

Court No. - 9

Case :- HABEAS CORPUS WRIT PETITION No. - 182 of 2023

Petitioner :- Nikita Awasthi Thru. Father Vivek Awasthi

Respondent :- State Of U.P. Thru. Prin. Secy. Home Deptt. U.P. Civil Sectt. Lko. And Others

Counsel for Petitioner :- Vineet Kumar Mishra

Counsel for Respondent :- G.A.

Hon'ble Shamim Ahmed,J.

Hon'ble Umesh Chandra Sharma,J.

1. Heard Shri Vineet Kumar Mishra, the learned counsel for the petitioner and Shri Badrul Hasan, the learned A.G.A.-I for the State-respondents.

2. The present habeas corpus petition has been filed with the following prayer:

"(i) Issue a writ, order or direction in the nature of Habeas Corpus commanding and directing the opposite parties to produce the detainee Nikita Awasthi before this Hon'ble Court and after setting at her liberty allow to go with her father i.e. petitioner, in the interest of justice.

(ii) Issue any other writ, order, or direction, which this Hon'ble Court may deem fit and proper in the circumstances of the case.

(iii) Award the cost of the writ petition to the petitioner."

3. Learned counsel for the petitioner submits that the order dated 24.04.2023 passed by the Juvenile Justice Board sending the detainee to shelter home is illegal.

4. Learned A.G.A.-I submits that the present habeas corpus petition is not maintainable in view of the Full Bench judgment of this Court in the case of **Km. Rachna and another Vs. State of U.P. and others, 2021 CrI.J. 2316**, wherein in para-78 it has been observed that, *".... it is evident that a writ of habeas corpus would not be maintainable, if the detention in custody is pursuant to judicial orders passed by a Judicial Magistrate or a court of competent jurisdiction or by the Child Welfare Committee. Suffice to indicate that an illegal or irregular exercise of jurisdiction by the Magistrate passing an order of remand or by the Child Welfare Committee under J.J. Act cannot be treated as an illegal detention. Such an order can be cured by way of challenging the legality, validity and*

correctness of the order by filing an appropriate proceeding before the competent appellate or revisional forum under the statutory provisions of law but cannot be reviewed in a petition seeking writ of habeas corpus".

5. Learned A.G.A. further submits that as the remedy lies before the petitioner to file an appeal under Section 101 of Juvenile Justice (Care and Protection) Act, he may avail the same, if so desire.

6. Learned counsel for the petitioner submits that petitioner may be permitted to avail the aforesaid remedy by filing an appeal before appropriate forum.

7. Accordingly, the present habeas corpus is finally **disposed of** with the liberty as prayed for.

Order Date :- 9.6.2023

Mustaqeem