IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.535 of 2022
Arising Out of PS. Case No.-189 Year-2021 Thana- KATEYA District- Gopalganj

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Dhanraj Kumar Rai Son of Brij Bihari Rai R/O Village- Sarari Nonia Toli, P.S.- Goreya Kothi, District- Siwan

... ... Petitioner

Versus

1. The State of Bihar, through Home Secretary, Govt. of Bihar, Patna Bihar
2. The Home Secretary, Govt. of Bihar, Patna Bihar
3. The Director General of Police, Govt. of Bihar, Patna Bihar
4. The Superintendent of Police, Gopalganj Bihar
5. The S.H.O. Kateya Police Station, District- Gopalganj Bihar
6. The Central Bureau of Investigation through it Director Patna

... ... Respondents

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Appearance :
For the Petitioner : Mr. Chandra Shekhar Singh, Advocate
For the Respondent State: Mr. Bishwa Bibhuti Kumar Singh, AC to AG
For the Respondent CBI : Ms. Nivedita Nirvikar, Senior Advocate
Mr. Sujeet Prakash, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH
and
HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

31 06-02-2023 The facts of this case are shocking. The apathy, the complacence and the nonchalance of the police machinery is upsetting.

2. The brief facts of the case are that one Raj Nath Sharma was admittedly arrested by the police personnel of Kateya Police Station in the District of Gopalganj on 07.06.2021 from his house, in connection with the Kateya P.S. Case No. 189 of 2021, registered for an offence punishable Section 302/31 of the Indian Penal Code. He was not produced before the concerned Magistrate soon after his arrest.

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3. The petitioner is the brother of Raj Nath Sharma and has filed the present writ application, under Article 226 of the Constitution of India, seeking issuance of a writ in the nature of writ of *habeas corpus* requiring the respondent State of Bihar and its officials to produce before this Court the *corpus* of his brother Raj Nath Sharma, whose whereabouts are not known, after his arrest by the police. It is his grievance that upon enquiry, he has been informed by the Station House Officer of Kateya Police Station (Respondent No. 5) that said Raj Nath Sharma had escaped from police custody on the day when he was arrested.

4. When the matter was heard on 25.07.2022, the State was allowed one week time to file counter affidavit. As no counter affidavit could be filed, further opportunity was granted by an order dated 01.08.2022 for the State to file counter affidavit. A counter affidavit and supplementary counter affidavits have thereafter been filed on behalf of the State which are there on record. The pleadings on record go to reveal that the fact of arrest of Raj Nath Sharma on 07.06.2021 and his non-production before the Magistrate in terms of mandatory statutory requirement under Section 177 of the CrPC are admitted facts.

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5. Raj Nath Sharma is still traceless. It is, however, the case of the State, as disclosed in the supplementary counter affidavit filed on 15.11.2022 that after his arrest on 07.06.2021, Raj Nath Sharma was brought to Kateya Police Station at 07:55 pm. He had expressed his urge to attend the nature's call. There was no functional lavatory available in the Police Station. Accordingly, Rajnath Sharma was taken by a Chowkidar to a lavatory in the old Police Station building to help Raj Nath Sharma relieve himself and in that process his handcuffs were removed. Altogether three persons were arrested on the said date including Raj Nath Sharma in connection with the same case. Other two persons were put in the police lock up as per the norms and the lock-up was locked from outside. At 08.30 pm, the Chowkidar, with whom Raj Nath Sharma had gone to attend the call of the nature, arrived at the police station and informed the police personnel that in the process of taking the accused to the lavatory, by deceiving the Chowkidar, he (Raj Nath Sharma) had escaped. Based on the information so furnished by the Chowkidar, an FIR came to be registered giving rise to Kateya P.S. Case No 190 of 2021 on the same date, i.e., 07.06.2021 for the offences punishable under Sections 224 and 216 of the Indian Penal Code. Further, on 08.06.2021, unsuccessful

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attempts were made to nab said Raj Nath Sharma. There is no pleading on record as to what efforts were made by the police to locate Raj Nath Sharma, if he had escaped on 07.06.2021, soon thereafter 08.06.2021 and before doing a formality of making a requisition before the learned Chief Judicial Magistrate for obtaining a warrant of arrest against him. To sum it up precisely, according to the respondent-State of Bihar, Raj Nath Sharma had escaped from custody on 07.06.2021 and an attempt was made to apprehend him on 08.06.2021 and thereafter, a requisition was made on 17.08.2021 by the Investigating Officer before the learned Chief Judicial Magistrate for obtaining warrant of arrest. It is also their case that no warrant of arrest could be obtained, however.

6. There are vague averments made in paragraph 20 of the said supplementary counter affidavit that the Investigating Officer had placed some confidants/agents into service at various places and had also conducted raids at certain places in connection with the escape of said Raj Nath Sharma.

7. It is worthwhile mentioning, as is evident from the materials on record, that a copy of this writ petition was served on the office of the Advocate General, Bihar before its filing by way of notice on 26.04.2022. The writ petition was

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filed thereafter and came to be registered on 11.05.2022. Apparently, after service of notice of the present writ application on the State of Bihar, the Investigating Officer made another requisition on 17.05.2022 before the Chief Judicial Magistrate, Gopalganj, for obtaining warrant of arrest against Raj Nath Sharma. There is no pleading on record to the effect that any effort was made to locate Raj Nath Sharma and the only step, which was taken by them, was by way of making a requisition before the learned Chief Judicial Magistrate for issuance of warrant of arrest. We fail to appreciate the said initiative of the police by seeking warrant of arrest against a person who was taken into custody in relation to an offence punishable under Section 302 of the IPC and, according to the police, he had escaped from the police custody. It is disturbing to note that only after this Court took up this matter that the Superintendent of Police, Gopalganj, constituted a Special Investigation Team (SIT) for investigating the aforesaid Kateya P.S. Case No. 189 of 2021, registered for the offence punishable under Sections 302/34 of the IPC as well as Kateya Police Station P.S. Case No. 190 of 2021, registered for the offences punishable under Section 224 and 216 of the Indian Penal Code regarding the prisoner’s escape from the police custody.

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8. We consider it apt to refer to, at this juncture, Section 60 of the Code of Criminal Procedure to emphasize that the Investigating Officer did not require any warrant of arrest to apprehend a prisoner, who, according to the police, had escaped from the police custody. Section 60 of the CrPC reads as under:-

> *"60. Power, on escape, to pursue and re-take-(1) If a person in lawful custody escapes or is rescued, the person from whose custody he escaped or was rescued may immediately pursue and arrest him in any place in India.*
>
> *(2) The provisions of Section 47 shall apply to arrests under sub-section (1) although the person making any such arrest is not acting under a warrant and is not police officer having authority to arrest."*

9. In the aforesaid facts and circumstances, we find reasons to doubt the *bonafides* of the police administration in making applications before the Chief Judicial magistrate for issuance of warrant of arrest to apprehend said Raj Nath Sharma

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without taking any sincere measure to nab him, if he had escaped. The said action on the part of Investigating Officer was essentially a useless/empty formality, visibly to develop an explanation for disappearance of said Raj Nath Sharma in mysterious circumstances. We also take note of the fact that as no satisfactory explanation was forthcoming in the pleadings of the State of Bihar, by an order dated 28.09.2022, the Court had required personal attendance of the Director General of Police, Bihar, and the Superintendent of Police, Gopalganj, on 29.09.2022. Accordingly, the Director General of Police, Bihar, and the Superintendent of Police, Gopalganj, appeared before this Court on 29.09.2022. It was stupefying for this Court to notice profound ignorance of the Director General of Police, Bihar, about disappearance of Raj Nath Sharma from the police custody. He disclosed to this Court that he did not have any knowledge about the fact that said Raj Nath Sharma had escaped from police custody, till it was brought to his notice under the orders of this Court. The Court, in its order dated 29.09.2022, had noted that it was disturbing that the State respondents were not taking any clear stand on the point as to what steps were taken after 07.06.2021, when, according to the Superintendent of Police, Gopalganj, said Raj Nath Sharma had

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escaped from police custody, till the filing of the present *habeas corpus* writ application. On an assurance given by the Director General of Police to this Court that the State Police would make earnest endeavors to locate the petitioner's brother, the matter was adjourned to 03.11.2022. The State was directed to file an exhaustive affidavit disclosing the steps taken for locating Raj Nath Sharma.

10. We consider it apt to notice, at this juncture, Rules 573 and 574 of the Bihar Police Manual, which read thus:

> *"573. Escapes.-(a) When an escape takes place from an escort party, the officer-in-charge shall give prompt notice at the nearest police-station and proceed with the remaining prisoners.*
>
> *(b) The officer-in-charge of the police station shall make all necessary arrangements for the recapture of the escaped prisoner and shall report the escape by the quickest means Superintendents of the jails of despatch and destination.*
>
> *(c) If recapture be not immediately effected, the warrant and documents relating to the prisoner and his property shall be returned to the jail when he was dispatched.*

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574. Negligence resulting in escapes.- (a) In most cases, the persons who are actually responsible in suffering the escape are dealt with but no effort is made to find out and remove the defects in spite of previous experience. It has also been noticed quite frequently that apart from the escort party being responsible for the escape, the officers confining prisoners do not exercise much caution and care. When reporting on these escape cases Superintendents of Police should send their comments to higher officers on the parts played by the dispatching and receiving officers and the manner in which sentry duties were allotted. Whenever any latch is noticed during investigation or trial departmental action shall be taken against the officer concerned.

(b) If any police officer negligently or willfully lets a prisoner escape, departmental proceedings under Section 7 of the Police Act should invariably be taken and the punishment awarded and unless there are unusual extenuating circumstances, this punishment should ordinarily be dismissed. Prosecution of

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the offenders under Sections 223/225(a) I.P.C. should not be resorted to, unless definite or concrete evidence is available to show connivance or criminal negligence."

11. Noticing the said provisions under Rules 573 and 574 of the Bihar Police Manual, we had observed in our order dated 16.11.2022 as under: -

"*14. Apparently, Rule 574 of the Police Manual casts a duty on the Superintendent of Police to send his comment to the higher officers on the parts played by the dispatching and receiving officers and the manner in which sentry duties were allotted. It further requires that whenever any lapse is noticed during investigation or trial, departmental action shall be taken against the officer concerned. It is admitted position that soon after the escape of the prisoner was reported, leading to registration of First Information Report, the steps were not taken in accordance with the Police Manual and without any requirement for issuance of warrant of arrest, the police were, in stead, approaching the court by filing requisitions for issuance of warrant of arrest.*

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15. We strongly deprecate the inaction on the part of the police officials of the State of Bihar in a sensitive matter of this nature where a person, according to the State, is said to have escaped from police custody, whereas it is the petitioner's (who is the brother of the prisoner) case that he is traceless and his corpus should be produced by the police before this Court.

16. It is utterly surprising that it has been shamelessly stated in the supplementary counter affidavit filed on behalf of the State of Bihar that the prisoner had to be taken to a place different than the police station because there was no lavatory in the said police station. It is beyond comprehension as to how a police station can function without a lavatory, when the persons, upon arrest, are put in the police lock-up. Availability of a lavatory in a police station for prisoners/arrestees is the most basic requirement, absence of which amounts to breach of the prisoners'/arrestees' human right. The Court expects that the State Government of Bihar, at higher level,

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shall look into this serious aspect of the matter of availability of basic minimum infrastructure in all the police stations in the State of Bihar.

17. Considering proved inaction on the part of the police officials in the present case and the insensitive approach depicted on their part, the Court would consider setting up an enquiry into the entire episode as well as directing an independent agency to investigate into the case(s) on the next date, if by the next date, the State respondents fail either to nab the prisoner, who, according to them, has escaped or to furnish a satisfactory explanation before this Court."

12. The hearing of this case was adjourned to 07.12.2022. On 07.12.2022, the State proposed to file a supplementary counter affidavit to bring on record subsequent developments in the matter. At the same time, in the interest of justice, we had permitted learned counsel for the petitioner to implead Central Bureau of Investigation through its Director as respondent no. 6. Visibly, the said order for impleading Central Bureau of Investigation was passed in the background of lackadaisical approach of the State Police in bringing the

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investigation of the two cases to a logical conclusion and the mysterious circumstance in which they claimed Raj Nath Sharma to have escaped from the police custody.

13. Subsequently, the matter was adjourned to 12.12.2022 and it was taken up on 14.12.2022. On 14.12.2012, this Court passed following order: -

> *"The said Raj Nath Sharma, who, according to the petitioner, was not produced before the court soon after his arrest by the police and according to the State he had escaped from the police custody is yet to be traced by the State Police. When the matter was taken up on 07.12.2022, considering the gravity of the matter, the court had directed impleadment of the Central Bureau of Investigation (CBI) for handing over the investigation of the case to the CBI in the view of the admitted incapacity of the State police to locate the whereabouts of Raj Nath Sharma.*
>
> *Learned State counsel has submitted that till date, despite all efforts made by the State police machinery corpus of the person for whose production this writ application has been filed has not been located.*

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Before issuing any positive direction in this matter and considering the lack of seriousness promptitude shown by the State of Bihar in a grave matter like the present one, the Court would like the State to file an affidavit giving details of all such persons, who, according to them, have escaped from the custody of the police in the State of Bihar and are still traceless. Such affidavit must be filed by next wednesday.

In the meanwhile, learned counsel for the CBI shall seek instructions as the court is of the prima facie view that the intervention of an independent investigating agency is required as the connivance of the officials of the State in this matter cannot be completely ruled out, keeping in mind their conduct right from the date of the arrest of Raj Nath Sharma."

14. The aforesaid order was passed in the presence of Ms. Navedita Nirvikar, learned counsel Central Bureau of Investigation.

15. Ms. Navedita Nirvikar, learned counsel for the Central Bureau of Investigation has submitted, upon

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instructions, that the CBI is not unwilling to undertake investigation of the two cases, i.e., Kateya P.S. Case no. 189 of 2021 and Kateya P.S. Case No. 190/2021, and shall investigate the matter, if so directed by this Court.

16. Learned State Counsel also has not opposed the Court's move to handover the investigation of the two criminal cases to an independent investigating agency like CBI.

17. As has been quoted hereinabove, by the order dated 14.12.2022, the Court had directed the State of Bihar, *inter alia*, to file an affidavit, giving the details of all such persons, who had escaped from the custody of police in the State of Bihar and were still traceless. In compliance of the said part of the order, a supplementary counter affidavit has been filed on 03.01.2023 sworn by the DIG Administration, PHQ. The said affidavit displays another alarming state of affairs. According to said affidavit, there are 256 accused persons, who have escaped from the police custody from various places in the State of Bihar and are still traceless. A list of number of persons, who, according to the police, have escaped from police custody, finds place at Annexure B to the said affidavit, from which it appears that the following is the district-wise break up of the numbers of persons, who have escaped from police custody

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district-wise and are still traceless: -

1	Patna	68
2	Nalanda	00
3	Bhojpur	08
4	Buxar	03
5	Rohtas	04
6	Kaimur	00
7	Gaya	14
8	Aurangabad	02
9	Jahanabad	00
10	Nawada	03
11	Arwal	01
12	Muzaffarpur	50
13	Sitamadhi	07
14	Sheohar	0
15	Vaishali	01
16	Bettiah	13
17	Motihari	11
18	Bagha	00
19	Saran	06
20	Siwan	06
21	Gopalganj	08
22	Darbhanga	04
23	Madhubani	02
24	Samastipur	02
25	Saharsa	02
26	Madhepura	03
27	Supaul	08
28	Purnea	00
29	Katihar	01
30	Kishanganj	00
31	Araria	11
32	Bhajalpur	02
33	Nawgachiya	02
34	Banka	02
35	Munger	00

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36	Sheikhpura	00
37	Lakhisarai	00
38	Begusarai	02
39	Khagria	01
40	Jamui	06
41	Rail Katihar	00
42	Rail Jamalpur	01
43	Police Adhishak Railway, Patna	02
44	Rail Zila Muzaffarpur	00

18. The above figures suggest that out of 256 persons, who, according to the State, have escaped from the police custody and are traceless, 118 are from two districts, namely, Patna and Muzaffarpur. We refrain from making any comment in respect of the aforesaid statistics, which apparently gives serious picture, since we are presently seized with the matter relating to production of the corpus of Raj Nath Sharma.

19. For the reason that said Raj Nath Sharma, according to the petitioner, was not produced before the Magistrate soon after his arrest and the mysterious circumstance put forth by the Bihar Police in which he is said to have escaped from the police custody coupled with the fact that subsequent action of the Bihar Police lacks bonafide and its inaction is glaring, we are of the view that a fair and impartial investigation by the State Police may not be possible, particularly as complicity of the police officials themselves cannot be ruled

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out. The said Raj Nath Sharma is said to have escaped from the police custody on 07.06.2021. Based on the pleadings on record, it is manifest that no visible action/step at all was taken by the police to locate the whereabouts of Raj Nath Sharma. If the police version is treated to be true, except by doing useless and unnecessary formality of approaching the learned Chief Judicial Magistrate for issuance of warrant of arrest against him, no effort was made at all by the police administration, before this *habeas corpus* writ application was taken up and only after this application was taken up, the district police is said to have constituted a Special Investigation Team (SIT), which has not yet yielded any result.

20. Providing for fair and impartial investigation is an important human right of a citizen, more so when a case of violation of fundamental right for life under Article 21 of the Constitution of India is demonstrated before a Court exercising extraordinary writ jurisdiction to enforce the fundamental right. It will be useful for us, at this stage, to note the Supreme Court's decision in the case of ***State of W.B. v. Committee for Protection of Democratic Rights***, reported in **(2010) 3 SCC 571**, paragraphs 68 and 69 of which, read as under:

> ***68.*** *Thus, having examined the rival contentions in the context of the*

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constitutional scheme, we conclude as follows:

(i) The fundamental rights, enshrined in Part III of the Constitution, are inherent and cannot be extinguished by any constitutional or statutory provision. Any law that abrogates or abridges such rights would be violative of the basic structure doctrine. The actual effect and impact of the law on the rights guaranteed under Part III has to be taken into account in determining whether or not it destroys the basic structure.

(ii) Article 21 of the Constitution in its broad perspective seeks to protect the persons of their lives and personal liberties except according to the procedure established by law. The said article in its broad application not only takes within its fold enforcement of the rights of an accused but also the rights of the victim. The State has a duty to enforce the human rights of a citizen providing for fair and

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impartial investigation against any person accused of commission of a cognizable offence, which may include its own officers. In certain situations even a witness to the crime may seek for and shall be granted protection by the State.

(iii) In view of the constitutional scheme and the jurisdiction conferred on this Court under Article 32 and on the High Courts under Article 226 of the Constitution the power of judicial review being an integral part of the basic structure of the Constitution, no Act of Parliament can exclude or curtail the powers of the constitutional courts with regard to the enforcement of fundamental rights. As a matter of fact, such a power is essential to give practicable content to the objectives of the Constitution embodied in Part III and other parts of the Constitution. Moreover, in a federal constitution, the distribution of legislative powers between Parliament and the State Legislature involves limitation on legislative powers and, therefore,

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this requires an authority other than Parliament to ascertain whether such limitations are transgressed. Judicial review acts as the final arbiter not only to give effect to the distribution of legislative powers between Parliament and the State Legislatures, it is also necessary to show any transgression by each entity. Therefore, to borrow the words of Lord Steyn, judicial review is justified by combination of "the principles of separation of powers, rule of law, the principle of constitutionality and the reach of judicial review".

(iv) If the federal structure is violated by any legislative action, the Constitution takes care to protect the federal structure by ensuring that the Courts act as guardians and interpreters of the Constitution and provide remedy under Articles 32 and 226, whenever there is an attempted violation. In the circumstances, any direction by the Supreme Court or the High Court in exercise of power under Article 32 or 226 to uphold

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the Constitution and maintain the rule of law cannot be termed as violating the federal structure.

(v) Restriction on Parliament by the Constitution and restriction on the executive by Parliament under an enactment, do not amount to restriction on the power of the Judiciary under Articles 32 and 226 of the Constitution.

69. In the final analysis, our answer to the question referred is that a direction by the High Court, in exercise of its jurisdiction under Article 226 of the Constitution, to CBI to investigate a cognizable offence alleged to have been committed within the territory of a State without the consent of that State will neither impinge upon the federal structure of the Constitution nor violate the doctrine of separation of power and shall be valid in law. Being the protectors of civil liberties of the citizens, this Court and the High Courts have not only the power and jurisdiction but also an obligation to protect the fundamental rights, guaranteed by Part III in general and under Article 21 of the Constitution in

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particular, zealously and vigilantly.

21. We are mindful of the note of caution issued by the Supreme Court in case of ***State of W.B. v. Committee for Protection of Democratic Rights*** (supra), wherein the Supreme Court observed, in paragraph-70, that the extraordinary power, in exercise of jurisdiction under Article 226 of the Constitution, to direct CBI to investigate a cognizable offence being investigated by the State Police, should be exercised sparingly, cautiously and explainable situations, where it becomes necessary to provide credibility and instil confidence in investigation or where such order may be necessary for doing complete justice and enforcing fundamental rights.

22. In our view, in the facts and circumstances, which have been noted above, it would be unsafe and would be a travesty of justice to allow the State Police to investigate into the case in which said Raj Nath Sharma was arrested and the case relating to his escape from the police custody. Inaction of the police personnel, which may be deliberate, depicts that their conduct is not above-board. Our view is strengthened by the Supreme Court's decision in case of ***Alsia Pardhi v. State of M.P.***, reported in **(2014) 2 SCC 725**.

23. In case of ***Alsia Pardhi*** (supra), various forest

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officials of Betul Range in the District of Betul (Madhya Pradesh) had forcibly taken away two females from the forest area. As the persons present at the site had attempted to resist, one of the females had managed to jump from the jeep of the forest personnel but the a minor girl was whisked away by them. The uncle of the minor girl *viz.* Alsia Pardhi made a complaint to the SHO Kotwali three days thereafter alleging that the minor girl was in the custody of the officials of the various departments and requested them the register a case of kidnapping. A complaint was also made to the Chief Conservator of the Forest for taking punitive action against the forest officials as also to get minor girl released. As all efforts in searching the girl had failed, Alisa Pardhi approached the Madhya Pradesh High Court by filing a writ of *habeas corpus* seeking a direction to produce before the Court the said girl and register an FIR against the forest officials involved in kidnapping and illegal detention of the minor as well as against those who had been instrumental in shielding and protecting the accused.

24. Before the Madhya Pradesh High Court, a plea was taken, *inter alia*, based on report of the police, that the girl was not detained by the forest officials, which report was

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doubted by the High Court and a further opportunity was granted to the police to produce the *corpus* of the girl and had also observed that if the State failed to produce her on the next hearing, it would be compelled to direct the Central Bureau of Investigation to take up the investigation into its hands. Subsequent reports were filed. Madhya Pradesh High Court subsequently reached a conclusion that it was not a case of illegal and forceful confinement warranting issue of writ of *habeas corpus*, but it was a case of missing person. The writ petition was dismissed by the High Court with the reasoning that there was no allegation of wrongful confinement either by the forest authorities or the police.

25. The Supreme Court, interfering with the High Court decision in the case of ***Alsia Pardhi v. State of M.P.*** reported in **(2014) 2 SCC 725** and relying on the Supreme Court's decision in the case of State of ***W.B. v. Committee for Protection of Democratic Rights*** (supra), issued following direction in paragraph 28:-

> ***28.*** *In order to adjudicate upon the issue at hand, it would be necessary to refer to some other relevant constitutional and statutory provisions as well. As noted earlier, the Special Police Act was enacted by the*

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Governor General-in-Council in exercise of the powers conferred by the Government of India Act, 1935 (Entry 39 of List I, Seventh Schedule). The said entry reads as under:

> *"39. Extension of the powers and jurisdiction of members of a police force belonging to any part of British India to any area in another Governor's Province or Chief Commissioner's Province, but not so as to enable the police of one part to exercise powers and jurisdiction elsewhere without the consent of the Government of the Province or the Chief Commissioner, as the case may be; extension of the powers and jurisdiction of members of a police force belonging to any unit to railway areas outside that unit."*
>
> *(emphasis supplied)*

It is manifest that the Special Police Act was passed in terms of the said entry imposing prohibition on the Federal Legislature to enact any law permitting the police of one State from

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investigating an offence committed in another State, without the consent of the State. The said entry was replaced by Entry 80 of List I of the Seventh Schedule to the Constitution of India. The said entry reads thus:

> *"80. Extension of the powers and jurisdiction of members of a police force belonging to any State to any area outside that State, but not so as to enable the police of one State to exercise powers and jurisdiction in any area outside that State without the consent of the Government of the State in which such area is situated; extension of the powers and jurisdiction of members of a police force belonging to any State to railway areas outside that State."*

26. Since, we are of the view that the investigation so far done in two cases by the State Police, namely, Kateya P.S. Case No. 189/2021 and Kateya P.S. Case No. 190/2021, does not instil confidence as their inaction is manifest and not free from doubts, we consider it desirable in the interest of justice to direct the State to transfer the Investigation of Kateya P.S. Case No.

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189/2021 and Kateya P.S. Case No. 190/2021 to the Central Bureau of Investigation.

27. Accordingly, let the entire documents of the aforesaid two cases be handed over to the Superintendent of Police, CBI, Patna, by 13.02.2023.

28. Before, we part with this judgment, we express our anxiety as regards the alarming number of cases in which, the persons, who have, according to the Police, escaped from the police custody and are still traceless. The Court would expect the State respondents to inform this Court as to what action(s) do they intend to undertake in respect of those cases in which the persons, who have escaped from police custody and are traceless.

29. For the said purpose, list this case on 13.03.2022 under the heading 'To The Mentioned' for the State to file an affidavit giving the details of proposed action.

30. This application is disposed of with the aforesaid direction and observation.

(Chakradhari Sharan Singh, J)

(Rajesh Kumar Verma, J)

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