

GAHC010237392023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : I.A.(Crl.)/1012/2023

MEGHNA KHEMKA,
D/O MAHABIR PRASAD BUKALSARIA
R/O NEW MARKET, DIBRUGARH, ASSAM
PIN- NO. 786001

VERSUS

THE STATE OF ASSAM AND 11 ORS
THROUGH THE CHIEF SECRETARY, GOVT. OF ASSAM, DISPUR,
GUWAHATI-781006.

2:THE SECRETARY TO THE GOVT. OF ASSAM

DEPARTMENT OF HOME AFFAIRS
DISPUR
GUWAHATI-781006

3:THE DISTRICT OF MAGISTRATE OF DIBRUGARH

DIST. DIBRUGARH
ASSAM

4:THE SUPERINTENDENT OF POLICE

DIBRUGARH
DIST. DIBRUGARH
ASSAM

5:THE OFFICER IN CHARGE

DIBRUGARH POLICE STATION

DIST. DIBRUGARH
ASSAM

6:CHILD WELFARE COMMITTEE

DIBRUGARH
OFFICER OF THE DISTRICT CHILD PROTECTION OFFICER
J.P. NAGAR

DR LILA GOGOI PATH

DIST. DIBRUGARH
ASSAM

REP. BY ITS CHAIRPERSON.

7:ARVIND KUMAR KHEMKA
S/O LATE RAJKUMAR KHEMKA
R/O 64
NALINI SETH ROAD
BARA BAZAR

KOLKATTA
WEST BENGAL
PIN-700007.
ALSO RESIDENT OF ROOM 230
25A
PARK STREET
KOLKATTA
WEST BENGAL
PIN-700016. ALSO RESIDENT OF GEETANJALI CREATIONS INDUSTRIAL
ESTATE
CHANDPUR
VARANASI
UTTAR PRADESH
PIN-221001.
ALSO RESIDENT OF GAYATRI TOWERS
PLOT NO. 256A
MLAS COLONY LOTUSPOND ROAD
ROAD NO. 12

BANJARA HILLS
HYDRABAD
TELENGANA
PIN-500034

MOBILE AND WHATSAPP NO. 9831766466.

8:GEETANJALI TIWARI
D/O BHRIGU NATH TIWARI
RESIDING AT GAYATRI TOWERS

PLOT NO. 265A
H. NO. 8-2-293/82/2/L/265A
MLAS COLONY
LOTUSPOND ROAD
ROAD NO. 12
BANJARA HILLS

HYDRABAD
TELENGANA PIN-500034.

9:SI SANGEETA KOCH
TRAFFIC BRANCH
DIBRUGARH POLICE STATION

DIBRUGARH
ASSAM.

10:SI SWAPNA BARUAH
DIBRUGARH POLICE STATION

DIBRUGARH
ASSAM

11:DR GITIMALLICA GOGOI
CHAIRPERSON
CHILD WELFARE COMMITTEE
DIBRUGARH
OFFICER OF THE DISTRICT CHILD PROTECTION OFFICER
J.P. NAGAR
DR. LILA GOGOI PATH
DIST. DIBRUGARH.

12:MS. RUPA RANI KOUR
MEMBER
CHILD WELFARE COMMITTEE

DIBRUGARH
OFFICER
OF THE DISTRICT CHILD PROTECTION OFFICER
J.P. NAGAR

DR. LILA GOGOI PATH

DIST. DIBRUGARH

Advocate for the Petitioner : MR. R DUBEY

Advocate for the Respondent : GA, ASSAM

Linked Case : W.P.(CrI.)/27/2023

MEGHNA KHEMKA
D/O MAHABIR PRASAD BUKALSARIA
R/O NEW MARKET
DIBRUGARH
ASSAM
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J.P. NAGAR

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DIST. DIBRUGARH.

Advocate for : MR. R DUBEY

Advocate for : GA

ASSAM appearing for THE STATE OF ASSAM AND 6 ORS.

BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

08.02.2024

(S.K. Medhi, J.)

Heard Shri R. Dubey, learned counsel for the petitioner / applicant. Also heard Shri D. Nath, learned Senior Government Advocate, Assam. Shri AJ Kashyap, learned counsel is present for the respondent no. 7.

2. The writ petition has been filed under Article 226 of the Constitution of India is for issuance of a Writ of *Habeas Corpus qua* the minor daughter of the parties (the petitioner and the respondent no. 7). For the sake of clarity, the prayer made in the writ petition is extracted hereinbelow-

“a. A writ in the nature of Habeas Corpus commanding upon the respondents particularly respondent nos. 2 to 6 to forthwith trace out, rescue and produce the body of the 11 years minor daughter of the petitioner;

b. A writ in the nature of Mandamus calling upon the respondent no. 6 to produce all records pertaining to this case before this Hon’ble Court so that the conscionable justice may be done upon perusal of the same;

c. Rule NISI in terms of the prayer above;

d. Pass such further order or order and / or direction or directions as your Lordships may deem fit and proper.”

3. This Court, in the aforesaid writ petition had passed an order dated 11.09.2023 directing production of the child by the respondent no. 7. Pursuant

to the said order, on 19.09.2023, the child was produced in an in-camera proceeding. The personal appearances of the parties were also dispensed with.

4. By the I.A., the petitioner / applicant has prayed for an appropriate order directing the respondent no. 7 to facilitate regular and uninterrupted physical and telephonic access to the minor child. The aforesaid I.A. has been filed in connection with WP(Crl.)/ 27/2023 instituted by the petitioner / applicant. Shri Dubey, learned counsel for the petitioner / applicant however submits that the present application would be pressed only for having telephonic access.

5. We are of the opinion that since very purpose of filing an application under Article 226 of the Constitution of India for issuance of a writ in the nature of *Habeas Corpus* has been served by production of the child, that too by her father who is the respondent no. 7, there is no scope to further entertain this writ petition.

6. However, on considering the prayer made in the I.A., this Court is of the opinion that telephonic access to the applicant – mother is required, taking into consideration the welfare of the minor child which is of paramount importance. In this regard, specific instructions have been sought for from the learned counsel and as per the same, the applicant – mother would be allowed to have telephonic access to the minor daughter twice a week namely, Tuesday and Friday between 06:00 PM to 07:00 PM. However, it is made clear that there may be slight modification in the dates or timings subject to the convenience of the parties.

7. On a specific query from this Court, Shri Dubey, learned counsel for the petitioner / applicant has submitted that the petitioner / applicant is aware of the telephone number of the respondent no. 7. However, in case there is any

change in such telephone number, the same has to be intimated to the petitioner / applicant so that the telephonic access which is being allowed to the petitioner / applicant can be done without any hindrance.

8. We further make it clear that the present order pertains to only telephonic access and no order has been passed on the prayer for physical access.

9. The petitioner / applicant would however be at liberty to approach the appropriate forum with an appropriate petition in case of any grievance.

10. The statements made under Section 164 of the Code of Criminal Procedure, 1973 of the child in question which were placed on record and is in custody of the Registry be returned to Shri D. Nath, learned Senior Government Advocate, Assam.

11. Both the writ petition and the I.A. stand closed.

JUDGE

JUDGE

Comparing Assistant