

Court No. - 13

Case :- HABEAS CORPUS WRIT PETITION No. - 375 of 2023

Petitioner :- Abhishek Mishra Thru. Father Susheel Kumar Mihsra

Respondent :- State Of U.P. Thru. Secy. Home Deptt. Lucknow And Others

Counsel for Petitioner :- Narvind Kumar Singh

Counsel for Respondent :- G.A.

Hon'ble Karunesh Singh Pawar,J.

Counter filed by the State is taken on record.

Heard learned counsel for the petitioner and learned AGA for the State as well as Shri Abhishek Shukla, learned counsel appearing for respondent no. 7 and 8, who has filed vakalatnama which is taken on record.

Upon a query being put to learned counsel for respondent no. 7 and 8, he has submitted that they have no information regarding the whereabouts of the detainee.

Learned AGA on the basis of the counter affidavit has submitted that in this case FIR bearing No. 312 of 2023, under Section 365/506 IPC, P.S. Murthi, District Bahraich has been lodged on a complaint submitted by Susheel Kumar Mishra (deponent). He further submits that the investigation in the case is going on.

Learned AGA has invited attention of the Court towards para 4 of the counter affidavit wherein on the basis of CDR, it has come that from 14.08.2023 to 04.09.2023, the location of the accused has been found in Lucknow and they have not even visited the place of occurrence. He further submits that in the statement of the accused Vineet Tiwari, it has come that the petition has been filed only to exert pressure so that the deponent may not have to give money back to the accused Vineet Tiwari.

Learned counsel for the petitioner submits that although he gave the application much earlier, however, FIR has been lodged after a delay of one month and sixteen days. He does not dispute the fact that the FIR has been lodged.

Perused the record.

The Supreme Court in the case of **Tejaswini Gaud v. Shekhar Jagdish Prasad Tewari, (2019) 7 SCC 42**, has held as under:-

"19. Habeas corpus proceedings is not to justify or examine the legality of the custody. Habeas corpus proceedings is a medium through which the custody of the child is addressed to the discretion of the Court. Habeas corpus is a prerogative writ which is an extraordinary remedy and the writ is issued where in the circumstances of the particular case, ordinary remedy provided by the law is either not available or is ineffective; otherwise a writ will not be issued. In child custody matters, the power of the High Court in granting the writ is qualified only in cases where the detention of a minor by a person who is not entitled to his legal custody. In view of the pronouncement on the issue in question by the Supreme Court and the High Courts, in our view, in child custody matters, the writ of habeas corpus is maintainable where it is proved that the detention of a minor child by a parent or others was illegal and without any authority of law.

*20. In child custody matters, the ordinary remedy lies only under the Hindu Minority and Guardianship Act or the Guardians and Wards Act as the case may be. In cases arising out of the proceedings under the Guardians and Wards Act, the jurisdiction of the court is determined by whether the minor ordinarily resides within the area on which the court exercises such jurisdiction. There are significant differences between the enquiry under the Guardians and Wards Act and the exercise of powers by a writ court which is summary in nature. What is important is the welfare of the child. In the writ court, rights are determined only on the basis of affidavits. **Where the court is of the view that a detailed enquiry is required**, the court may decline to exercise the extraordinary jurisdiction and direct the parties to approach the civil court. It is only in exceptional cases, the rights of the parties to the custody of the minor will be determined in exercise of extraordinary jurisdiction on a petition for habeas corpus."*

In this case contents of the petition are highly disputed and coupled with the fact that investigation in the case is going on, the matter requires thorough investigation/inquiry to know about the whereabouts of the detainee.

This Court while exercising the writ jurisdiction under habeas cannot adjudicate such disputed question of facts. Accordingly, the writ petition is **dismissed**.

Order Date :- 19.12.2023

R.C.