

Court No. - 1

Case :- HABEAS CORPUS WRIT PETITION No. - 365 of 2024

Petitioner :- Chandini Singh And Another Thru. Brijendra Pratap Singh

Respondent :- State Of U.P. Thru. Prin. Secy, Home Deptt. Lko. And 4 Others

Counsel for Petitioner :- Raghvendra P. Singh, Mohd. Sheraj

Counsel for Respondent :- G.A.

Hon'ble Attau Rahman Masoodi, J.

Hon'ble Subhash Vidyarthi, J.

1. This matter has come up before us on a mention having been made and permission thereof granted by Hon'ble the Chief Justice on administrative side. The court in pursuance of the administrative order was convened at 6.30 p.m.

2. On a perusal of the record placed before us, it is noticed that the petitioner no.1 who is a pregnant lady at an advanced stage, was stated to have gone missing on 14.08.2021 at 6.50 Hrs. when she was aged 21 years and she had left her home for appearing in B.A. 3rd year examination at Agra College, Agra. The petitioner no.1 alleged to be the victim not having returned home and after all the efforts made by the informant to find her or to obtain information about the whereabouts of victim who is his sister, therefore, the F.I.R. No.0504 of 2021, under Section 363 I.P.C. was lodged in Police Station Jagdishpura, District Agra on 15.08.2021 at 12.47 Hrs.

3. It is surprising to note that for nearly more than three years the investigation in relation to the F.I.R. did not progress barring for the fact that the statement of the informant is said to have been recorded. The present Investigating Officer Sri Anurag Kumar, Sub Inspector, who was posted at the Police Station Jagdishpura, District Agra about two months ago, took over the pending

investigation. Sri Anurag Kumar, Sub Inspector who is present in person before us along with the victim and her minor child, has stated that further statement of the informant was recorded recently of which he does not recollect the date and it is in pursuance thereof that he had come to Lucknow to record the statement of victim alleged to have been kidnapped by one Brijesh Pratap Singh @ Prince. The name Brijesh Pratap Singh @ Prince as a matter of fact is Brijendra Pratap Singh, to whom the petitioner no.1 Smt. Chandini Singh is stated to have married on 15.08.2021 and her marriage has been registered before the Registrar (Marriages) on 19.08.2021.

4. The Investigating Officer present before us has also stated that a meeting in the office of Commissioner, Agra had been convened on 28.11.2024 to monitor and expedite the investigation of pending cases and a report was accordingly called for. It is in pursuance of the general direction so issued that he left Agra for verifying the whereabouts of the victim at Lucknow, which information according to him had been gathered by the previous Investigating Officer through the mobile number of suspected person Brijendra Pratap Singh (Brijesh Pratap Singh @ Prince in the F.I.R. itself).

5. The Investigating Officer has further stated that on reaching Lucknow he went to the concerned Police Station Chinhat, where he contacted the Incharge of the Police Station Sri Bharat Pathak for providing the police force to take necessary steps for search of the victim. Sri Bharat Pathak, who is also present in person, at that time was not physically present in the Police Station but was rather on duty in the Sessions Court where some remand matters were fixed. Consequently a lady police constable was provided from Police Station Chinhat to the Investigating Officer who went

along with her to the residence of the petitioners at Bishwanath Enclave, Officers Colony, Vigyan Khand-4, Police Station Chinhat, Lucknow. The Investigating Officer states that he reached the victim's house at about 12:15 p.m. where the petitioner no. 1 along with her minor child of two years and grand mother of her husband were present.

6. Thus, it is clear that no male member was present at the petitioners' home. The Investigating Officer who had reached Lucknow and after obtaining police assistance from the concerned police station had reached the victim's place of residence, did not carry his case diary with him and in order to record the statement under Section 161 Cr.P.C. (Section 180 BNSS) chose to take the victim into custody and brought her to the Police Station Chinhat along with her minor child under the pretext of recording the statement. The victim who is carrying pregnancy of about eight months has thus been subjected to torture by making her sit in the police station from 12.15 Hrs. until a mention was made before this court and the same having been accepted and led to the institution of the present petition pursuant to which the victim has been brought to this court. The victim in this manner remained in the police custody from 12.15 hrs. at least upto the time she has stepped into this court room at 6.30 p.m.

7. We are shocked to notice as sham investigation where an Investigating Officer while proceeding to carry out his duties was even not possessed with the case diary, wherein the statement of the investigations are recorded. It appears that for this reason alone he had taken the victim into custody for taking her to Agra and it is due to the interception of this court that the victim has been brought to the Court in pursuance of the oral directions issued to the learned counsel for the State.

8. This court time and again has struck a note of caution to the police authorities and particularly the Investigating Officers to be vigilant in the matter of recording statements and carrying out investigation in accordance with law. In the present case, where the victim in the F.I.R. was stated to be about 21 years of age, apparently no offence under Section 363 Cr.P.C. is made out, but the Investigating Officer did not apply his mind to the allegations made in the F.I.R. to ascertain whether the F.I.R. discloses the commission of any cognizable offence. The necessity of taking such a victim into custody along with minor child by no stretch of imagination justifies methodology of the Investigating Officer. The Investigating Officer present before us has not offered any plausible explanation as to why did he choose to take the victim into custody under such precarious condition and as to how could he subject the person of a vulnerable class to such a risk along with her minor son of two years. The action on the part of the Investigating Officer is no less than torture of a victim whereas every officer is expected to act fairly in the discharge of his duties. The explanation or justification offered by the police officer in the circumstances of the case is unacceptable and cannot prevent the Investigating Officer from suitable action.

9. The Investigating Officer at every step of explanation has also distorted his version and did not in-still confidence.

10. To say the least, we have no hesitation to put on record that the manner in which police duties were carried out by the Investigating Officer were far far away from the process of law and is a clear case of abuse of the authority in the capacity of Investigating Officer.

11. We are also pained to note that the Investigating Officer, who was not possessed with the case diary, even did not enquire the age of the victim before taking her into custody and detaining in the police station. A simple query regarding her age and her marital status would have brought whole process of investigation to an end. It is also to be noted that the F.I.R. which itself mentions the age of victim as 21 years was sufficient to restrict the Investigating Officer from proceeding with the investigation once the allegations levelled therein do not constitute any cognizable offence. It is also worthwhile to put on record that the Investigating Officer in the normal course would not take the victim into custody unless the circumstances of the case for protection of her person or property was also so imminently necessary. Caution is bound to be observed more rigorously when the victim is a lady and that too at an advance stage of pregnancy. In the present case not only that a pregnant lady was taken into custody but her minor child of two years of age was also compelled to remain in custody.

12. We find it a fit case to be taken note by the Director General of Police and necessary proceedings being drawn and steps thereof as well as the conclusion be apprised to the court.

13. The torture and agony caused to the victim cannot be left unnoticed, for which a suitable compensation deserves to be awarded to her for having been subjected to undue harassment and violation of her rights of personal liberty and privacy.

14. We find it a fit case for imposing an exemplary cost, which in our view, cannot be quantified at less than Rs.1,00,000/-, against the State Authorities to be paid to the victim, as

compensation, which amount shall be paid to her not later than a period of ten days from today.

15. We further expect the State to issue necessary guidelines for dealing with such cases relating to woman carefully and cautiously by the Investigating Officers henceforth. An affidavit of compliance of this order shall be filed before this court within a period of ten days from today. We direct the victim brought to us to be set free forthwith and to be taken back and dropped at her residence by the Female Constable namely Ms. Parul Tomar and in case her husband is present outside the court premises, as pointed out, on making necessary verification of the identity, the victim shall be handed over to her husband Sri Brijendra Pratap Singh. The handing over of the victim to her husband shall be accomplished in presence of learned counsel appearing for the victim.

16. The action directed to be taken by the Director General of Police shall be apprised to the court on the next date of listing so that for conclusion of any such proceeding, the court may pass further orders as are necessary in the case. The Director General of Police is expected to initiate appropriate proceedings immediately and in any view of the matter, conclude the same not later than a period of three months from today.

17. List this case again on 11.12.2024.

[Subhash Vidyarthi, J.] [A.R. Masoodi, J.]

Order Date :- 29.11.2024
kanhaiya/Ram.