

**HIGH COURT OF TRIPURA
AGARTALA**

CRP No.38 of 2023

Smt. Puja Dey Saha

.....Petitioner(s)

Versus

Sri Rakesh Saha and others

.....Respondent(s)

For Petitioner(s) : Mr. P. Roy Barman, Sr. Advocate,
Ms. A. Debbarma, Advocate,
Mr. Dipjyoti Paul, Advocate.

For Respondent(s) : None.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

08/08/2023

Heard Mr. P. Roy Barman, learned senior counsel assisted by Mr. Dipjyoti Paul, learned counsel for the petitioner.

2. By the instant petition, the only relief that the petitioner is seeking is for a direction upon the learned Additional Sessions Judge, Gomati Judicial District, Udaipur to expeditiously dispose of CrI. App. No.14 of 2022 pending before it. The said criminal appeal has been preferred invoking Section 29 of the Protection of Women from Domestic Violence Act, 2005 being aggrieved by an order dated 30.09.2022 under Section 21 passed by the learned Judicial Magistrate, First Class (Court No.2), Udaipur, Gomati Tripura, regarding custody of the minor daughter aged five years of the petitioner born out of the wedlock with the respondent-husband herein.

3. Mr. P. Roy Barman, learned senior counsel for the petitioner, submits that by an interim order dated 27.09.2022, the custody of the minor daughter was ordered in favour of the petitioner-mother. However, on 30.09.2022 itself, the interim order was vacated and the learned Court of

Judicial Magistrate, First Class (Court No.2), Udaipur, Gomati Tripura ordered the custody of the minor child to remain with the husband/respondent herein being guided by the fact that the petitioner had, in the meantime, approached the Police and Child Line, Udaipur for the custody of the child in furtherance of the interim order passed in her favour.

4. The paramount welfare of the child, which is the uppermost criteria to be kept in mind, has not been taken into consideration while passing the order dated 30.09.2022. Petitioner-wife is staying separately on account of torture from the matrimonial home. As per the provisions of Section 6 of the Hindu Minority and Guardianship Act, 1956, the custody, of a minor who has not completed the age of 5 years, shall ordinarily be with the mother. The expression 'ordinarily' has been interpreted by decisions of the Apex Court and several High Courts. The learned Trial Court ignored the mandate of law and directed the custody of the minor child to the husband within three days of the interim order.

5. The petitioner, being aggrieved, preferred the criminal appeal under Section 29 of the Protection of Women from Domestic Violence Act, 2005 which is pending till date in the Court of learned Additional Sessions Judge, Gomati Judicial District, Udaipur. It is submitted that meanwhile the custody of the minor remains with the respondent-husband to the peril of the minor child and also the mother. The mother is the natural guardian of a minor daughter aged five years. However, it is submitted that at this stage it would suffice if a direction is issued upon the learned Court of Additional Sessions Judge, Gomati Judicial District, Udaipur to dispose of the pending appeal

expeditiously. It is further submitted that there is a divorce case pending between the parties.

6. Having regard to the fact that the petitioner-mother has only made a limited prayer for a direction upon the learned appellate Court of Additional Sessions Judge, Gomati Judicial District, Udaipur for expeditious disposal of the appeal pending before it, this Court at this stage, does not feel it necessary to issue any notice upon the other side on the limited prayer as it is not going to adversely affect the position of either of the parties, if the appeal is disposed of in an expeditious manner.

7. In that view of the matter, the instant petition is disposed of with a direction to the learned appellate Court of Additional Sessions Judge, Gomati Judicial District, Udaipur to consider and dispose of the pending appeal, in accordance with law and after due hearing to the parties, within a period of 6(six) weeks from the date of receipt of the copy of this order. It is expected that the parties would cooperate and not seek unnecessary adjournments.

8. Pending application(s), if any, also stands disposed of.

(APARESH KUMAR SINGH), CJ