

IN THE HON'BLE DELHI HIGH COURT AT NEW DELHI

CRIMINAL ORIGINAL JURISDICTION

WRIT PETITION (CRIMINAL) NO. ____ OF 2020 (HABEAS CORPUS)

(Under Article 226 Of The Constitution Of India)

IN THE MATTER OF:

Karna Bhakta

...Petitioner

Versus

Government of NCT of Delhi & Ors

...Respondents

**WRIT PETITION UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA R/W SECTION 482 OF CODE OF
CRIMINAL PROCEDURE, 1973 SEEKING A WRIT OF HABEAS
CORPUS**

To,

The Lord Chief Justice of Delhi, and His Lordship's Companion

Justices of the Hon Delhi High Court

New Delhi

The Humble Petition of the
Petitioner above named

MOST RESPECTFULLY SHOWETH:

1. The present writ petition is being filed under Article 226 of the Constitution of India seeking a direction from the Hon'ble

Court in the nature of the Habeas Corpus to trace and produce before this Hon'ble Court, [REDACTED] who was trafficked in November 2019. She is the sister of the petitioner and has been missing since November 2019.

2. Petitioner is the brother of [REDACTED] an agriculture sector worker by profession who is working in the tea estate in Assam and is the principal bread winner of the family. The situation back at home was so difficult and poverty stricken that when the trafficker lured the sister of the petitioner with better employment opportunities, after the petitioner lost all communication with his sister, he became extremely worried and restless when the whereabouts of his sister were nowhere to be traced. It is then the petitioner approached a social activist based in Delhi named Nirmal Gorana who is one of the prominent activists fighting for the rights and interests of bonded labourers, since 2008 he has been actively engaged in the rescue, rehabilitation and ensuring the welfare of the bonded labourers in India. True copy of the voter identity card of the petitioner is annexed and marked as **Annexure P1** at page ³² ___ to ____.

FACTS

3. There is exists a network of human trafficking in India emanating from remote poverty stricken rural pockets and culminating at metro cities and often abroad. People, more often children and even more often girls are trafficked from poor families on the pretext of education, vocational training, lucrative jobs etc. The Modus Operandi is that the traffickers front as placement agencies in cities to recruit people from poor districts, taken in confidence and use them, often without their understanding, approach certain local residents to lure them to cities. Once they are in the city they are made to work anywhere as brick kiln workers in remote areas to domestic help to construction workers and factory labourers. Some are even pushed into sex-trade in India and abroad. Newly arrived are often treated well but their life and liberty deteriorates slowly but certainly. The families of the victims are usually paid regular money in the beginning but this gradually discontinues in the future leaving them more vulnerable than ever. Over time, the family is expected to lose interest in their wards, especially with respect to a girl child and usually some story of them marrying, going abroad for work etc. is supplied to the family. Authorities are usually too occupied to act promptly in such sensitive cases often without appropriate

judicial intervention. Such violations are not even noticed by the authorities.

4. It is the case of the petitioner that the prime accused has been running one placement agency for a long time named R. B Placement agency. This placement agency has a history of trafficking young girls/boys from various states of the country and employing them as domestic workers in and around Delhi. This placement agency is owned by one Ram Bilas Paswan and her sister Anita Paswan, who recruit numerous people as domestic workers to various houses. The owners of this agency intend to traffic people especially young girls from different states and employ them as bonded laborers by luring them with good employment opportunities. After placing them at various locations, at the starting of every month someone from the placement agency especially Ram Bilas Paswan collects the monthly wages of these bonded laborers from their place of employment. These bonded laborers work for more than 10-12 hours every day, without wages and have absolute restrictions in their movement. They are not allowed to leave their place of employment or go back to their respective homes, rather they are shifted from one place of employment to another after a few months/years.

5. This placement agency has a history of forcing people to work against their wishes, illegally confine them, keep them under bondage and deprive them of their wages. It is apposite to note that in the year 2017, a raid took place at this placement agency on the basis of secret information and a number of bonded laborers were rescued by the district administration and the police. Thereafter, a FIR bearing No. 257/17 was registered in this case against the accused Ram Vilas Paswan and Anita Paswan. However few bonded laborers were not rescued in the first raid, after which a habeas corpus was filed before this Hon'ble Court and the rescue was done. The prime accused Ram Vilas Paswan and was booked under U/s 323/344/354/370/374/506/34 IPC, 16/17 Bonded Labour System Abolition Act, 75/79 JJ Act and Anita Paswan was booked under U/s 323/344/374/506/34 IPC, 16/17 Bonded Labour System Abolition Act, 75/79 JJ Act.
6. According to the SCRB Delhi report accused Ram Bilas Paswan has criminal history that in 2011 he was arrested and brought at Subhash Place Police Station U/s 365/368. FIR No. 235/11. A chargesheet in the present matter was filed on 10.1.2018. The accused Anita Paswan was arrested on 19.8.17 but was released on judicial bail, accused Ram Bilas Paswan was arrested on 13.10.17 and has been languishing in judicial

custody since then. The trial in the concerned matter has been pending before ASJ, Tis Hazari Court, New Delhi.

7. In the present case, [REDACTED] was residing at Village-

[REDACTED]. In the month of January, one Vicky Mirdha who is the brother-in-law of the main accused Ram Vilas Paswan and brother of Anita Paswan along with another person trafficked three girls from Assam to Delhi by enticing them with better work opportunities. Vicky Mirdha, is the trafficker in the present case, who is a resident of Una, Himachal Pradesh and is used as a catalyst for trafficking people from various parts of the country and employing them at R. B. Placement Agency.

8. That in the month of November 2019, he trafficked [REDACTED] and two other girls to Delhi and employed them at R. B Placement Agency in Delhi. For once [REDACTED] was in contact with her family when she was at the agency but soon after she was placed as a domestic help at some household in Delhi, her family lost contact with her. Petitioner states it is only of late somehow [REDACTED] managed to contact her family in the first week of August 2020, where she expressed

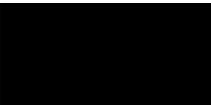
her desire to come back home to Assam and how she was refrained from doing so.

9. Vicky Mirdha visited Assam again in the month of January 2020 and trafficked three more girls to Delhi. After bringing them to Delhi, he took them to R.B. Placement Agency after which they were placed at respective locations as domestic help in Delhi.
10. Petitioner's sister was issued a registration form of the R. B. Placement on the given date mentioning the details of the employer and the employee. True and translated copy of the registration form dated nil issued by R. B. Placement Agency, Ranjit Nagar, New Delhi to the Petitioner's sister is annexed and marked as **Annexure P2** at page 33 to 35.
11. In the month of March, a pandemic occurred leaving the whole world amidst an unprecedented situation. The country was helplessly struggling to get through the situation of Covid-19, hence to curb the same a nationwide lockdown was imposed by the Hon'ble Prime Minister of the country which kept on extending time and again. This horrible situation made [REDACTED] [REDACTED] family restless and extremely worried about her well being and her health. But since they were unaware about her

whereabouts and had lost all contact with her, the family was helpless as a result of which they tried all their efforts to find her.

12. It is only in the month of August, when Vicky Mirdha came back to the village again in Assam with the intention to traffic more people, all the family members along with the local panchayat decided to inquire about all the girls he had taken to Delhi. The crowd at the panchayat asked and granted him one month's time to bring all the girls back to the village as the situation had worsened due to Covid-19 and they the family members were extremely worried about the well being of the trafficked girls.
13. Suddenly after getting inquired at the panchayat, Vicky Mirdha escaped and ran away from the spot with the fear of getting caught. After that the petitioner has been unable to get hold of him and since he lost all contact with his sister. Despite several attempts, the petitioner has failed to get through his sister . Fearing for the worst, Petitioner approached a social activist based in Delhi named Nirmal Gorana who is one of the prominent activists fighting for the rights and interests of bonded labourers, since 2008 he has been actively engaged in the rescue, rehabilitation and ensuring the welfare of the

bonded labourers in India. He is also the General Secretary of Bandhua Mukti Morcha, a prominent organisation working for bonded labourers. Thereafter, in 2014 he formed the National Campaign Committee for Eradication of Bonded Labourers (NCCEBL), with an objective to form a national network of social activists, lawyers and like minded people working on the issue of bonded labourers.

14. As soon as the petitioner contacted Nirmal Gorana, he through his organization sent an electronic mail representation dated 20.8.2020 to District Magistrate, South West Delhi and Sub-Divisional Magistrate (Pate), requesting them for their intervention for the immediate rescue of all six trafficked bonded labourers. The electronic mail mentioned the name and details of 

A true copy of the electronic mail dated 20.8.2020 is annexed and marked as **Annexure P3** at page 36 to 45.

15. However, neither any immediate action was taken by the respondent authorities nor any revert was received upon the complaint letter. With everyday passing there was an increasing fear of the worst, therefore Mr. Nirmal Gorana immediately wrote an electronic mail dated 22.8.2020 to Delhi Commission for Women seeking their urgent intervention into

the matter, after which a team Delhi Commission for Women was formed the very next day along with the local police. The team went for the rescue at the anticipated location, but no one was to be found there. Hence, till date the whereabouts of [REDACTED] is unknown to the petitioner and his family. True copy of the electronic mail dated 22.8.2020 is annexed and marked as **Annexure P4** at page ⁴⁶ to _____.

16. Petitioner states that [REDACTED] is a trafficked victim who was falsely lured and trafficked to Delhi and thereafter she was forcibly kept in Delhi against her will by the persons mentioned in the earlier paragraphs. Despite her several requests to go back home in Assam, she was refrained from the same and had a complete restriction in her movement . She was kept in bondage and slavery.

17. Petitioner states that the authorities in Delhi have been criminally negligent and complicit in the missing and bondage of the Petitioner's sister. Hence the petitioner has approached the Hon'ble Court seeking a writ of habeas corpus and for prosecution of all those responsible for engaging in criminal activity against [REDACTED] Pertaining to the ongoing pandemic, the concerns and fears of the petitioner about his sister have multiplied.

Grounds

A. Because it is the case of the petitioner that the prime accused who has been running one placement agency for a long time named R. B Placement agency is a habitual offender. The accused Ram Bilas Paswan has been languishing in judicial custody since 2017 in the FIR bearing No. 257/17, wherein he has been charged U/s 323/344/354/370/374/506/34 IPC, 16/17 Bonded Labour System Abolition Act, 75/79 JJ Act. The trial in the concerned matter is pending before ASJ, Tis Hazari Court, New Delhi.

B. Because this placement agency has a history of forcing people to work against their wishes, illegally confine them, keep them under bondage and deprive them of their wages. They have slyly understood the people from the remote poverty stricken rural pockets and by taking advantage of their vulnerabilities, they lure the people with enticing employment opportunities and traffic them to metro cities. People, more often children and even more often girls are trafficked from poor families on the pretext of education, vocational training, lucrative jobs etc. However, the reality is far from what is portrayed and projected. It hits harder and uglier when these vulnerable

people are deceived and employed as bonded labourers across the country.

C. Because it has been approximately more than one month since there has been a complete deprivation of any communication between the petitioner and his sister [REDACTED] despite several rigorous attempts. As a result of which, the petitioner is extremely distressed about the whereabouts of his sister and pertaining to the situation of the ongoing pandemic his concerns and fears have multiplied. The welfare and the safety is in impending jeopardy with every passing minute if Respondents do not send immediate help.

D. Because the acts of the Respondents is in complete violation of Article 14 and 21 of the Constitution of India and thereby has amounted to infringement of the right to equality and right to life of the petitioner and his sister.

E. Because the petitioner's sister who is missing for more than one month and since the Respondents have failed in their duties and hence the safety and security of the Victim is at risk. That the same might have adverse effects which could risk her life.

F. Because the incident that has occurred would also attract the provision of the Bonded Labour System (Abolition) Act 1976 Sec 16 , 17 and 18.

G. Because Surinderjit Singh Mand and another v. State of Punjab and another (2016) 8 SCC 722, to highlight the importance and significance of personal liberty, especially with reference to unlawful detention the Court held as follows:

“10. The legality of any form of detention may be challenged at common law by an application for the writ of habeas corpus. Habeas corpus was a prerogative writ, that is, one issued by the King against his officers to compel them to exercise their functions properly. The practical importance of habeas corpus as providing a speedy judicial remedy for the determination of an applicant's claim for freedom has been asserted frequently by judges (sic) and writers. Nonetheless, the effectiveness of the remedy depends in many instances on the width of the statutory power under which a public authority may be acting and the willingness of the courts to examine the legality of decision made in reliance on wide-ranging statutory provision. It has been suggested that the need for the 'blunt remedy' of habeas corpus has diminished as judicial review has developed into an

ever more flexible jurisdiction. Procedural reform of the writ may be appropriate, but it is important not to lose sight of substantive differences between habeas corpus and remedies under judicial review. The latter are discretionary and the court may refuse relief on practical grounds; habeas corpus is a writ of right, granted *ex debito justitiae*."

H. Because the Hon'ble Court in *Kanu Sanyal v. District Magistrate* 1974 AIR 510, held that the writ of habeas corpus had been called by Blackstone "the great and efficacious writ in all manner of illegal confinement". The Apex Court in the case of *Kanu Sanyal v. District Magistrate*, traced the immemorial antiquity of the writ and referred to number of English decisions and opined that there can be no doubt that in enacting Article 32 (2) the Constitution makers meant to give to person illegally restrained of his liberty the same kind of remedy, fashioned and developed over the years, which his counterpart enjoyed in England and United States.

I. Because in *K.S.Puttaswamy and another versus Union of India and others*, (2017) 10 SCC 1, the Hon'ble Court held the following:

“119. The judgments rendered by all the four judges constituting the majority in ADM Jabalpur are seriously flawed. Life and personal liberty are inalienable to human existence. These rights are, as recognised in Kesavananda Bharati, primordial rights. They constitute rights under Natural law. The human element in the life of the individual is integrally founded on the sanctity of life. Dignity is associated with liberty and freedom. No civilized state can contemplate an encroachment upon life and personal liberty without the authority of law. Neither life nor liberty are bounties conferred by the state nor does the Constitution create these rights. The right to life has existed even before the advent of the Constitution. In recognising the right, the Constitution does not become the sole repository of the right. It would be preposterous to suggest that a democratic Constitution without a Bill of Rights would leave individuals governed by the state without either the existence of the right to live or the means of enforcement of the right. The right to life being inalienable to each individual, it existed prior to the Constitution and continued in force under Article 372 of the Constitution. Khanna, J. was clearly right in holding that the recognition of the right to life and personal

liberty under the Constitution does not denude the existence of that right, apart from it nor can there be a fatuous assumption that in adopting the Constitution the people of India surrendered the most precious aspect of the human persona, namely, life, liberty and freedom to the state on whose mercy these rights would depend. Such a construct is contrary to the basic foundation of the Rule of Law which imposes restraints upon the powers vested in the modern state when it deals with the liberties of the individual. The power of the Court to issue a Writ of Habeas Corpus is a precious and undeniable feature of the rule of law.”

J. Because the Petitioner has not filed any other similar Writ Petition before this Hon’ble Court or any other High Court or the Supreme Court of India on the same matter, which is the subject matter of this Petition.

K. Because there is no efficacious remedy available to the Petitioner, therefore the Petitioner is left with no other option than to approach before this Hon’ble Court and file this petition. The petitioner has not moved before this Hon’ble Court in any earlier occasion for the relief as prayed for in this writ application.

- L. Because the present petition is extremely time sensitive as it is a manifest fact that the prevalent situation across the country is worsening with each day passing due to the pandemic and the same extends the risk and threat to the life of the petitioner's sister.

PRAYER

That, in the aforesaid circumstances, it is humbly prayed that this Hon'ble Court may kindly:

- I. Issue a writ of Habeas Corpus directing the Respondents to immediately rescue and produce the missing sister of the petitioner – [REDACTED] before this Hon'ble Court.
- II. Issue appropriate writ or order directing Respondent No. 1 to give protection to [REDACTED] the petitioner and his family.
- III. Issue appropriate writ or order directing the Respondent No. 1 and Respondent No. 3 to investigate and prosecute the accused persons mentioned in this petition for the criminal activities as set out in this petition.

IV. Any other order or direction deemed just and proper in the facts and circumstances of the case may also be passed, with cost of these proceedings.

AND FOR THIS ACT OF KINDNESS THE PETITIONER AS IN DUTY BOUND SHALL EVER PRAY

Filed by

Date : 02.09.2020

Place : New Delhi



Arun Kasi/ Ankita Wilson
Advocates for the Petitioner

