



2026:AHC:149104

HIGH COURT OF JUDICATURE AT ALLAHABAD

HABEAS CORPUS WRIT PETITION No. - 986 of 2026

Omwati And Another

.....Petitioner(s)

Versus

State Of U.P. And 6 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Pankaj Dwivedi
Counsel for Respondent(s)	:	G.A.

A.F.R.

Court No. - 73

HON'BLE SANDEEP JAIN, J.

1. Learned counsel for the petitioner submitted that the corpus Manish aged about 35 years is the son of the petitioner Omwati, who is in the illegal detention of private respondent nos.4 to 7, who are the wife and the relatives of the wife, of the corpus. He further submitted that in this regard an F.I.R. was registered on 18.02.2026 being Case Crime No.74 of 2026, under Sections 115(2), 126(2), 351(2), 351(3), 303(2) of B.N.S. at P.S. Mania, District Dholpur (State of Rajasthan) against respondent no.4 Lakhan Singh but neither the corpus has been traced out nor any action has been taken against the private respondents.

2. Per contra, learned A.G.A. submitted that there is a matrimonial dispute between the corpus and his wife/respondent no.7 Sona. The corpus Manish and his relatives demanded dowry of Rs.2,00,000/- and in non-fulfillment of that demand, the wife of the corpus was subjected to mental and physical harassment and cruelty and was thrown out of her matrimonial home. The relatives of the petitioner also committed sexual assault on the respondent Sona, regarding which an F.I.R. was registered by her on 16.12.2025, being Case Crime No.371 of 2025, under Sections 74, 85, 115(2), 352, 351 (2) of B.N.S. and 3/4 Dowry Prohibition Act.

available on record and instructions received by the A.G.A.

4. The Apex Court in the case of ***Union of India vs. Yumnam Anand M. @ Bocha @ Kora @ Suraj and Another (2007) 10 SCC 190*** while explaining the nature of writ of habeas corpus has held that the petitioner must show a prima facie case of unlawful detention. It is quoted as under:-

“7. Article 21 of the Constitution having declared that no person shall be deprived of life and liberty except in accordance with the procedure established by law, a machinery was definitely needed to examine the question of illegal detention with utmost promptitude. The writ of habeas corpus is a device of this nature. Blackstone called it “the great and efficacious writ in all manner of illegal confinement”. The writ has been described as a writ of right which is grantable ex debito justitiae. Though a writ of right, it is not a writ of course. The applicant must show a prima facie case of his unlawful detention. Once, however, he shows such a cause and the return is not good and sufficient, he is entitled to this writ as of right.”

5. The Apex Court in the case of ***Home Secretary(Prison) and Others vs. H. Nilofer Nisha (2020) 14 SCC 161*** while delineating the scope and ambit of the writ of habeas corpus, has categorically held that such a writ is not maintainable where there is no allegation or material indicating that he/she is under unlawful or illegal detention. The existence of unlawful detention constitutes the sine qua non for the issuance of a writ of habeas corpus. The relevant paras reads as under:-

“16. A writ of habeas corpus can only be issued when the detention or confinement of a person is without the authority of law. *Though the literal meaning of the Latin phrase habeas corpus is “to produce the body”, over a period of time production of the body is more often than not insisted upon but legally it is to be decided whether the body is under illegal detention or not. Habeas corpus is often used as a remedy in cases of preventive detention because in such cases the validity of the order detaining*

limitation is that the Court, before issuing any writ of habeas corpus must come to the conclusion that the detenu is under detention without any authority of law.”

(emphasis supplied)

6. This Court in the case of ***Satendra Kumar Srivastava and Another vs. State of UP and Others 2011 SCC OnLine All 4084*** held as under:-

“4. It seems that in the aforesaid crime no. 472 of 2008, after investigation, a charge sheet was submitted, on the basis of which, cognizance was taken and case no. 6864 of 2010 under the aforesaid offences was registered in the court and 82-83 process have been issued by C.J.M. It is at this stage that father has preferred this habeas corpus writ petition because petitioner no. 2 Vandana @ Teetu is not traceable.

*5. On the aforesaid facts, it is perceptly clear that Vandana @ Teetu is residing with her husband on her own volition. She is not traceable, ostensibly for the reason that she is residing with her family at a place where the police is unable to lays its hands. **Since the Vandana @ Teetu is not in illegal detention, habeas corpus writ petition is not maintainable. In case, a charge sheeted accused is not appearing in court and has been declared to be an absconder, the remedy for the victim is to approach appropriate authorities or this court in an appropriate writ. Habeas corpus writ petition are not meant for such purpose. A habeas corpus writ petition is maintainable only when some corpus is under illegal detention against his or her wish and the person, who is filing the petition is interested in knowing whereabouts the corpus, production of the corpus and its release from the cluches of illegal detention.”***

(emphasis supplied)

7. A Division Bench of the Madras High Court in the case of ***Rajamani vs. The Superintendent of Police and Another in HCP(MD) No.1439 of 2021*** decided on 28.09.2021, held as under:-

the detenu is an accused in a murder case and the trial is pending in S.C.No.134 of 2016, on the file of Mahila Court, Tirupur, and the detenu is absconding, a Non-Bailable Warrant is issued against him and the same is pending for execution.

3.Considering the above said facts, the detenu is an absconding accused and he is not illegally detained as alleged by the petitioner. Hence, the Habeas Corpus Petition is not maintainable and the same is dismissed.”

8. A Division Bench of the Madhya Pradesh High Court in the case of *Netram Rawat(Baba) vs. State of MP and Others 2024 SCC OnLine MP 8207* held as under:-

“2. Grievance of petitioner is that his son is missing and according to him, he is in illegal confinement of respondent No. 4-Balli Rawat and respondent No. 5-Nathu Singh Rawat.

3. He also referred order dated 9 September, 2024 passed in WP No. 26523/2024 by this Court which was first round of habeas corpus petition which was filed and disposed of when status report was filed.

4. Learned counsel for the respondent-State opposed the prayer. According to counsel for the respondent-State, petitioner himself is a man of criminal background consisting of 22 cases. Corpus is his son-Mahesh. He also bears criminal record of five cases and arrest warrant has been issued against him. Police is in search of him.

5. Considering the rival submissions and previous status report filed in WP No. 26523/2024, it appears that son of petitioner (corpus) is absconding because of arrest warrant being issued against him. When earlier writ petition in nature of habeas corpus was filed and when fact of absconsion was brought before this Court then said petition was disposed of in terms of directions as contained into. Now, again another petition is being filed as habeas corpus. This appears to be abuse of process of law. When corpus himself is a man of criminal background and is absconding,

9. From a perusal of the instructions received from the A.G.A., it is apparent that an additional demand of Rs. 2,00,000/- as dowry was made from the respondent, Sona, who is the wife of the corpus. Due to the non-fulfillment of the said dowry demand, she was subjected to mental and physical harassment and acts of cruelty by the corpus and his family members. Besides that she was molested by the relatives of the corpus and as such, in order to save herself from continued acts of cruelty and molestation she returned to her parental home and subsequently, registered an F.I.R. on 16.12.2025, being Case Crime No.371 of 2025, under Sections 74, 85, 115(2), 352, 351(2) of B.N.S. and 3/4 D.P. Act, P.S. Shamshabad, District Agra against the corpus and his relatives.

10. It is further apparent that in these circumstances, since the corpus is accused of committing an offence by the private respondents, as such, he cannot be illegally detained by them. It is also evident from a perusal of the instructions received by the learned A.G.A. that the Investigating Officer (I.O.) has made sincere efforts to trace and apprehend the corpus; however, he is absconding and has failed to cooperate with the I.O. The I.O. has approached the Court for obtaining non-bailable warrants against him. The investigation against accused persons have been concluded and a charge sheet has been submitted against the petitioner Omwati and corpus Manish, under Sections 85, 115(2), 352, 351(2) of B.N.S. and 3/4 of D.P. Act, as such, no ground is made out for entertaining this habeas corpus writ petition.

11. Accordingly, the instant habeas corpus writ petition is *dismissed*.

(Sandeep Jain,J.)