

Court No. - 13

Case :- HABEAS CORPUS WRIT PETITION No. - 329 of 2023

Petitioner :- Priyansh Gond Thru. His Real Father Dharmendra Kumar

Respondent :- State Of U.P. Thru. District Magistrate Bahraich And Others

Counsel for Petitioner :- Zia Ur Rehman

Counsel for Respondent :- G.A.

Hon'ble Karunesh Singh Pawar,J.

Heard learned counsel for the petitioner as well as learned AGA for respondent no. 1 to 3.

Notices to respondent no. 4 to 6 are dispensed with.

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

Issue a writ order or direction in the nature of Habeas Corpus to direct the opposite parties No-2 and 3 to produce the petitioner before this Hon'ble court and opposite parties be directed to set the petitioner free from illegal detention forthwith and custody of the Minor petitioner be given to his Father (deponent)

Learned AGA on the basis of instructions submits that respondent no. 4 is mother of the detainee. As per the instructions received by him, he has further stated that during pregnancy due to physical cruelty committed by the deponent under influence of liquor, she left her matrimonial home and went to her parent's place. Since then, the deponent has not bothered to meet respondent no. 4 or the detainee (his son) and neither he has paid any expenses of his wife and son. She is upbringing the detainee on her own. She is not willing to live with her husband (deponent of the petition).

Instructions provided by the learned AGA is taken on record.

Upon a query being put to the petitioner's counsel, he could not point out as to why this habeas corpus petition has been filed after a delay of six years that too unexplained.

A perusal of the record shows that the petitioner has already filed a suit for restitution of conjugal rights under Section 9 of the Hindu Marriage Act which according to the petitioner is still pending. Apart from this, another suit for divorce filed by respondent no. 4 numbered as Case No. 1163/2019 "Reenu

Kumari Vs. Dharmendra Kumar Gaud" has been dismissed, copy of which is on record.

Perusal of the record further shows that the dispute between the parties is matrimonial in nature; respondent no. 4 is mother of the detenue and the natural guardian; she is residing with her parents out of her own will and accord due to the cruelty committed by the deponent and therefore, it cannot be said to be a case of illegal detention.

Writ of habeas corpus fails and is accordingly dismissed. It is also dismissed on the ground of laches.

Order Date :- 8.11.2023

R.C.