

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C)(HC) No.03 of 2023

Indrani Bhowmik

..... Petitioner(s);

Versus

The State of Tripura & others

.....Respondent(s).

For Petitioner(s) : Mr. P. Roy Barman, Sr. Advocate,
Mr. Kawsik Nath, Advocate,
Ms. S. Deb Barman, Advocate.

For Respondent(s) : Mr. Mangal Debbarma, Addl. G.A.

**HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR. JUSTICE S.D. PURKAYASTHA**

Order

09/01/2024

Heard Mr. P. Roy Barman, learned senior counsel for the petitioner. Mr. Mangal Debbarma, learned Additional Government Advocate, appears for the respondents-State.

2. Petitioner, the mother of a 10 year old girl namely Adrija Ghosh, has prayed for issuance of a writ of habeas corpus under Article 226 of the Constitution of India for production of her girl child from the custody of respondents No. 7 to 9 since the husband died on 07.11.2023 during pendency of a divorce suit being T.S. (Div) No.46/2023 instituted by the petitioner-wife before the learned Family Court, Agartala, West Tripura. A suit for restitution of conjugal rights being T.S. (R.C.R) No.04/2022 was filed by the husband. In a proceeding under Section 125 of the Cr.P.C, the petitioner was granted interim monthly maintenance @ Rs.3,500/- per month by the learned Additional Judge, Family Court, Agartala, West Tripura by order dated 18.04.2022. Petitioner preferred a petition under Section 26 of the Hindu Marriage Act, 1955 read with Section 151 of the CPC for granting visitation rights to her minor child in the pending T.S. (Div) No.46/2023 during the

lifetime of her husband which was allowed by order dated 26.09.2023 by granting her visitation rights to access the minor daughter thrice in a week in her school premises namely Gurukul English Medium School after end of her class for two hours and whereafter the minor child would be returned to the house of the respondent i.e. the husband. The Principal/Headmaster of Gurukul English Medium School, Ranirbazar was asked to permit and extend cooperation to the petitioner in visiting her minor daughter as per the directions contained therein and the respondent was also cautioned not to create any obstruction.

3. Petitioner contends that after the unfortunate death of her husband during pendency of the matrimonial dispute, the custody of the minor daughter has passed on to the respondents No.7 & 8 who are the paternal grandfather and grandmother respectively of the minor daughter and respondent No.9, i.e. the son of respondents No.7 & 8 and brother-in-law of the petitioner. Petitioner also contends that she has not been allowed to meet the child who is undergoing trauma after the death of her father at such a minor age. The detention of the daughter in the custody of respondents No.7 to 9 is illegal and therefore, she has approached this Court for issuance of the writ of habeas corpus for her production and handing over her custody to the petitioner.

4. Mr. Barman, learned senior counsel for the petitioner, submits that because of the death of the husband, all pending proceedings have abated.

5. We have considered the submission of learned senior counsel for the petitioner and gone through the records and the order passed granting visitation right to the petitioner in the pending divorce suit.

6. It is not in dispute by the petitioner that her minor daughter was staying in the same household with her father where her grandparents i.e. respondents No.7 & 8 resided apart from respondent No.9, the uncle of the minor girl. Therefore the custody of the girl constructively not only lied with the father, but also with her grandparents. A writ of habeas corpus at this stage, in our opinion, would not lie as the custody of a minor girl child with her paternal grandparents cannot be said to be a case of illegal detention. Petitioner also had asked for visitation rights only during the pendency of the divorce suit instituted by her which got abated. As such, the right course for the petitioner would be to seek the custody of the minor daughter in an appropriately constituted proceeding under the relevant Act i.e. the Hindu Minority & Guardianship Act, 1956 or the Guardians & Wards Act, 1890 as the case may be.

7. However, since the petitioner has been granted visitation rights during pendency of the divorce suit and she, being the mother of the minor girl child aged ten years, petitioner ought not to be denied access to the girl child, though the divorce case may have abated because of death of her husband and till the time she approaches the competent Family Court for adjudication of her rights to seek custody of the minor daughter. It however appears from the averments made in the instant petition that perhaps after the death of the father, she is facing some difficulty/obstruction in exercising her visitation rights.

8. In such circumstances, we are of the opinion that proper arrangement for exercise of her visitation rights would be made in terms of the order passed by the learned Additional Judge, Family Court, Agartala, West Tripura by ensuring the visitation rights through the help of the District Legal Services Authority, West Tripura, Agartala. Such visitation rights may be exercised at the school premises in the manner prescribed by the learned

Additional Judge, Family Court, Agartala, West Tripura or in case the session comes to a close in the meantime and no classes are held, such visitation rights would also be exercised within the premises of the District Legal Services Authority, West Tripura, Agartala, three times in a week so that the girl child, who has undergone trauma after the death of her father, may also have the care and affection of the mother till the adjudication proceedings for her custody are decided or this interim arrangement is modified in such proceedings by the learned Family Court.

9. Let it be made clear that the above arrangement is being made as a temporary measure taking into account the death of the father of the girl and for effective discharge of visitation rights already granted to the petitioner's mother so that the girl does have emotional support and care of her mother also during this period.

10. Since the issue of custody of the minor daughter of the petitioner requires prompt consideration, in the event such a proceeding is instituted by the petitioner-wife before the competent Family Court, the learned Family Court would endeavour to decide it in an expeditious manner in accordance with law, of course after due notice and hearing to the parties.

11. Writ petition is disposed of. Pending application(s), if any, also stands disposed of.

(S.D. PURKAYASTHA), J

(APARESH KUMAR SINGH), CJ