

Court No. - 13

Case :- HABEAS CORPUS WRIT PETITION No. - 157 of 2023

Petitioner :- Suyash Singh Thru. His Father Dinkar Singh Pawar

Respondent :- State Of U.P. Thru. Prin. Secy. Home Lko. And 3 Others

Counsel for Petitioner :- Surya Prakash

Counsel for Respondent :- G.A.,Anshul Baranwal

Hon'ble Karunesh Singh Pawar,J.

1. The present petition has been filed by the petitioner for issuance of a writ in the nature of Habeas Corpus directing the respondent nos.2 and 3 to produce the detenu Suyash Singh before this Court and also permit him to go with the deponent, father of the detenu.

2. Heard learned counsel for the petitioner and learned A.G.A for respondent no.1 to 3.

3. Learned counsel for the petitioner submits that the deponent is the father of the minor Suyash Singh and is entitled for his custody who has been illegally detained by respondent no.4. The mother of the petitioner has died on 17.10.2011 when the petitioner was two years old and at that time the petitioner gave custody of the detenu to respondent no.4. He submits that the petitioner has always tried to contact his son but respondent no.4 never allowed the deponent to meet the detenu.

4. Learned counsel for the petitioner further submits that respondent no.4 has illegally detained the detenu

although he is not in a position to maintain the child. He has filed a case under Section 125 Cr.P.C. in the court of Sidhauri Sitapur on 14.3.2014, which was registered as Crl. Misc. Case No.368 of 2016 against the petitioner. The petitioner appeared in that case and filed objection and has categorically stated that his wife was in service and appointed as Siksha Mitra and was residing with his father. He submits that after the death of his wife Insurance amount of Rs. 11,35,000/- was paid by the Insurance Company to the deponent out of which, Rs.6,35,000/- was fixed in SBI Lucknow as a fixed deposit and remaining amount of Rs.5,00,000/- has been deposited in SBI Life Insurance Lucknow in the name of the detainee. The case under Section 125 Cr.P.C. was decided against the deponent and direction was issued to pay Rs.4,000/- per month as maintenance. It has been further pleaded in the writ petition that respondent no.4 is having no right to keep the detainee.

5. Per contra, learned A.G.A. as well as respondent no.4 has submitted that the daughter of the respondent no.4 was married with the deponent on 13.5.2007 and from their wedlock, the detenu Suyash was born on 17.8.2009. The mother of the detainee died in unnatural circumstances on 17.10.2011 just after four years of marriage and two years of infant was left with the petitioner since 2011. The deponent never went back to meet the detainee. He has married again and he is having a second family.

6. It is submitted that in order to escape from his liabilities to pay the maintenance amount of Rs.4,000/- per month to the detenu as directed by the family court, the present habeas corpus petition has been filed by the deponent.

7. It is further submitted that the detainee is presently

14 years old and the he does not even recognize his father/deponent. It is further submitted that maintenance amount was awarded in the year 2022 and till date not a single penny has been given to the detenue by the deponent which shows that he is not having any affection towards the detenue.

8. Perused the record.

9. This court vide order dated 20.7.2023 has noticed that the detenue Suyash Singh does not recognize the deponent. The detenue had further stated before the Court, on that day, that the deponent has never come to his place to see him except once i.e. three years back. No maintenance amount has been given by the deponent to the detenue. Order dated 20.7.2023 passed by this court is extracted below:-

1. Heard learned counsel for the petitioner and learned A.G.A. for the State as well as perused the record.

2. In compliance of order dated 23.5.2023 passed by this Court, the detenue Suyash Singh has been produced by the respondent no.4 before this Court. The detenue as well as respondent no.4 have been identified by their respective counsel.

3. The detenue, Suyash Singh, on query being made by this Court, has stated that he is 14 years old, studying in Sita Inter College Mahmudabad, Sitapur in 8th standard. He has stated that he is residing with respondent no.4. He also stated that he has not received any amount or any gift etc. from the deponent. He has further stated that during all these years the deponent has never come to his place to see him except once i.e. three years back. He could not identify the deponent. His aunt (mausi) told him that the deponent is his father.

4. It has been informed by learned counsel for respondent no.4 that this petition is a device to exert pressure upon respondent no.4 as maintenance case was filed under Section 125 Cr.P.C. against the petitioner, which has been decided vide judgement and order dated 7.1.2022 passed in Cri. Misc. Case No. 368 of 2016 wherein the deponent of this petition has been directed to pay a sum of Rs.4000/- per month as maintenance to the detenue on 10th of every moth. Learned counsel for respondent no.4 further submits that the petition suffers from extraordinary unexplained delay and laches.

5. From the statement of the detenue, Suyash Singh, prima facie it is evident that in all these years the deponent has not bothered to take care the detenue and has out-rightly ignored the detenue and also never paid any attention or has ever tried to see the welfare of the detenue. It is also clear that respondent no.4 is taking due care of the detenue. The detenue is studying in a College.

6. It is not disputed between the parties that no amount of maintenance has been given yet to the detenue.

7. The submission advanced by learned counsel for the respondents carries weight. He prays for and is granted four weeks' time to file Counter Affidavit, two weeks' thereafter for Rejoinder Affidavit.

8. List on 4.9.2023. The parties, present today, need not to appear on the next date. .

10. Upon a query being made from learned counsel for the petitioner regarding the explanation of 12 years of delay in approaching this Court, he could not give any reply/reason for the delay and laches. He has also not

given any plausible reason as to why maintenance of amount of Rs.4,000/- per month has not been given to the detenu.

11. Learned counsel for the deponent also could not dispute the settlement agreement arrived between the parties after the death of the mother of the detenu. However, he says that since deponent is father and natural guardian he deserves the visiting right to meet the detenu. He further says that to show his bonafide he is ready and willing to give half of the balance maintenance amount within two months from today and the remaining amount he proposes to give within ten equal installments.

12. The statement of the detenu recorded on 20.7.2023 before this court shows that after death of the mother of the detenu he is residing with respondent no.4. He has not received any maintenance amount or any gift etc. ever from the deponent and all these years only once deponent came to see him then he could not recognize the deponent. The maternal grand parent i.e respondent no.4 of the detenu is taking due care and he has brought up in his guidance.

13. Apart from the above, the petition suffers from extraordinary delay and laches for which no explanation at all has been given by the deponent. However, considering the fact that deponent is the father and natural guardian of the detenu the prayer for visiting rights of the deponent be given.

14. In view of the above, I am not inclined to issue any writ in the nature of Habeas Corpus, however, so far as visiting rights are concerned, he is at liberty to move appropriate application before the competent court of law.

15. It is provided that subject to payment of an amount

of Rs.2,00,000/- to the detenu by the deponent, the deponent shall be at liberty to file an application for visiting right. After payment of the said amount, if the application for visiting rights is filed by the deponent of this case/father of the detenu within 15 days from the date of payment before the competent court, the same shall be considered and decided expeditiously within a further period of one month from the date of receipt of certified copy of this order.

16. Remaining amount shall be paid by the deponent to the detenu in ten monthly installments as fixed by learned family court.

17. The petition is ***disposed of*** accordingly.

Order Date :- 7.11.2023

Madhu