

Court No. - 15

Case :- HABEAS CORPUS WRIT PETITION No. - 386 of 2022

Petitioner :- Mohd. Arham Minor Thru. Mother Natural Guardian
Khuosboo

Respondent :- State Of U.P. Thru. Prin. Secy. Home Civil Secrett. U.P.
Lko. And 3 Others

Counsel for Petitioner :- Surendra Pratap Singh, Rajendra Pratap
Singh, Rishi Kumar Pandey

Counsel for Respondent :- G.A., Durgesh Kumar Rajput, Piyush Chandra
Agarwal

Hon'ble Shamim Ahmed, J.

(C.M. Application No. 1A/5/2023)

Heard Sri Rishi Kumar Pandey, learned counsel for the applicant/petitioner as well as Sri Durgesh Kumar Rajput, learned counsel for the opposite party No.4 and Sri Ashok Kumar Srivastava, learned A.G.A. for the State.

This application has been on behalf of the opposite party No.4- father moved for restoring the custody of minor Mohd. Arham child from the petitioner (mother).

Sri Ashok Kumar Srivastava, learned A.G.A. for the State submits that this application is totally misconceived. This Court is not correct forum to decide the custody of the minor child, unless the parties demonstrate before this court that the child under whom is in illegal custody. He further argued there is no any law that a child living with her mother or father said to be under illegal custody. He further submits that if the parties, either the petitioner or the opposite party No.4 wants custody of the minor child, the remedy lies before the competent forum by filing a file petition under Section 25 of Guardians and Wards Act, 1890.

Accordingly, this Court is of the view that the objection raised by the learned A.G.A. appears to be justified and this Court is not the correct forum to decide the custody at this stage, as the parties have already settled their dispute on 02.03.2023 and this Court had passed the detailed order, which is being reproduced herein-below:

"Heard Sri Rishi Kumar Pandey, learned counsel for the petitioner, Sri Diwakar Singh, learned Additional Government Advocate for the State-opposite parties nos. 1, 2 and 3 as well as Sri P.C. Agarwal, learned counsel appearing for opposite

party no. 4.

The parties, namely, Smt. Khuosboo and Mohd. Jafar Aqeel @ Shanu alongwith minor child Mohd. Arham, on the application moved before this Court, are present before this Court in person.

When the Court asked to Mrs. Khuosboo if there is any danger to her life and any cruelty is caused by her husband Mohd. Jafar Aqeel, she submits that except some minor dispute, nothing has happened.

Anyhow, opposite party no. 4, Mohd. Jafar Aqeel is warned by this Court that in future, he will not create any hindrance or any untoward incident with his wife Mrs. Khuosboo.

Mrs. Khuosboo submits that she is ready to live peacefully in the matrimonial life and there is no disturbance. Mohd. Jafar Aqeel also assured that he will look after Mrs. Khuosboo and also fulfill the entire desire as well as the requirements and also fulfill the duty of husband towards wife and both will take care of their minor child Mohd. Arham.

Accordingly, the personal appearance of Mrs. Khuosboo as well as Mohd. Jafar Aqeel @ Shanu is exempted till further orders of this Court.

Mrs. Khuosboo is free to go her parental house on her sweet will after taking permission from her husband and the husband also accompany Mrs. Khuosboo to her parental house.

Put up this case on the date fixed in the matter."

After some argument Sri Rishi Kumar Pandey, learned counsel for the applicant/petitioner submits that this application may be rejected as withdrawn with the liberty to approach before the correct forum under Section 25 of Guardians and Wards Act, 1890 for custody of the minor child.

After hearing both the parties this Court is of the view that for the last 7-8 months there is a settlement now some new dispute has been arose. This Court is not here to deal with minor dispute between husband and wife.

The application moved by Sri Rishi Kumar Pandey, learned counsel for the applicant/petitioner has no merit at all. The parties, either petitioner or opposite party No.4 are free to file petition under Section 25 of Guardians and Wards Act, 1890 for custody of minor child, if they so desire.

With the above observation, the present application as well the petition is **dismissed** as withdrawn with liberty at prayed for.

The file is consigned to record.

Order Date :- 30.11.2023

Arvind