

Court No. - 13

Case :- HABEAS CORPUS WRIT PETITION No. - 227 of 2023

Petitioner :- Zehra, Thru. Her Mother Smt. Rabab

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

Counsel for Petitioner :- Neeraj Kumar Rai,Raj Kumar Singh

Counsel for Respondent :- G.A.,Avikshit Mishra

Hon'ble Karunesh Singh Pawar,J.

1. The petition seeks issuance of a writ in the nature of Habeas Corpus commanding the opposite party No.4 to produce the detenue in Court and give her in the custody of petitioner's mother Smt. Rabab.

2. Case called out in the revised list. None appears for the petitioner.

3.Learned A.G.A. and learned counsel for private respondent are present.

4.This Court has passed the following order on 6.10.2023 :

"1.Mr. Ramakar Shukla, learned counsel for the petitioner on being pained with the conduct of the deponent Smt. Rabab seeks withdrawal of his vakalatnama.

2.Accordingly, the vakalatnama filed on behalf of Smt. Rabab by Mr. Ramakar Shukla, learned counsel for the petitioner is permitted to be withdrawn.

3.Smt. Rabab, the deponent who has filed this habeas corpus writ petition is present in court. On a query being made, she stated that earlier she had married with respondent No.4 and thereafter she has remarried with Jamal Mohsin without giving divorce to her husband respondent No.4. She has further admitted the fact that she has lodged a first information report under section 376 I.P.C. against Jamal Mohsin with whom she is presently residing. Pursuant to the first information report, charge sheet has been filed and consequently, Jamal Mohsin was arrested and remained in jail for a period of about 40 days and thereafter, he was enlarged on bail. She prays that she may be granted time to engage another counsel.

4.Respondent No.4 who is present in court has submitted that looking to the statement of the deponent, it is evident that the deponent is presently residing with the accused who is charged with offence under section 376 I.P.C. and the deponent herself is the informant, therefore, it will not be safe for the detenue Zehra who is only two years old to reside with the deponent.

5.In view of the above, considering the fact that learned counsel for the petitioner

has withdrawn his vakalatnama, in the interest of justice, one opportunity is given to the petitioner to engage a counsel.

6.List on 21.11.2023 for disposal."

5. A perusal of the statement of the deponent made before this court on the last date shows that at present, she is residing with a rape accused against whom charge sheet has been filed and he was also arrested and remained incarcerated for 40 days. The deponent is seeking custody of minor girl who is only two years old.

6.Considering the fact that the deponent is residing with Jamal Mohsin who is an accused in an offence under section 376 I.P.C., I am of the opinion that it will not be in the overall interest of the detinue who is a minor child of two years old to reside with a rape accused.

Thus, considering the judgment of Supreme Court in Nil Ratan Kundu and another versus Abhijit Kundu (2008)9 SCC 413 and also the judgment of a Coordinate Bench of this Court in Reshu alias Nitya and others versus State of U.P. and others (2021)6 ALJ 632, the petition fails and is accordingly dismissed.

Order Date :- 21.11.2023

k kb/