

Court No. - 16

Case :- HABEAS CORPUS WRIT PETITION No. - 91 of 2024

Petitioner :- Master Advik Mishra Thru. His Mother Smt. Pragati Mishra

Respondent :- State Of U.P. Thru. Secy. Home Deptt. Lko. And 3 Others

Counsel for Petitioner :- Jitendra Bahadur Singh

Counsel for Respondent :- G.A.

Hon'ble Shamim Ahmed,J.

Counter affidavit alongwith Vakalatnama filed today in the Court by Shri Arjun Singh Kalhans, Advocate on behalf of respondent No.4 is taken on record.

Heard Shri Jitendra Bahadur Singh, learned counsel for the petitioner, Shri Arjun Singh Kalhans, learned Counsel for the respondent N4.4 and Shri Ashok Kumar Singh, learned A.G.A.- I for the State and perused the record.

This Habeas Corpus Writ Petition has been filed seeking following main relief:

"(i) Issue a writ, order or direction in the nature of writ of Habeas Corpus for the release of the detainee/Master Advik Mishra from illegal detention of opposite party No.4.

(ii). Issue a writ order or direction in the nature of Mandamus directing the opposite parties for procuring the attendance of the detainee before this Hon'ble Court in order to record his statement before this Hon'ble Court.

(iii). Issue a writ, order or direction in the nature of Mandamus directing the opposite parties for giving visitation rights to the petitioner for meeting the detainee and providing the basic necessities of live to him during the pendency of the above noted petition.

(iv.)...

(v)..."

Learned counsel for the petitioner submits that the marriage of the respondent no.4 and Sandhya Pandey (the petitioner) was solemnized on 03.12.2011 and they were living happily and from their wedlock a child, namely-Advik Mishra i.e. the

detenue was born. Thereafter, some quarrel took place between the parties, the respondent No.4 ousted the petitioner and the detenue from his house on 26.12.2023 and on 24.01.2024, the respondent No.4 entered the house of the petitioner and forcibly taken away the detenue with him to his house at Bahraich and has illegally detained the detenue.

On the other hand, learned Counsel for respondent No.4 has opposed the contentions raised by learned Counsel for the petitioner and submits that the petitioner, who is the mother of the detenue has already filed an application under Section 13 of the Hindu Marriage Act before the concerned court claiming the custody of the detenue but she herself is not appearing in the aforesaid case, thus, he submits that the relief sought by the petitioner cannot be granted at this stage as she is unnecessarily delaying the conclusion of the application filed under Section 13 of the Hindu Marriage Act.

Learned A.G.A.-I for the State submits that the relief sought in this Habeas Corpus Writ Petition could not be granted by this Court as the mother of the minor child is unable to point out any illegality or any infirmity regarding the custody with the Father. Thus, the prayer made in this petition could not be granted by this Court and the petitioner may be directed to pursue the application already filed by her under Section 13 of the Hindu Marriage Act.

In view of the submissions made by learned counsel for the parties, this Court is of the view that if the mother i.e. the petitioner has already approached a competent court under Section 13 of the Hindu Marriage Act and is not appearing in the case, then this Court cannot interfere in this case, the petitioner should make efforts to get the application under Section 13 of the Hindu Marriage Act decided expeditiously by appearing in the said case.

Learned counsel for the petitioner confined his prayer that in the interest of justice, the mother may be provided visitation right to meet the minor child.

Accordingly, the mother of the minor child, namely, Smt. Pragati Mishra is permitted to meet the child on third Sunday of every month starting from July, 2024 at the residence of respondent No.4 from 10:30 A.M. till 1:30 P.M. with the condition of giving a day's prior information to the respondent No.4- Sri Kartikeya Mishra (father) regarding her arrival. It is further provided that mother may have conversation with her child by mobile phone, whats app call or video call during 7:30 P.M. to 8:00 P.M. everyday. It is made clear that both the parties

and their family members will not create any nuisance at the time of meeting.

If the mother of the child wants to give any gifts on account of love and affection or do anything for well being of child then father/ respondent no. 4 or any of his family members will not make any objection. However, mother shall keep in mind that such thing will be given, which are of use and safe for the child's health.

With the above observations/directions, this habeas corpus writ petition is finally **disposed of**.

Order Date :- 10.7.2024

Piyush/-