

Court No. - 81

Case :- HABEAS CORPUS WRIT PETITION No. - 827 of 2023

Petitioner :- Sahil Kumar Prajapati And 2 Others

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Sunita Chauhan

Counsel for Respondent :- G.A.,Ambrish Chandra Pandey

Hon'ble Mrs. Jyotsna Sharma,J.

1. Heard Ms. Sunita Chauhan, learned counsel for the petitioners, Sri Ambrish Chandra Pandey, learned counsel for the respondent nos. 4 and 5 and Sri L.D. Rajbhar, learned AGA for the State.

2. Petitioner no. 3-Punni Lal Prajapati (real uncle of the corpus) and respondent no. 4-Dhaniram Prajapati (maternal grandfather of the corpus) alongwith maternal grandmother of the corpus, are present in-person.

3. This habeas corpus writ petition has been filed praying for release of corpus namely, Sahil Kumar Prajapati, aged about 6 years and Nikhil Kumar Prajapati, aged about 5 years, from illegal custody of respondent no. 4-Dhaniram Prajapati and to be handed over to the petitioner no. 3-Punni Lal Prajapati.

4. Undisputedly, the real parents of Sahil and Nikhil died/murdered in an incident which occurred on 19.08.2019.

5. Submissions of the petitioner no. 3 are that he stands in capacity of legal guardian of the corpus, after death of his parents. He submits that petitioner no. 3, on the request from the respondent no. 4, went with the corpus to their house on 30.08.2023. They forcibly took Sahil and Nikhil in their custody and turned him out therefore petitioner no. 3 lodged a report with the police, but no action has been taken. It is further submitted that after murder of his real brother and bhabhi, a dispute as regard guardianship arose, therefore, he filed a case no. 22 of 2019 under the Guardians and Wards Act, 1890 and he was granted custody of both the kids and since then he has been taking care of them.

6. A counter affidavit has been filed by respondent nos. 4 and 5. It is contended that this petition has been filed with false facts. The kids have been staying with respondent no. 4 (maternal grandfather of the corpus) and their maternal grandmother. Petitioner no. 3 filed a case under the Guardians and Wards Act, without impleading maternal grandparents of the kids. It is submitted that the kids have been staying with maternal grandparents since murder of their parents in 2019 and that no such incident of forcibly detaining them in their custody, ever took place on 30.08.2023. It is said that the affidavit given by the petitioners contained false facts. It is further pointed out that the case under the provisions of the Guardians and Wards Act was lodged in a collusive manner, showing their maternal grandparents, as having already died. It is alleged that petitioner no. 3 is interested in taking custody of the

kids, just to take advantage of the share in ancestral property which the kids have inherited after death of parents.

7. I interacted with the kids namely, Sahil and Nikhil in the privacy of my chamber. From looks, they do not appear to be more than 4 to 6 years. They are too innocent, ignorant and young to take any reasoned decision.

8. Admittedly, the kids are presently staying with their maternal grandparents. Disputed question of fact is whether they have been staying with them since 2019, when their parents were murdered or were forcibly removed from the custody of the petitioner no. 3-Punni Lal Prajapati, just few months ago. From the papers on record, it is revealed that Punni Lal Prajapati had filed a case under sections 7 and 8 of the Guardians and Wards Act in 2019 itself. This is quite clear that the instant respondents were not impleaded as party and the real brother of Punni Lal Prajapati was the only opposite party in that case under the Guardians and Wards Act. This case was decided in favour of Punni Lal on 13.04.2022. This fact is not denied by the petitioner no. 3 that now respondent no. 4 has filed an application for recall of the aforesaid order dated 13.04.2022 and the same is now pending before the court concerned.

9. The custody of the minors with maternal grandparents cannot be termed as absolutely illegal. Moreover, in the matters relating to minor children in a habeas corpus writ petition, the court has to find out what is best for welfare of the children, irrespective of legal rights of the parties. No doubt the legal rights of the parties do have their value but in my opinion where the case pertains to custody of minors of too tender an age, the courts should show utmost sensitivity and keep the welfare of the child as top priority in the mind. Definitely in such a scenario the respective rights of parties are relegated to secondary position, if not in oblivion. The interaction with children do not give an impression that they are not comfortable with their present place.

10. In my view, as the matter is now seized by the court concerned under the provisions of the Guardians and Wards Act, therefore, in my view it can properly be decided by that court, as per law. I do not find any good ground to transfer the children from one place to other, when the children appear absolutely comfortable and settled with their present place of abode.

11. In above circumstances, I do not find any good ground to allow this petition, therefore, it is **dismissed**.

Order Date :- 3.11.2023

#Vikram/-