

Court No. - 13

Case :- HABEAS CORPUS WRIT PETITION No. - 348 of 2023

Petitioner :- Km. Anuma Baudh Thru. Her Mother Neetu Singh

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

Counsel for Petitioner :- Sheikh Mohammad Ali, Akhtar Ali

Counsel for Respondent :- G.A.

Hon'ble Karunesh Singh Pawar,J.

1. Heard learned counsel for the petitioner and learned A.G.A for the respondent nos.1 to 3.

2. Notices to respondent nos.4 to 6 are dispensed with in view of the proposed order.

3. Through this petition the petitioner has prayed for issuance of a writ in the nature of Habeas Corpus commanding the opposite parties to produce the corpus of the detainee namely Km. Anuma Baudh and further to give the custody of the detainee to her mother Neetu Singh, who is deponent in this petition.

4. This petition has been filed by the detainee Km. Anuma Baudh, aged about 12 years through her mother Neetu Singh. It is contended on behalf of

the petitioner that the mother of the detainee was married with the respondent no.5 on 11.12.2001. After lapse of 12 years of marriage the couple did not have any issue and after enough consultation and thought process they have adopted the detainee Km. Anuma Baudh. Even after adoption, the mother of the detainee was being subjected to harassment as she could not give birth to any child, therefore, she got herself treated and through medical treatment (I.V.F.) she became pregnant and consequently on 29.8.2017 a baby girl was born. After birth of her daughter and due to the rude behaviour of the detainee, the mother of the detainee came to reside with her parents. Respondent no.5 has neither bothered to come and see her nor any expenses were given by him. Both, the mother of the detainee as well as respondent no.5 are government teachers.

5. Learned counsel for the petitioner submits that against respondent no.5 the deponent had given an application in the form of complaint to respondent no.2, which is on record with this petition. He submits that in the interest of justice and welfare of the detainee, respondent no.5 may

be directed to produce the detenue before this Court.

6. Learned A.G.A. for the respondent nos. 1 to 3 has opposed the petition.

7. Perused the record.

8. Pleadings in the writ petition shows that no dates whatsoever have been given as to since when the detenue has been detained by respondent no.5. Although it is not pleaded in the writ petition, however, from perusal of Annexure-3, which is an application given by Neetu Singh, the mother of the detenue, on 28.8.2023 to the respondent no.2 shows that for the custody of the detenue already a suit under Section 28 of The Guardians and Wards Act, 1890, which is registered as Case No.11/2019 has been filed by her before the Principal Judge, Family court District Sitapur, however, respondent no.5 deliberately not doing *pairvi* in this case. This fact, though, has been mentioned in the application, which is Annexure-3 to the writ petition, however, no pleading whatsoever has been made in the petition. It appears that when the statutory

alternative remedy has been availed by the mother of the detenue by filing a suit under The Guardians and Wards Act, 1890 in the year 2019 and no relief has been granted in that case and the same is pending, as a shortcut, by concealing these facts in the pleading in the writ petition, a writ of Habeas Corpus has been sought in utter disregard.

9. The parallel proceedings for the same prayer cannot be permitted. The petitioner has already availed alternative remedy by filing a suit under Section 28 of The Guardians and Wards Act, 1890, which is pending as per the application contained in Annexure-3 to the petition. No dates have been given as to since when the detenue has been illegally detained by respondent no.5 and when the mother of the detenue has been ousted by respondent no.5, in the writ petition. The pleadings are vague. It is not the case of illegal detention. The fact of filing of suit under The Guardians and Wards Act, 1890 has also been suppressed while filing the present petition.

10. In view of the aforesaid facts, this Court *prima*

facie not satisfied for issuing a writ in the nature of Habeas Corpus. The prayer is declined, however, considering the fact that the petition has been filed by the mother of the detenue and detenue is 12 years old, this court is of the opinion that she deserves to be given the visiting rights.

11. Accordingly, it is provided that in case an application for visiting right has not been filed yet in the pending suit (*supra*), the petitioner is permitted to file an application for visiting right before the Principal Judge, Family Court District Sitapur, within fifteen days from today, which shall be considered and decided expeditiously by the court concerned.

12. With the aforesaid observation the Habeas Corpus petition is disposed of.

Order Date :- 2.11.2023

Madhu