

Court No. - 1

Case :- SPECIAL APPEAL DEFECTIVE No. - 770 of 2023

Appellant :- Pratibha Gupta And Others

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

Counsel for Appellant :- Mahendra Nath Mishra

Counsel for Respondent :- C.S.C.

Hon'ble Attau Rahman Masoodi,J.

Hon'ble Om Prakash Shukla,J.

(C. M. Application No.1 of 2023)

1. Heard Shri Mahendra Nath Mishra, learned counsel for the applicants/appellants and Shri Siddhant Mishra, Brief Holder for the State.

2. Having regard to the averments made in the affidavit filed in support of the application seeking condonation of delay, we are satisfied that the delay has sufficiently been explained.

3. Accordingly, the application is allowed and delay in filing the special appeal is condoned.

Order on Memo of Appeal

4. This intra-court appeal under Chapter VIII Rule 5 of the Allahabad High Court Rules, 1952 has been filed against the judgment and order dated 25.07.2023 passed by the Writ Court in Habeas Corpus Writ Petition No.229 of 2022, whereby the writ petition filed on behalf of the respondent no.3 through natural guardian i.e. father, was allowed and the custody of the

minor child aged about 2½ years was handed over to him.

5. It is an admitted position that the custody of the minor child aged about 2½ years has been handed over to the natural guardian on the premise of analyzing the family composition besides the fact that the elder sister of the alleged detenu, who is aged about 8 years, was already under the custody of natural guardian i.e. father. The Court while deciding the custody of the minor child has recorded the reasons in the light of the Apex Court judgment viz **Tejaswini Gaud and others vs. Shekhar Jagdish Prasad Tewari and others**, reported in **(2019) 7 SCC 42**.

6. The appellants herein, admittedly, are the family members from maternal side and their status to look after the minor child at such a tender age has rightly been weighed. The welfare of the minor child being of paramount consideration has rightly been addressed and appreciated by the writ court. The relevant aspects of the matter having been taken into consideration do not leave us with the option of taking a different view, therefore, interference in exercise of appellate jurisdiction is uncalled for. It is, however, clarified that the appellants shall be allowed to make video calling and in the event of visiting Kolkata, they shall be facilitated to meet the minor children by the respondent no.3-natural guardian, namely, Shri Nitesh Gupta, S/o Shri Siya Ram Gupta, R/o 143/1/1 Utkalmani Gopa

Bandhu Sarani, Barrabazar, Kolkata, State of West Bengal.

7. In view of above, the special appeal is finally **disposed of**.

Order Date :- 10.10.2023

akhilesh/