

Court No. - 13

Case :- HABEAS CORPUS WRIT PETITION No. - 352 of 2023

Petitioner :- Arth Sachan Thru. Mother Anshika Sachan

Respondent :- State Of U.P. Thru. Prin. Secy. Home Lko. And 7 Others

Counsel for Petitioner :- Ankit Kumar Rao, Deepak Kumar

Counsel for Respondent :- G.A.

Hon'ble Karunesh Singh Pawar, J.

1. This petition, mainly, seeks issuance of a writ in the nature of habeas corpus directing respondents 5 to 8 to produce the detenu and give his custody to the petitioner mother.

2. I have heard learned counsel for the petitioner and learned counsel for the State as also Mr. Surya Prasad Tiwari, Advocate who has filed vakalatnama on behalf of respondents 5 to 8, which is taken on record.

3. Learned counsel for the petitioner submits that the detenu is minor son of the deponent who is mother and natural guardian of the detenu. The detenu is in illegal custody of respondent No.5 since 2016. It is submitted that the custody of the detenu may be given to the deponent from respondent No.5.

4. Per contra, learned A.G.A. and learned counsel for private respondents have opposed the petition and submitted that respondent No.5 is the father and natural guardian of the detenu. It is not a case of illegal detention.

5. On a query being made, learned counsel for the petitioner could not give any explanation as to why a writ of habeas corpus has been filed after a delay of so many years when the detenu was in custody of respondent No.5, nor there is any pleading in the petition to explain the delay and laches in approaching this Court.

6. On due consideration to the fact that the respondent No.5 is

the father and also natural guardian along with the deponent, there is an unexplained delay and laches of almost seven years in filing this petition, a writ of habeas corpus cannot be issued as a matter of course. It is an exceptional jurisdiction and has to be exercised with caution. The petition suffers from delay and laches and is accordingly dismissed. However, liberty is given to the deponent to take recourse to other remedy available under law, for custody of the detenu.

Order Date :- 16.11.2023

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