaching the police authorities, the whereabouts of the corpus Shiv Kumar is not known. It has been further contended that the concerned Sub Inspector as well as the concerned constable have been made party by name and have been arrayed as respondent Nos.4 and 5 in the array of the parties.

At the first instance, this court deems it fit to ask the learned AGA to seek instructions about the whereabouts of the corpus Shiv.

Accordingly, put up as fresh on 03.12.2018 on which date Sri Rajesh Mishra, learned AGA shall inform the Court regarding the whereabouts of the boy.

Till Monday i.e. 03.12.2018 which is the next date of listing no coercive measure of any sought whatsoever will be initiated against the petitioner no.2."

After this, the order-sheet of this case almost reads like a book. The Police, apparently, have been hoodwinking this Court into not producing the detainee, Shiv Kumar.

The allegations of eliminating Shiv Kumar by the Police, which would be a case of death in police custody, have been noticed by the Division Bench on 19.03.2021. A First Information Report was not lodged against the guilty policemen, leading the Division Bench on 19.03.2021 to pass the following order:

"Heard learned counsel for the petitioner and Sri Patanjali Mishra, learned AGA for the State.

Pursuant to direction of this Court, the present Investigating Officer and Superintendent of Police, Basti are present. They were called to find out the efforts made by them to recover corpus Shiv Kumar. The record shows that the police has visited Nepal border to search Shiv Kumar.

The officers present in Court were asked to disclose the basis for visiting Nepal border because no material information about the availabilities of Shiv Kumar in Nepal or border exist on record. We further find that no effective action has been taken pursuant to the letter dated 24.9.2018 written by the father making specific allegation about missing of the boy who said to have been taken by ASI Arvind Kumar Rai along with two constables. It could not be clarified as to why Shiv Kumar could not be arrested when he was the accused in a case lodged against him. The way the matter has proceeded after the letter dated 24.9.2018 cannot be accepted rather we are of the opinion that effort of the police to recover the boy Shiv Kumar is superficial.

When the specific allegation exists against ASI Arvind Kumar Rai apart from two constables, why they were not booked in reference to the allegation and furthermore why the case was not registered by the police in reference to the allegation made in the letter dated 24.9.2018. The serious allegation of killing of Shiv Kumar exists against the police officers. The allegation made by the father cannot be ignored. A mis-happening may have taken place. There was no reason for boy to abscond and for the police not to recover him.

Since the Superintendent of Police has joined the District concerned in October, 2019 and is praying for time to look into the matter personally for needful action, we grant time to him.

Accordingly, let this petition be listed on 25.3.2021 for further hearing.

A direction is given to prepare the complete chart to show efforts of the police for recovery of the corpus Shiv Kumar after receipt of the report dated 24.9.2018. It should be supported by the material and for which a direction is to bring it before the Court which may include the Rapat Rawangi and Rojnamcha. It would be clarified as to why a

case was not registered pursuant to the letter dated 24.9.2018.

In case, no satisfactory efforts are made to recover Shiv Kumar on or before 25.3.2021 or appropriate action against whom allegations have been made with registration of report, this Court will have no option but to call Director General of Police, State of Uttar Pradesh as it would remain to be case of total failure of the administration.

The officers concerned present in Court today will again remain present before this Court on 25.3.2021 also."

It was after the order dated 19.03.2021 that a First Information Report, giving rise to Case Crime No. 31 of 2021 under Sections 364 and 120-B IPC Police Station- Paikaulia, District- Basti was registered, albeit against Sub-Inspector Arvind Kumar, two unknown Constables and Ravi, the brother of the victim, in regard to whose elopement with the detenue the earlier crime was registered and the detenue detained at the police station.

In the said First Information Report, it is alleged:

"दिनांक 12.09.2018 को प्रार्थी अपने गाँव के गजराम सिंह, कामेश चौकिदार, ओमप्रकाश, प्रमोद, रामपाल नेताजी को साथ लेकर थाने गया तो वहाँ पर प्रार्थी का पुत्र थाने पर मौजूद था और प्रार्थी व प्रार्थी के साथ गये लोगो ने प्रार्थी के पुत्र से बातचीत की और उसके बाद दरोगा जी से बात की तो दरोगा जी ने कहा कि तीन-चार दिन बाद अपने पुत्र को अपने साथ ले जाना हम, लडकी के ब्यान कराने के बाद ही हम आपके के लड़के को देगे। प्रार्थी उपरोक्त की बात मानकर थाने से चला आया और दिनांक 19.09.2018 को प्रार्थी फिर अपने गाँव के कुछ लोगो को लेकर थाने गया तो वहाँ प्रार्थी का पुत्र मौजूद नहीं मिला तब प्रार्थी ने एस०आई० अरविन्द राय व कास्टेबल से मालूम किया तो उन्होने प्रार्थी को कोई सन्तोषजनक जबाब नहीं दिया प्रार्थी को शक है कि उपरोक्त लोगो ने षडयंत्र रचकर प्रार्थी के पुत्र को कही गायब कर दिया है या मार दिया है।"

Till date, the whereabouts of the detenue are not known.

We have spoken of the volume of the order-sheet, the volume of affidavits filed in this case far exceeds the volume of the order-sheet. The effort of the police, to trace the detenue, is still said to be on which makes it nothing but utter mockery.

Mockery, we say, because a man, who was detained at the police station in connection with a crime way back in the year 2018, is still missing in the year 2025. By now, it is a period of seven years since the detenue disappeared without trace whilst in police custody. This kind of

disappearance from police custody cannot be tolerated. What is more important is that the responsibility, if the detainee has indeed been eliminated, cannot be placed upon the shoulders of a sundry Sub-Inspector. The then Superintendent of Police of the district cannot be spared.

We are informed that the Director General of Police, Lucknow, who currently holds office, is very sensitive about the criticism of his officers. Let him look into the facts of this case and file his own affidavit within three days, before some further and suitable orders are passed in the matter.

List on **28.11.2025 at 2.00 p.m.**, by which time the personal affidavit of the Director General of Police shall be filed.

Let this order be communicated to the Director General of Police, Government of U.P., Lucknow through the learned Chief Judicial Magistrate, Lucknow by the Registrar (Compliance) **today**.

(Sanjiv Kumar,J.) (J.J. Munir,J.)

November 25, 2025

Prashant D.