

Court No. - 13

Case :- HABEAS CORPUS WRIT PETITION No. - 284 of 2022

Petitioner :- Ojas Tripathi Thru. His Mother Smt. Richa Tripathi

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

Counsel for Petitioner :- Maneeshi Srivastava, Nisha Srivastava

Counsel for Respondent :- G.A., Apoorv Dev, Ram Kushal Tiwari, Shashank Singh

Hon'ble Karunesh Singh Pawar, J.

1. Case called out. None appears for the petitioner. Learned AGA as well as learned counsel for private respondents is present.

2. The petition has been filed on behalf of the detenu by his next friend i.e. the mother praying for the following relief:-

i) Issue a writ, order or direction in the nature of Habeas Corpus directing the Opposite Party No. 4 to 7 to produce the Petitioner (minor Ojas the Corpus) before this Hon'ble Court;

ii) Issue a writ, order or direction in the nature of Habeas Corpus directing the Opposite Party No. 4 to 7 to set free the Petitioner from their custody with immediate effect and give the custody of the Petitioner to his mother;

3. Learned counsel for respondent no. 4 to 7 has submitted that mother of the detenu who was wife of the son of opposite party no. 6 compelled her husband to commit suicide and consequently her husband namely Rahul Tripathi died for which opposite party no. 4 lodged an FIR bearing No. 544 of 2021 under Section 306/34 IPC at P.S. Sunlight Colony, District South East (Delhi). He has invited attention of the court towards copy of the FIR which is contained in Annexure No. 1 to the counter affidavit filed on behalf of opposite party no. 4 to 7.

4. This Court while perusing the record has taken note of the fact that case No. 1575/2021 under Domestic Violence Act filed by the deponent Richa Tripathi before the Civil Judge (Senior Division), FTC-II, Pratapgarh and case bearing No. 02 of 2022, under Section 20 read with Section 21 of the Hindu Adoption and Maintenance Act, 1956 filed by the grand parents of the detenu in the Court of Principal Judge, Family Court (South East) Saket Court, New Delhi are pending.

5. This Court vide order dated 11.09.2023 has passed the following order:-

"In compliance of order dated 16.08.2023 as well as order dated 04.09.2023, the detenu has been produced by respondent no. 6 and 7 who are his grand parents.

Upon a query being made to the detenu, he has stated that now his name is Viraj Tripathi and earlier his name was Ojas Tripathi. He is 11 years old and his date of birth is 13.11.2012. Presently, he is residing with respondent no. 6 and 7; he is a student of class-V and is pursuing his study in Dev Samaj Modern School, Nehru Nagar, New Delhi.

Upon further query being made, he has stated that he is happy with his grand parents and he does not want to go with his mother who met him only in the year 2020 and in July this year and in the meantime, there has been no conversation between them. He further stated that he has been duly vaccinated and is being taken care of by his grand parents.

From interaction with the detenu, this Court is of the opinion that he is quite capable to take a decision regarding his well being.

On the contrary, Ms. Richa Tripathi, who is mother of the detenu, submits that she is natural guardian and the detenu has been tutored.

Matter requires consideration.

List on 05.10.2023.

This Court while hearing the matter has taken note of the fact that visiting rights have been provided to the mother of the detenu by the Court of Civil Judge (Senior Division), District Pratapgarh in complaint case No. 1575 of 2021 vide its order dated 12.07.2022. Since, already visiting rights are provided, no fresh orders are required to

be passed.

Learned counsel for respondent no. 4 to 7 undertakes that he will abide order dated 12.07.2022 passed by the Civil Judge (Senior Division), District Pratapgarh."

6. From interaction with the detenu who is 11 years old, this Court found that he is happy with his grand parents and does not want to go with his mother who only met him once in the year 2020 and in July this year. No conversation has taken place between them and he is being duly taken care of by his grand parents and is pursuing his studies in Delhi.

7. Peculiar facts of this case are that the mother of the detenu is facing charges under Section 306/34 IPC for abetment to commit suicide for the alleged murder of her husband, coupled with the fact that the Court of Civil Judge (Senior Division), FTC-II, District Pratapgarh is seized with the matter and has provided visiting rights to the mother. Another petition under Hindu Adoption and Maintenance Act, 1956 filed by the grand parents of the detenu is pending in the Court of Principal Judge, Family Court (South East) Saket Court, New Delhi.

8. Supreme Court in the case of "***Nil Ratan Kundu v. Abhijit Kundu, (2008) 9 SCC 413***" has held that if such case is pending against either of the parents for committing such an offence, the character of the person seeking custody becomes relevant.

9. In this case, mother of the detenu is admittedly facing

charges under Section 306/34 IPC, coupled with the opinion of the detenu who is 11 years old and is quite capable of taking a decision regarding his well being, I am of the view that in the peculiar facts of this case, the wish of the detenu cannot be ignored, coupled with the fact that mother is an accused who is facing charges under Section 306/34 IPC, and hence, in view of the judgment of the Supreme Court in the case of ***Nil Ratan Kundu (supra)***, I am not inclined to entertain this petition.

10. Since the visiting rights have already been provided by the Civil Judge (Senior Division), FTC-II, District Pratapgarh, no fresh orders for visiting rights are required to be passed.

11. The petition fails and is accordingly ***dismissed***.

Order Date :- 22.11.2023

R.C.