

**IN THE HIGH COURT OF SINDH,**  
CIRCUIT COURT, HYDERABAD

C.P. No.S-275 of 2020.

Bakaullah Khan

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Petitioner

Vs.

The Province of Sindh & others

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Respondents

Date of hearing & Decision: 28.08.2020

Mr. Ashar Majeed Khokhar advocate for petitioner.  
Mr. Gulzar Ali Almani advocate for respondents No. 7 & 10.  
Mr. Wali Muhammad Jamari, Assistant Advocate General.

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ORDER

ADNAN-UL-KARIM MEMON, J. - Petitioner through instant petition has prayed for issuance of directions to the concerned police officials to recover detainee Abdul Waheed @ Wanhial from the illegal confinement of private respondents. He has also prayed for issuance of directions to the concerned police officials not to register new case against the Petitioner, abductee / detainee and his family on the instigation of private respondents.

2. It is contended by the learned counsel for the petitioner that the police have not taken any step for tracking down the missing person namely Abdul Waheed @ Wanhial. Hence this court should issue a writ of habeas corpus directing the police to trace, recover and produce the missing person; he further prays for holding an independent inquiry in respect of alleged state of affairs as discussed supra.

3. I asked learned counsel as to how this petition is maintainable on the premise that the petitioner has recourse under the law. He replied, while giving brief history of the case and argued that detainee Abdul Waheed @ Wanhial contracted valid marriage with Respondent No.7 and after his marriage, his whereabouts are unknown, leaving his brother to move an application to Additional I.G. Police Hyderabad Range for tracking his whereabouts. He next added that Respondent No.7, who is legally wedded wife of Abdul Waheed alleged detainee as discussed supra, filed Cr. Misc. Application No. 511 of 2020 under Section 22-A & B Cr.P.C before the competent court of law with the assertion that alleged detainee had kidnapped her, raped her and made her objectionable videos, such F.I.R of the incident was registered with concerned police station and is under

investigation. He further pointed out that subsequently, Respondent No.10, who is mother of Mst. Fareeda / Respondent No.7 also filed another Cr. Misc. Application No. 542 of 2020 under Section 22-A & B Cr.P.C, before the competent court of law, for registration of another FIR against Abdul Waheed and others on the plea that her another daughter namely Majida had been kidnapped by alleged detainee and others; such F.I.R of the incident was also registered with concerned police station. Learned counsel for the petitioner has submitted the since petitioner's nephew namely Abdul Waheed went missing, therefore he has approached this court.

4. During the course of arguments I have been informed that one F.I.R of the alleged incident as discussed supra has already been disposed of under C-Class, but no final order has been passed by learned trial court on the summary proceedings.

5. In our view, a habeas corpus writ is to be issued only when the person concerning whose liberty, the petition has been filed, is illegally detained by respondents in the petition. On the basis of a habeas corpus petition the power under Article 199 of the constitution is not to be exercised for tracing a missing person engaging an investigating agency empowered to investigate a case under the Code of Criminal Procedure. The investigation, if is in progress, is to be overseen by the criminal court. Here the petitioner is asking this court to direct the police to track down his missing nephew against whom a criminal case is registered for which learned Trial Court has to take decision yet and interference at this stage is not called for, however, it is the usual practice as and when missing report is made, the police officials enter only a Daily Diary Report and not an FIR as has been done in the present case. This practice has been deprecated by this Court in various orders passed from time to time observing that such a procedure is not correct and justified.

6. Under the circumstances, we direct the official respondents that as and when any report is made regarding missing of any individual, immediately an FIR should be registered. They are required to monitor the entire process of tracing out the missing individuals so that criminals may not escape with the person.

7. In view of the forgoing, the above writ petition stand disposed of with the aforesaid directions. In the meantime official Respondents to cooperate with the petitioner and locate the whereabouts of his nephew namely Abdul Waheed @ Wanhial and if he provides concrete evidence against anyone

regarding his detention, the police official shall act strictly promptly in accordance therewith.

**JUDGE**