

Court No. - 10

Case :- CRIMINAL MISC. WRIT PETITION No. - 9251 of 2023

Petitioner :- Mannu Kumar

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

Counsel for Petitioner :- Sameer Singh, Sakshi Singh

Counsel for Respondent :- G.A.

Hon'ble Mrs. Sangeeta Chandra, J.

Hon'ble Narendra Kumar Johari, J.

(1) Heard the learned counsel for the petitioner and the learned A.G.A. who appears for the Opposite party nos.1, 2 & 3.

(2) This petition has been filed by the petitioner for the following main prayer:-

"1) Issue a writ, order or direction in the nature of Mandamus directing the Opposite party no.3 to release the wife and child of the petitioner from Rajkiya Balika Grah and hand over the custody to the petitioner, as the petitioner is the natural guardian of his wife and child.

ii) Issue a writ, order or direction in the nature of Certiorari quashing the order dated 10.11.2023 passed by the Opposite party no.2 and thereafter, directing the opposite party no.2 by exercising the writ of mandamus to decide the application dated 08.11.2023 preferred by the petitioner for release of his wife after considering the consent of his wife and looking after her welfare as well as welfare of the child (Annexure No.1 to the writ petition)."

(3) It has been submitted by the learned counsel for the petitioner that the petitioner was married to the alleged victim at the behest of the parents of the victim herself but the parents wanted some monetary benefit and has falsely implicated the petitioner in a rape case saying that he had eloped with the minor daughter and had raped her. Initially, the F.I.R. was lodged in Case Crime No.520 of 2022, under Sections 363, 376 I.P.C. and during the course of investigation Section 5J (ii)/6 of P.O.C.S.O. Act has been added and Charge-sheet No.A13 of 2023,

dated 06.01.2023 has been filed in Court on 14.03.2023.

(4) It has been submitted that the Date of Birth of the victim is 01.01.2007 and at the time of the incident she was minor and she was produced before the Child Welfare Committee (C.W.C.), Bahraich, and has been sent to Rajkiya Bal Grah (Balika), Moti Nagar, Lucknow, on orders passed by the C.W.C. in this regard.

(5) The petitioner has challenged the order dated 10.11.2023 passed by the C.W.C. before this Court with the argument that the alternative remedy is no bar for this Court to entertain the petition.

(6) This Court is of the opinion that in view of the law settled by the Hon'ble Supreme Court in the case of ***N.P. Ponnuswami Vs. Returning Officer, reported in AIR 1952 SC 64***, and has held that when rights are created under specific Act and statutory remedy is provided under the Act, the litigant must first approach the statutory authority in the remedy provided for the same in the Act itself. It is a question of statutory remedy not alternative remedy where this Court has discretion to entertain a petition despite availability of alternative remedy. Hence, this Court cannot interfere in the order impugned.

(7) The writ petition stands ***dismissed***.

Order Date :- 6.12.2023

N.PAL