

Court No. - 13

Case :- HABEAS CORPUS WRIT PETITION No. - 264 of 2023

Petitioner :- Baby Trishu Thru. Father Upendra Nath And Another

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

Counsel for Petitioner :- Harish Chandra Yadav, Pratibhan Yadav

Counsel for Respondent :- G.A.

Hon'ble Karunesh Singh Pawar, J.

Heard learned counsel for the petitioners as well as learned AGA for respondent no. 2 to 5.

Notices to respondent no. 6 and 7 are dispensed with in view of the proposed order.

By this petition, the petitioner has prayed for the following relief:-

"Issue a writ, order or direction in the nature of Habeas corpus commanding and directing opposite parties to produce the detenue Babu Trishu and Baby Kiyara @ Kiya before this Hon'ble Court and after setting them at liberty allow to go with their father i.e. the petitioners.

Learned counsel for the petitioners submits that the deponent is father of the detenues and they are in the illegal detention of respondent no. 6 and 7. The deponent being natural guardian is entitled to the custody of the detenues. The mother of the detenues has died by committing suicide.

Learned AGA has opposed the petition submitting that the deponent in this petition is father of the detenues and is facing charges under Section 306 IPC for the murder of his wife and the mother of the detenues and therefore, in view of the law laid down by the Supreme Court in the case of "***Nil Ratan Kundu v. Abhijit Kundu, (2008) 9 SCC 413***" as well as by this Court in the case of "***Vedant Vs. State Of U.P. Others***" passed in "***HABEAS CORPUS WRIT PETITION No. - 26085 of 2021***", he is not entitled to the custody of the detenues.

Perused the record.

It appears that marriage of the deponent was solemnized with one Monika Prakash mother of the detenues on 04.02.2013 and out of the wedlock, detainee no. 1 Baby Trishu and detainee no. 2 Baby Kiyara were born who are presently 9 years and 3 years old respectively. An FIR was registered on 14.07.2021 as case crime No. 445/2021, under Sections 498A/302/507 IPC, P.S. Sikandara, District Agra alleging that the mother of the detenues has been done to death by the deponent. Later on

charge sheet has been filed under section 306/498A/507 IPC by the police against the deponent.

This Court has also noticed that earlier, the detenues had filed a writ of habeas corpus through one Prabhu Nath bearing writ petition no. 332/2022, which was dismissed by this Court.

This is the second writ petition by the detenues. This Court has also perused the statement of detainee no. 1 Trishu, who is elder daughter of the deponent, given before the trial court as PW-3 wherein she has clearly stated that the deponent killed her mother and further threatened that if she tells this to anyone, she as well as her younger sister shall also be killed by him. The statement of detainee no. 1 is on record as Annexure No. SA-1 to the writ petition.

In the given facts of this case, it is evident that the deponent who is the father of the detenues is facing charges under Section 306/498/507 IPC for the murder of his wife. The charge sheet has been filed coupled with the fact that PW-3 i.e. detainee no. 1 in this petition, has supported the prosecution story and has stated that it is the deponent who has killed her mother and he further threatened to kill both the detenues. Hence, in view of the law laid down by the Supreme Court in the case of **Nil Ratan Kundu (supra)** as well as judgment of this Court passed in the case of **Vedant (supra)** and since the deponent is facing such a serious charges for the murder of his wife, his character become very much relevant for the purpose of giving custody of the detenues to him. Supreme Court in the case of **Nil Ratan Kundu (supra)** has held as under:-

"63. In our considered opinion, on the facts and in the circumstances of the case, both the courts were duty-bound to consider the allegations against the respondent herein and pendency of the criminal case for an offence punishable under Section 498-A IPC. One of the matters which is required to be considered by a court of law is the "character" of the proposed guardian. In Kirtikumar [(1992) 3 SCC 573 : 1992 SCC (Cri) 778] , this Court, almost in similar circumstances, where the father was facing the charge under Section 498-A IPC, did not grant custody of two minor children to the father and allowed them to remain with the maternal uncle.

64. Thus, a complaint against the father alleging and attributing the death of the mother, and a case under Section 498-A IPC is indeed a relevant factor and a court of law must address the said circumstance while deciding the custody of the minor in favour of such a person. To us, it is no answer to state that in case the father is convicted, it is open to the maternal grandparents to make an appropriate application for change of custody. Even at this stage, the said fact ought to have been considered and an appropriate order ought to have been passed."

In the given facts of this case, I am of the opinion that

considering the over all welfare of the detenues who are residing with their maternal grand parents, their custody cannot be given to the deponent as he is facing trial for the murder of his wife and in that trial PW-3 who is detenue no. 1 in this petition clearly alleged the complicity of the deponent in the alleged murder of her mother.

For the aforesaid reasons, the petition fails and is accordingly ***dismissed.***

Order Date :- 8.12.2023

R.C.