IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1419 of 2019

Arising Out of PS. Case No.- Year-0 Thana- District- Gaya

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Binit Kumar (Assistant Engineer under Suspension), S/o Suraj Prasad, Water Resources Department, Chief Engineer Office, Katari Hill Road Gaya, R/o- Surya Niwas, Tilha Mahavir Asthan, Beldari Tola, P.S.- Civil Line, Distt.- Gaya

... ... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Secretariat Building, Patna
2. The Director General of Police, Government of Bihar, Secretariat Building, Patna
3. The Inspector General of Police, Patna, Bihar
4. The Deputy Inspector General of Police, Patna, Bihar
5. The Senior Superintendent of Police, Patna, Bihar
6. The Superintendent of Police, Patna, Bihar Bihar
7. The Officers-in-charge, Beur P.S., Patna, Bihar
8. Smt. Prabha Singh, w/o Shri P.C Chowdhary, 1st Floor, H. No. 30, Opp. Nam Ghar, Madhav Dev Pur, Rehabari, Guwahati
9. Kiran Kumari, w/o Brajendra Kumar, R/o- Rajkiya Polytechnic, Barauni, Distt.- Begusarai, Bihar
10. Vibha Sinha, w/o Vijay Kumar Singh, Zircon Computer, Lal Kothi Compound (Next to Hotel Royal Surya), P.S.- Civil Lines, Gaya, Bihar

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Prakash Tiwari, Advocate.
For the State : Mr. Sheo Shankar Prasad, APP

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CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR

CAV JUDGMENT

Date : 10.03.2026

The present criminal writ petition has been preferred by the petitioner seeking issuance of appropriate writ or order directing the respondent police authorities to find out/trace out the father of the petitioner, namely, Suraj Prasad Singh, who is

missing since 19.03.2013.

2. The factual background of the present writ petition is that on 19.03.2013, the wife of the Petitioner filed a missing report to the officer incharge, Beur police station, Patna, stating that her father-in-law, Shri. Suraj Prasad Singh has gone missing and she has suspicion that Prabha Singh, Kiran Kumari and Vibha Sinha have abducted him with intent to get registration of sale deed in regard to the house of her father-in-law, Suraj Prasad Singh, who is 85 years old. The persons against whom the Petitioner has doubt for abduction are his sisters, who have eagle eye on the property of his father as per allegation made by the petitioner.

3. It is further alleged in the petition that the three sisters, who are Respondent nos.8, 9 and 10 herein, have given false affidavit in the registration office at Purnia that the Petitioner has died on 12.04.2010. This false affidavit has been given by Respondent no.8, 9 and 10 while some property of the Petitioner at Purnia were being alienated. It is further stated in the petition that despite several requests to the officer-in-charge of Beur police station and higher police officers, neither father of the Petitioner was recovered nor any FIR has been lodged. It is also stated that no police official of the Beur Police station

has ever visited Gowhati to find out or trace his father-in-law as is evident from the information received under the R.T.I.

4. The matter is still at the stage of admission.

5. I heard learned counsel for the Petitioner and learned counsel for the State.

6. Learned counsel for the Petitioner submits that in view of failure of the police to trace out his father till date and failure of the police to lodge FIR, the Petitioner has been constrained to move this Court for want of any efficacious alternative remedy.

7. However, learned counsel for the State vehemently submits that the the petition is not maintainable, in view of the availability of the efficacious alternative remedy to the Petitioner. As per allegation it is a case of missing, though the Petitioner has suspicion that his father has been abducted by his sisters with intent to grab his property. But there is no clear case established as per the averment made in the missing report or in the writ petition that the father of the Petitioner is in illegal confinement by any state authority or individual. At most, it is a case for lodging of FIR and conducting proper investigation by the police. But for this, the Petitioner has efficacious alternative remedy by way of application under Section 156(3) Cr.PC/

175(3) B.N.S.S. read with Section 97 Cr.PC/Section 100 B.N.S.S.

8 I considered the submission advanced by both the parties and perused the material on record.

9. As per the record, the father of the petitioner has been missing and the Petitioner has suspicion that his sisters have abducted his father with intent to grab his property. But there is no clear case of illegal confinement of his father either by any state authority or individual. The grievance of the Petitioner is on account of failure of the police to lodge FIR and recover the victim/father of the Petitioner.

10. Here I find that efficacious alternative remedy is available to the petitioner by way of moving appropriate application before the Jurisdictional Judicial Magistrate. Section 156(3) Cr.PC/ 175(3) B.N.S.S. read with Section 97 Cr.PC/Section 100 B.N.S.S. are wide enough covering the power of the Jurisdictional Magistrate to direct the Officer-in-charge of concerned police station to take all such necessary steps that may be necessary for ensuring proper investigation including monitoring the same. Section **156(3) Cr.PC** [equivalent to Section **175(3) B.N.S.S.**] reads as follows:

> **“** Any Magistrate empowered under section 190 may order such an investigation as above-mentioned.”

11. **Section 97 Cr.PC/Section 100 B.N.S.S.** reads as follows:

> "If any District Magistrate, Sub-divisional Magistrate or Magistrate of the first class has reason to believe that any person is confined under such circumstances that the confinement amounts to an offence, he may issue a search-warrant, and the person to whom such warrant is directed may search for the person so confined; and such search shall be made in accordance therewith, and the person, if found, shall be immediately taken before a Magistrate, who shall make such order as in the circumstances of the case seems proper."

12. Section 156(3) Cr.PC/ 175(3) B.N.S.S. empowers the Judicial Magistrate to order lodging of FIR and proper investigation.

13. Such view is settled by Hon'ble Supreme Court in **Sakiri Vasu v. State of U.P., (2008) 2 SCC 409,** where it has been held as follows:-

> "11. In this connection we would like to state that if a person has a grievance that the police station is not registering his FIR under Section 154 CrPC, then he can approach the Superintendent of Police under Section 154(3) CrPC by an application in writing. Even if that does not yield any satisfactory result in the sense that either the FIR is still not registered, or that even after registering it no proper investigation is held, it is open to the aggrieved person to file an application under Section 156(3) CrPC before the learned Magistrate concerned. If such an application under Section 156(3) is filed before the Magistrate, the Magistrate can direct the FIR to be registered and also can direct a proper investigation to be made, in a case where, according to the aggrieved person, no proper investigation was made. The Magistrate can also under the same provision monitor the investigation to ensure

a proper investigation.

…….

15. Section 156(3) provides for a check by the Magistrate on the police performing its duties under Chapter XII CrPC. In cases where the Magistrate finds that the police has not done its duty of investigating the case at all, or has not done it satisfactorily, he can issue a direction to the police to do the investigation properly, and can monitor the same.

16. The power in the Magistrate to order further investigation under Section 156(3) is an independent power and does not affect the power of the investigating officer to further investigate the case even after submission of his report vide Section 173(8). Hence the Magistrate can order reopening of the investigation even after the police submits the final report, vide *State of Bihar* v. *J.A.C. Saldanha* [(1980) 1 SCC 554].

17. In our opinion Section 156(3) CrPC is wide enough to include all such powers in a Magistrate which are necessary for ensuring a proper investigation, and it includes the power to order registration of an FIR and of ordering a proper investigation if the Magistrate is satisfied that a proper investigation has not been done, or is not being done by the police. Section 156(3) CrPC, though briefly worded, in our opinion, is very wide and it will include all such incidental powers as are necessary for ensuring a proper investigation.

18. It is well settled that when a power is given to an authority to do something it includes such incidental or implied powers which would ensure the proper doing of that thing. In other words, when any power is expressly granted by the statute, there is impliedly included in the grant, even without special mention, every power and every control the denial of which would render the grant itself ineffective. Thus where an Act confers jurisdiction it impliedly also grants the power of doing all such acts or employ such means as are essentially necessary for its execution.

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24. In view of the above mentioned legal position, we are of the view that although Section 156(3) is very briefly worded, there is an implied power in the Magistrate under Section 156(3) Cr.PC to order registration of a criminal offence and/or to direct the officer in charge of the police station concerned to hold a proper investigation and take all such necessary steps that may be necessary for ensuring a proper investigation including monitoring the same. Even though these powers have not been expressly mentioned in

> Section 156(3) Cr.PC, we are of the opinion that they are implied in the above provision.
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> 25. We have elaborated on the above matter because we often find that when someone has a grievance that his FIR has not been registered at the police station and/or a proper investigation is not being done by the police, he rushes to the High Court to file a writ petition or a petition under Section 482 Cr.PC. We are of the opinion that the High Court should not encourage this practice and should ordinarily refuse to interfere in such matters and relegate the petitioner to his alternating remedy, first under Section 154(3) and Section 36 Cr.PC before the police officers concerned, and if that is of no avail, by approaching the Magistrate concerned under Section 156(3).
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> 26. If a person has a grievance that his FIR has not been registered by the police station his first remedy is to approach the Superintendent of Police under Section 154(3) Cr.PC or other police officer referred to in Section 36 Cr.PC. If despite approaching the Superintendent of Police or the officer referred to in Section 36 his grievance still persists, then he can approach a Magistrate under Section 156(3) Cr.PC instead of rushing to the High Court by way of a writ petition or a petition under Section 482 Cr.PC. Moreover, he has a further remedy of filing a criminal complaint under Section 200 Cr.PC. Why then should writ petitions or Section 482 petitions be entertained when there are so many alternative remedies?
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> 27. As we have already observed above, the Magistrate has very wide powers to direct registration of an FIR and to ensure a proper investigation and for this purpose he can monitor the investigation to ensure that the investigation is done properly (though he cannot investigate himself). The High Court should discourage the practice of filing a writ petition or petition under Section 482 CrPC simply because a person has a grievance that his FIR has not been registered by the police, or after being registered, proper investigation has not been done by the police. For this grievance, the remedy lies under Sections 36 and 154(3) before the police officers concerned, and if that is of no avail, under Section 156(3) CrPC before the Magistrate or by filing a criminal complaint under Section 200 CrPC and not by filing a writ petition or a petition under Section 482 CrPC.
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> (Emphasis supplied)

14. Section 97 Cr.PC/Section 100 B.N.S.S. empowers the Judicial Magistrate to issue search warrant to recover any

person if he has reason to believe that such person is confined under such circumstances that the confinement amounts to an offence and if the person is recovered, he shall be immediately taken before a Magistrate.

15. Search and recovery of the victim of any offence is part of investigation and police is duty bound to do proper investigation, if required. The Jurisdictional Magistrate can issue search warrant for recovery of the victim and he can even monitor the efforts being taken by the police to search and recover the victim.

16. In **Showkat Ahmad Mir vs. Nighat Begum** case, **High Court of Jammu and Kashmir and Ladakh** at Srinagar in Case No. CRM(M) No. 240 of 2022, has held as follows:-

> "**8)** A perusal of the aforesaid provision reveals that a Magistrate of the first class is vested with power to issue a search warrant in respect of a person who is confined under such circumstances that his/her confinement amounts to an offence. After the production of confined person before the Magistrate, an order, as is deemed proper by the Magistrate in the circumstances, has to be passed.
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> **9)** Thus, two things are essential before a Magistrate can issue a search warrant under Section 97 of Cr. P. C; one is that a person should be confined and second is that the confinement of such person should amount to an offence."
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> (Emphasis supplied)

17. In **Jaishree v. State of U.P., (2024 SCC OnLine All 162),** High Court of Allahabad has held as follows:-

> **"9.** The power to direct search for persons wrongfully confined is provided under Section 97 of the Criminal Procedure Code, 1973 whereas Section 98 provides the procedure to compel restoration of abducted females. In a situation where the husband seeks to assert that the wife, without reasonable cause, is refusing to return to her matrimonial home, it would be open for him to seek the remedy of restitution of conjugal rights under Section 9 of the Hindu Marriage Act, 1955. The recourse to the latter remedy may be sought where the detention does not amount to an offence and to the former if it does. While invoking either of these remedies, all the issues relating to facts can be agitated and examined, whereas a writ of habeas corpus may not be issued where facts are disputed or are not clearly established.
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> **10.** The exercise of the extraordinary jurisdiction for issuance of writ of habeas corpus would be dependent on the jurisdictional fact where the petitioner establishes a *prima facie* case that the detention is unlawful, which apparently is not demonstrated from the facts which are on record in the present case.
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> **11.** In view of the other remedies available for the purpose, under criminal and civil law, exigence of a writ of habeas corpus at the behest of a husband to regain his wife would be rare and may not be available as a matter of course and the power in this regard may be exercised only when a clear case is made out."
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> (Emphasis supplied)

18. Here, it would also profitable to refer to some judgments delivered by some High Courts where victims were missing but there was no allegation of any illegal confinement. Here, the High Courts have held that in such circumstances, the writ of habeas corpus is not maintainable and such missing cases are required to be registered under penal provisions as well as Code of Criminal Procedure to be dealt with as regular cases by the competent Court of Law and the extraordinary

jurisdiction of Constitutional Courts cannot be invoked for the purpose of dealing with such cases.

19. In **Selvaraj v. State, (2018 SCC OnLine Mad 14215),** High Court of Madras has held as follows:-

> "**13.** The Courts are frequently witnessing that Man/Women Missing cases are mostly converted as Habeas Corpus Petitions under Article 226 of the Constitution of India. Mainly, two aspects are to be considered in such cases. Right of every citizen for free movement is also enshrined in Part III of the Constitution as a fundamental right. Personal liberty means that any person on attaining the age of majority is at liberty to move to a place of his choice. It is not necessary that a person has to inform each and every one of his desire or decision to his kith and kin or to the other persons. Way of life is also a part of personal liberty and a citizen of this Country shall choose a path or way of his own choice for leading his life as per his own mind set and wishes. Merely because a person was not found in his usual dwelling place, that does not mean that always an element of "illegal detention" is involved. For establishing an "illegal detention", it is necessary that substantial materials are to be furnished by the person, who approaches the Courts by filing Habeas Corpus Petitions. Thus, the personal liberty includes free movement of a citizen of his own choice and no other person has got any right to interfere with the right of a person to move freely anywhere at his own choice. A Man/Women voluntarily moving from their dwelling house to any other place of his/her own choice, then his/her family members or other person concerned with such a person can file a case for Man missing and on receipt of any such complaint, the Police having jurisdiction has to investigate the matter in the manner known to law. Under these circumstances, question of entertaining a Habeas Corpus Petition by the High Courts would not arise at all. Thus, it is a condition precedent that a person filing a Habeas Corpus Petition should establish that there is a prima facie case of "illegal detention" or atleast a strong and reliable suspicion in respect of such "illegal detention". In the absence of any of these illegal ingredients, no Habeas Corpus petition can be entertained under Article 226 of the Constitution of India.

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20. The constitutional Courts across the country predominantly held in catena of judgments that establishing a ground of "illegal detention" and a strong suspicion about any such "illegal detention" is a condition precedent for moving a Habeas Corpus petition and the Constitutional Courts shall be restrained in entertaining such Habeas Corpus petition, where there is no allegation of "illegal detention" or suspicion about any such "illegal detention". Man/Women missing cases cannot be brought under the provision of the Habeas Corpus petition. Man/Women missing cases are to be registered under the regular provisions of the Penal Code, 1860 and the Police officials concerned are bound to investigate the same in the manner prescribed under the Code of Criminal Procedure. Such cases are to be dealt as regular cases by the competent Court of Law and the extraordinary jurisdiction of the Constitutional Courts cannot be invoked for the purpose of dealing with such Man/Women Missing cases "

(Emphasis supplied)

20. In **Mamonikakoty v. State of Assam, (2021 SCC OnLine Gau 2584), Gauhati High Court** has held as follows:-

"**15.** On overall consideration of the cases referred herein before, it appears that the Constitutional Courts across the Country have held that establishing a ground of illegal detention and a strong suspicion about any such illegal detention is a condition precedent for moving a habeas corpus petition. Thus, the legal proposition would be that the Constitutional Courts would not entertain habeas corpus petitions where there is no allegation of illegal detention or suspicion regarding illegal detention. Thus, missing person cases would not come within the ambit of a habeas corpus petition, but such cases are required to be registered under the regular provisions of the Penal Code, 1860 and the police and other investigating agencies would investigate the same in the manner prescribed under the Code of Criminal Procedure. "

(Emphasis supplied)

21. In **Jaymati Sahu v. State of Chhattisgarh,** (**2022 SCC OnLine Chh 737),** High Court of Chhattisgarh at Bilaspur

has held as follows:-

> "**14.** Thus, the constitutional Courts across the country predominantly held in catena of judgments that establishing a ground of "illegal detention" and a strong suspicion about any such "illegal detention" is a condition precedent for moving a Habeas Corpus petition and the Constitutional Courts shall not entertain a Habeas Corpus petition, where there is no allegation of "illegal detention" or suspicion about any such "illegal detention". Cases of missing persons cannot be brought under the provision of the Habeas Corpus petition. Cases of missing persons are to be registered under the regular provisions of the Penal Code, 1860 and the Police officials concerned are bound to investigate the same in the manner prescribed under the Code of Criminal Procedure. Such cases are to be dealt as regular cases by the competent Court of Law and the extraordinary jurisdiction of the Constitutional Courts cannot be invoked for the purpose of dealing with such cases of missing persons.
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> **15.** It is seen in the instant case that the petitioner has not made any averment in the entire writ petition that her daughter Juhi Sahu has been illegally detained either by the official respondents or by the respondent No. 7. Averrment made in the writ petition, as a whole, do not disclose the illegal detention of Juhi Sahu by private or official respondents. The petitioner only apprehends that the respondent No. 7 and his family members might have murdered Juhi Sahu. As such, unlawful detention of the petitioner's daughter, either by private person or custody/control/detention by the respondents is not pleaded, established or urged before this Court, only apprehension of alleged criminal act by respondent No. 7 and his family members has been expressed. As already observed in the above-stated paragraphs, a writ of habeas corpus is not to be issued as a matter of course and clear grounds must be made out for issuance of a writ of habeas corpus. In the instant case, the petitioner has miserably failed to plead and establish the necessary ingredients for issuance of the writ of habeas corpus and as such, the extraordinary writ cannot be issued at the instance of the petitioner for production of a missing person, as it is the case of the petitioner herself that her daughter is missing since 10-2-2019."

(Emphasis supplied)

22. In **Nimananda Biswal v. State of Odisha, (2023**

SCC OnLine Ori 5628), High Court of Orissa at Cuttack has held as follows:-

> "**10.** Writ of habeas corpus cannot be issued in a casual and routine manner. Though it is a writ of right, it is not a writ of course. The writ of habeas corpus is festinum remedium and power can be exercised in clear case. Illegal confinement is a pre-condition to issue a writ of habeas corpus. It cannot be issued in respect of any and every missing person more so when no named person is alleged to be responsible for the 'illegal detention' of the person for whose production before the Court, a writ is to be issued. On the basis of a habeas corpus petition, the power under Article 226 of the Constitution of India is not to be exercised for tracing a missing person engaging an investigating agency empowered to investigate a case under Cr. P.C.
> **11.** In this case, the petitioner has not established a prima facie case of 'unlawful detention' of his daughter by any particular person, rather it is submitted on his behalf that his daughter has been missing. Therefore, we are of the considered view that a petition seeking the issuance of the writ of habeas corpus cannot be entertained to trace out a missing person and for such purpose, the petitioner can pursue other effective remedy."
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> (Emphasis supplied)

23. In **Simmi Bai v. State, (2025 SCC OnLine MP 893), High Court of Madhya Pradesh** has held as follows:-

> **"16.** Cases of missing persons cannot be brought under the provision of the Habeas Corpus petition. Cases of missing persons are to be registered under the regular provisions of the Penal Code, 1860 and the Police officials concerned are bound to investigate the same in the manner prescribed under the Code of Criminal Procedure. Such cases are to be dealt as regular cases by the competent Court of law and the extraordinary jurisdiction of the Constitutional Courts cannot be invoked for the purpose of dealing with such cases of missing persons. Thus, the constitutional Courts across the country predominantly held in catena of judgments that establishing a ground of "illegal detention" and a strong suspicion about any such "illegal detention" is a condition precedent for moving a habeas corpus petition and the constitutional Courts shall

> not entertain a habeas corpus petition, where there is no allegation of “illegal detention” or suspicion about any such “illegal detention”.
>
> (Emphasis supplied)

24. In **Babita v. State of Rajasthan, (2025 SCC OnLine Raj 5227),** High Court of Rajasthan has held as follows:-

> **"13.** The writ of Habeas Corpus is to secure release of person illegally detained either by State or a private individual. A prima facie case of illegal detention has to be made out for invoking the writ of Habeas Corpus. The scope of Habeas : orpus has been enlarged with time, but there cannot be traitjacket formula for interference in writ in the nature of labeas Corpus. It is a trite law that in ordinary course the high court should not interfere in writ jurisdiction, if there is an alternative remedy available. The writ jurisdiction in the case of a missing person cannot be invoked as a matter of routine to know the status of the investigation or on being dissatisfied with the manner of investigation. Criminal procedure law provides remedies for supervision of investigation and if required, for issuance of direction for effective investigation and such matters are to be dealt with by the competent court of law."
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> (Emphasis supplied)

Availability of Efficacious Alternative Remedy And Entertainaibility/Maintainability of Writ Petition Under Article 226 Of The Constitution.

25. Now question arises, whether the writ petition is maintainable in view of the availability of the efficacious alternative remedy to the Petitioner. Here, it may be pointed out that maintainability and entertainability of a writ petition are distinct concepts. The objection as to maintainability goes to the

root of the matter and if such objection is found to be of substance, the Court is rendered incapable of even receiving the lis for adjudication. However, the question of entertainability is entirely within the realm of discretion of the High Court, as writ remedy is discretionary. Writ Petition, despite being maintainable may be not entertained by a High Court for many reasons or relief could even be refused to the Petitioner, despite setting up a sound legal point, if grant of the claimed relief would not further public interest. It may be further pointed out that availability of efficacious alternative remedy is not an absolute bar to maintainability of a writ petition. However, the Court can still refuse to entertain the writ petition, if the Petitioner has efficacious alternative remedy as held by Hon'ble Supreme Court in **Godrej Sara Lee Ltd. Vs. Excise and Taxation Officer-cum-Assessing Authority and Others** as reported in **(2023) SCC OnLine SC 95.** Relevant paragraph of the judgment reads as follows:

> "4. Before answering the questions, we feel the urge to say a few words on the exercise of writ powers conferred by article 226 of the Constitution having come across certain orders passed by the High Courts holding writ petitions as "not maintainable" merely because the alternative remedy provided by the relevant statutes has not been pursued by the parties desirous of invocation of the writ jurisdiction. The power to issue prerogative writs under article 226 is plenary in nature. Any limitation on the exercise of such power must be traceable in the Constitution itself. Profitable reference in this regard may

be made to article 329 and ordainments of other similarly worded articles in the Constitution. Article 226 does not, in terms, impose any limitation or restraint on the exercise of power to issue writs. While it is true that exercise of writ powers despite availability of a remedy under the very statute which has been invoked and has given rise to the action impugned in the writ petition ought not to be made in a routine manner, yet, the mere fact that the petitioner before the High Court, in a given case, has not pursued the alternative remedy available to him/it cannot mechanically be construed as a ground for its dismissal. It is axiomatic that the High Courts (bearing in mind the facts of each particular case) have a discretion whether to entertain a writ petition or not. One of the self-imposed restrictions on the exercise of power under article 226 that has evolved through judicial precedents is that the High Courts should normally not entertain a writ petition, where an effective and efficacious alternative remedy is available. At the same time, it must be remembered that mere availability of an alternative remedy of appeal or revision, which the party invoking the jurisdiction of the High Court under article 226 has not pursued, would not oust the jurisdiction of the High Court and render a writ petition "not maintainable". In a long line of decisions, this court has made it clear that availability of an alternative remedy does not operate as an absolute bar to the "maintainability" of a writ petition and that the rule, which requires a party to pursue the alternative remedy provided by a statute, is a rule of policy, convenience and discretion rather than a rule of law. Though elementary, it needs to be restated that "entertainability" and "maintainability" of a writ petition are distinct concepts. The fine but real distinction between the two ought not to be lost sight of. The objection as to "maintainability" goes to the root of the matter and if such objection were found to be of substance, the courts would be rendered incapable of even receiving the lis for adjudication. On the other hand, the question of "entertainability" is entirely within the realm of discretion of the High Courts, writ remedy being discretionary. A writ petition despite being maintainable may not be entertained by a High Court for very many reasons or relief could even be refused to the petitioner, despite setting up a sound legal point, if grant of the claimed relief would not further public interest. Hence, dismissal of a writ petition by a High Court on the ground that the petitioner has not availed the alternative remedy without, however, examining whether an exceptional case has been made out for such entertainment

would not be proper.

(Emphasis supplied)

26. It has been also held by Hon'ble Supreme Court in **Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Ors.** as reported in **(1998) 8 SCC 1** that power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. The High Court has discretion to entertain or not to entertain a writ petition and the High Court has imposed upon itself certain restrictions, one of which is that if an effective and efficacious alternative remedy is available to the Petitioner, the High Court would not normally exercise its jurisdiction. However, this restriction is not an absolute bar to maintainability of the writ petition. The High Court can entertain the writ petition in the following three contingencies, namely the writ petition has been filed for enforcement of any of the Fundamental Rights or where there has been any violation of Principle of Natural Justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. The relevant paragraph of the judgments reads as follows:

"14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution.

> This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for "any other purpose".
>
> 15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field."
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> (Emphasis supplied)

27. In **Radha Krishan Industries vs. State of Himachal Pradesh and Others a**s reported in **(2021) 6 SCC 771 Hon'ble Supreme Court** has further held as follows after referring to relevant Judicial precedents:

> "27. The principles of law which emerge are that:
>
> 27.1. The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well.
>
> 27.2. The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person.
>
> 27.3. Exceptions to the rule of alternate remedy arise where : (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the

> principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged.
>
> 27.4. An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law.
>
> 27.5. When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion.
>
> 27.6. In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.
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> 28. These principles have been consistently upheld by this Court in Chand Ratan v. Durga Prasad, (2003) 5 SCC 399, Babubhai Muljibhai Patel v. Nandlal Khodidas Barot, (1974) 2 SCC 706] and Rajasthan SEB v. Union of India, (2008) 5 SCC 632] among other decisions."

Present Case

28. Coming to the case on hand, I find that the Petitioner is seeking lodging of FIR and recovery of the victim/his father, for which efficacious alternative remedy is available to the Petitioner and there is no pleading or allegation of any exceptional circumstances warranting interference by this Court.

29. Under such facts and circumstances it would be desirable for the Petitioner to move an appropriate application

under Section 156(3) CrPC/Section 175(3) B.N.S.S. before Judicial Magistrate for lodging of FIR and proper investigation including recovery of the victim.

30. Hence, the present writ petition is dismissed with liberty to the petitioner to move the jurisdictional magistrate with an appropriate application. In case, such application is moved, the concerned magistrate is duty bound to pass order as per law.

(Jitendra Kumar, J.)

S.Ali/-

AFR/NAFR	AFR
CAV DATE	26.02.2026
Uploading Date	10.03.2026
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