

Court No. - 16

Case :- HABEAS CORPUS WRIT PETITION No. - 107 of 2024

Petitioner :- New Born Baby Of Gurmeet Kaur Thru. Natural Guardian Mother. Gurmeet Kaur

Respondent :- State Of U.P. Thru. Prin. Secy., Home, Lucknow And 7 Others

Counsel for Petitioner :- Dilip Kumar Pandey

Counsel for Respondent :- G.A., Prashant Kumar Chaurasia, Purshottam Chaurasia

Hon'ble Mohd. Faiz Alam Khan, J.

1. Heard learned counsel for the petitioner, learned counsel appearing for the respondent no.6 as well as learned A.G.A. for the respondent nos.1 to 5 and perused the record.

2. This habeas corpus petition has been filed with the following prayers:

“[I] Issue a writ, order or direction in the nature of habeas corpus to set free the detenu New born baby of Gurmeet Kaur, Aged about 2 month, Daughter of Navpreet Singh, Resident of Balipur, Behind Charu Nursing Home Hospital, Police Station Kotwarli Nagar, District Pratapgarh & hand over the custody of detenu to her mother Gurmeet Kaur Daughter of Manjeet Singh, Wife of Navpreet Singh, Resident of Ram Nagar, Police Station Manak Nagar, Commissionerate Lucknow from the custody of the opposite party no.6.

[II] Issue a writ, order or direction in the nature of Mandamus commanding the opposite party no 1 to 5 to insure the presence of the detenu before this court from the unlawful custody of the detenu from Navpreet Singh, Resident of Balipur, Behind Charu Nursing Home Hospital, Police Station Kotwarli Nagar, District Pratapgarh opposite party no.6.

[III] Issue such other order or direction, which this Hon'ble Court may deem, fit and proper under the facts and circumstances of the case, in favour of the petitioner.

[IV] Allow the writ petition with cost.”

3. Learned counsel for the petitioner submits that the detenue is the daughter of the petitioner and is aged about 2 months and 10 days and was born on 10.03.2024 at Lok Bandhu Shri Raj Narayan Combined Hospital, Lucknow and the opposite party no.6 – Navpreet Singh (her husband) had arrived at her house on 13.04.2024 at about 10:00pm. and forcibly took away the detenue/newly born baby from her maternal home – Ram Nagar, Alambagh, Lucknow.

4. It is also submitted that the petitioner on 15.04.2024 visited her matrimonial house at Pratapgarh to bring her newly born baby, but the respondent no.6 did not allow her to even touch her baby and ousted her from the house and also intimidated her.

5. It is also submitted that newly born baby is not in good condition and is constantly crying and weeping and she is continuously hungry and if at this stage, the newly born baby is kept away from the mother, she may not be properly feeded, her life would be in danger, if she is left in the custody of the respondent no.6.

6. It is further submitted that the petitioner had also moved a complaint to the Child Welfare Committee, Pratapgarh to seek custody of the baby, but the Child Welfare Committee, Pratapgarh has refused to entertain her complaint on the ground of lack of jurisdiction. It is further submitted that welfare of the newly born child is in the company of mother – petitioner, as she is required to be breast feeded and also her other necessities could only be undertaken by the mother. Thus having regard to the welfare and life of the newly born baby, her custody be provided to the petitioner. The petitioner along with petition has enclosed a copy of the application dated 27.04.2024 given to the Station House Officer, Police Station Kotwali Nagar, Pratapgarh as Annexure No.1, discharge certificate of Lok Bandhu Shri Raj Narayan Combined Hospital, Lucknow of date 10.03.2024 as

Annexure No.2 and the order of the Child Welfare Committee, Pratapgarh of date 18.04.2024 as Annexure No.3.

7. Learned counsel for the petitioner has also relied on the law laid down by Hon'ble Supreme Court as well as by this Court in ***Kannu Sanyal Vs. District Magistrate, Darjiling and others; AIR 1973 SC 2684, Capt. Dushyant Somal Vs. Smt. Shushma Somal; (1981) 2 SCC 277, Rajesh Gupta Vs. Ram Gopal Agrawal and others; (2005) 5 SCC 359, Atul Sharma vs. State of U.P. and 3 others; Special Appeal No.476 of 2013 and Master Devansh Agarwal (Detenue) and Anr. vs. State of U.P. and Ors; Habeaus Corpus No.9307 of 2020*** in order to show that at the tender age of only two months, it would be the company of mother, which would be required more for the welfare of the child.

8. Learned A.G.A., however, submits that it is for this Court to take just decision pertaining to the dispute existing between the parties.

9. Learned counsel for the respondent no.6 vehemently opposes the submissions made by learned counsel for the petitioner and referring to the counter affidavit dated 16.05.2024 submits that the petitioner was married with the respondent no.6 on 05.02.2023 at Ludhiana and on 10.03.2024, she gave birth to a child namely 'Gurisha' at Lok Bandhu Shri Raj Narayan Combined Hospital, Lucknow and after birth of the baby child, the petitioner was beaten by her mother namely Priti Pal Kaur, which could be fortified from the CCTV footage of the hospital.

10. It is further submitted that the petitioner is not ready to reside with the respondent no.6 and mother of the petitioner has also tried to convince the petitioner to live with her husband (respondent no.6) and to forego her behavior and in this regard mother of the petitioner namely Priti Pal Kaur had also slapped the petitioner in the house of the respondent no.6 and the said incident has also been captured in a mobile phone.

11. It is also submitted that the petitioner is having extra marital affair with some other person, from before and during marriage with the respondent no.6 and in this regard some call recordings are also available with the respondent no.6. It is further submitted that newly born baby namely Gurisha is having danger of her life from the petitioner as the petitioner wants to kill her, as she had earlier tried on number of occasions to abort the baby during the course of her pregnancy and in this regard on 26.11.2023, the petitioner had sent a message through her mobile phone no.9555579239 texting that baby would remain with the respondent no.6. The screen shot of the said message is placed on record as Annexure No.CA-1 to the counter affidavit filed by the respondent no.6.

12. It is further submitted that it was the petitioner herself, who had handed over the newly born baby to the respondent no.6 on 13.04.2024 on the day of Baishakhi festival and therefore, the respondent no.6 can very well take care of the child with his mother. It is also submitted that there are various voice call recordings, which would sufficiently reveal that future and welfare of the minor child is in safe hands of the respondent no.6 (father) and the Child Specialist namely Dr. Atul Kumar Sivastava is being regularly consulted for the newly born child, in this regard documents CA-2, 3 and 4 to the counter affidavit have been relied and it is submitted that the child is living in good health with the respondent no.6 and her adequate care is being undertaken.

13. It is also submitted that the respondent no.6 is a respected citizen of the locality and he is having a business of selling clothes in the name of 'Chandralok Saree Wala' situated at Punjabi Market, Pratapgarh and is an income tax payee, who may take due care of the newly born child while the petitioner – Gurmeet Kaur is a non working lady and her mother namely Priti Pal Kaur, is working in some houses as maid servant and therefore, they are not in a position to take good care of the newly born child.

14. It is also highlighted that Priti Pal Kaur is also having matrimonial dispute with her second husband, who is step father of the petitioner and they are not having good relationship, therefore, the environment of the house of the petitioner would not be favourable to the newly born child. It is further submitted that the respondent no.6 has also instituted a petition for restitution of conjugal rights before the Principal Judge, Family Court, Pratapgarh, which is pending and as the petitioner has refused to live with the respondent no.6 without any justified reason, she is not entitled for the custody of the child.

15. Learned counsel for the respondent no.6 has also highlighted a report submitted by the Bal Kalyan Samiti, Pratapgarh of date 18.04.2024, wherein it was found that the newly born child is being taken care of by the respondent no.6 and the said report has been placed as Annexure No.8 to the counter affidavit and it is vehemently submitted that the disturbance of the custody of the child at this stage would be detrimental to her welfare as well as to her health.

16. Learned counsel for the petitioner while relying on the short rejoinder affidavit submits that the respondent no.6 and his mother were committing cruelty with petitioner in lieu of demand of dowry and in this regard an F.I.R. bearing Case Crime No.31 of 2024 has been lodged at Police Station Manak Nagar, Lucknow West under Sections 498-A, 323, 504, 506, 354, 427 I.P.C. and Section 3/4 of the Dowry Prohibition Act against the respondent no.6 and his mother and one Jagjeet Singh @ Monu and it is reiterated that the future of the child is only safe with the mother (petitioner) at this tender age and without considering the precedence the right of any person to the custody of the child, who is the mother of the child, it should be provided her custody.

17. Perusal of the pleadings filed by the parties would reveal that there are certain facts, which are admitted to the parties. It is admitted that the petitioner – Gurmeet Kaur and respondent no.6 Navpreet Singh are the

parents of the newly born baby, who was born on 10.03.2024 at Lok Bandhu Shri Raj Narayan Combined Hospital, Lucknow, thus age of the newly born child, which has been named in the counter affidavit and short counter affidavit filed by the respondent no.6 as 'Gurisha' is at present about 2 months and 15 days. Various allegations and counter allegations have been levelled with regard to the manner in which the custody of the newly born baby is with respondent no.6. As per allegations levelled by the petitioner, the respondent no.6 had come to her house and has forcibly taken away the newly born child on 13.04.2024 while the respondent no.6 has claimed that during the course of pregnancy also the petitioner attempted to get the pregnancy terminated and has given a message to him that the baby would remain with him and had herself handed over the newly born female baby to the respondent no.6 on 13.04.2024 on the occasion of Baishakhi festival. However, this has been denied by the petitioner.

18. Certain documents have also been relied by respondent no.6 filed with his counter affidavit, which reflects that certain text messages have been sent from the mobile phone of some Komal with regard to the fact that baby after taking birth would remain with the respondent no.6. Certain photographs of the baby have also been enclosed with the counter affidavit showing the baby in good condition. There is also an order of the Child Welfare Committee, Pratapgarh dated 18.04.2024, wherein report of the Project Coordinator, Child Helpline, Pratapgarh has also been considered and by passing the order dated 18.04.2024, the Child Welfare Committee, Pratapgarh has denied the custody of the child to the petitioner on the ground that the newly born child is being taken good care by the respondent no.6 and his mother and also that the Child Welfare Committee, Pratapgarh is not having jurisdiction to change the custody, which could only be decided by a competent court.

19. Now having regard to above facts, a duty has been cast on this Court to adjudicate on the issue as to whether the welfare of the newly born child, who is aged about 2 months and 15 days as on today may be permitted to be remained with respondent no.6 (father) or the same is required to be given to the mother.

20. Hon'ble Supreme Court while considering the nature and scope of writ of habeas corpus of such nature in ***Kannu Sanyal Vs. District Magistrate, Darjiling and others***; AIR 1973 SC 2684 observed as under:

"It will be seen from this brief history of the writ of habeas corpus that it is essentially a procedural writ. It deals with the machinery of justice, not the substantive law. The object of the writ is to secure release of a person who is illegally restrained of his liberty. The writ is, no doubt, a command addressed to a person who is alleged to have another person unlawfully in his custody requiring him to bring the body of such person before the Court, but the production of the body of the person detained is directed in order that the circumstances of his detention may be inquired, or to put it differently, 'in order that appropriate judgment be rendered on judicial inquiry into the alleged unlawful restraint'." "The writ is primarily designed to give a person restrained of his liberty a speedy and effective remedy for having the legality of his detention enquired into and determined and if the detention is found to be unlawful, having himself discharged and freed from such restraint. The most characteristic element of the writ is its peremptoriness and, as pointed out by Lord Halsbury, L.C. In Cox v. Hakes, 'the essential and leading theory of the whole procedure is the immediate determination of the right to the applicant's freedom' and his release, if the detention is found to be unlawful. That is the primary purpose of the writ; that is its substance and end."

21. The above observation of Hon'ble Supreme Court reveals that no doubt the basic purpose of entertaining a petition of writ of habeas corpus is to enquire the circumstance of detention and to provide a person speedy and effective remedy, liberty of whom has been restrained and if on an

inquiry the detention of such a person is found to be unlawful, the detenue is to be released.

22. The law relating to habeas corpus concerning transfer of custody of children has been discussed by Hon'ble Supreme Court in the case of ***Capt. Dushyant Somal Vs. Smt. Shushma Somal***; (1981) 2 SCC 277 and it is held that it is beyond question that a writ of habeas corpus is not to be issued as a matter of course particularly when the writ is sought against a parent for custody of a child. However, the Court goes on to observe further that all these does not mean that a writ of habeas corpus cannot or will not be issued against a parent who has snatched away a child from lawful custody of other parent. The Court in para 3 of the judgment has observed as under:

"There can be no question that a writ of habeas corpus is not to be issued as a matter of course, particularly when the writ is sought against a parent for the custody of a child. Clear grounds must be made out. Nor is a person to be punished for contempt of court for disobeying an order of court except when the disobedience is established beyond reasonable doubt, the standard of proof being similar, even if not the same, as in a criminal proceeding. Where the person alleged to be in contempt is able to place before the court sufficient material to conclude that it is impossible to obey the order, the court will not be justified in punishing the alleged contemner. But all this does not mean that a writ of habeas corpus cannot or will not be issued against a parent who with impunity snatches away a child from the lawful custody of the other parent, to whom a court has given such custody. Nor does it mean that despite the contumacious conduct of such a parent in not producing the child even after a direction to do so has been given to him, he can still plead justification for the disobedience of the order by merely persisting that he has not taken away the child and contending that it is therefore, impossible to obey the order. In the case before us, the evidence of the mother and the grandmother of the child was not subjected to any cross-examination; the appellant-petitioner did not choose to go into the witness-box; he did not choose to examine any witness on

his behalf. The evidence of the grandmother, corroborated by the evidence of the mother, stood unchallenged that the appellant-petitioner snatched away Sandeep when he was waiting for a bus in the company of his grandmother. The High Court was quite right in coming to the conclusion that the appellant-petitioner had taken away the child unlawfully from the custody of the child's mother. The writ of habeas corpus was, therefore, rightly issued. In the circumstances, on the finding, impossibility of obeying the order was not an excuse which could be properly put forward."

23. In another case of ***Rajesh Gupta Vs. Ram Gopal Agrawal and others;*** (2005) 5 SCC 359, Hon'ble Supreme Court held that in a petition seeking writ of habeas corpus for custody of minor child the principal consideration for the Court is to ascertain whether the custody of the child can be said to be lawful or illegal and whether the welfare of the child requires that the said custody should be changed and the child should be left in the care and custody of someone else. The said judgment reiterated the principles laid down by Hon'ble Supreme Court in the case of ***Saiyad Salimuddin Vs. Dr. Rukhsana;*** (2001) 5 SCC 247, wherein it is held that in case of dispute pertaining to the custody of the child, the paramount consideration is welfare of the child and not the legal right of either of the parties. The para 7 of the above reported judgment is reproduced as under:

"It is well settled that in an application seeking a writ of habeas corpus for custody of a minor child, the principal consideration for the court is to ascertain whether the custody of the child can be said to be lawful or illegal and whether the welfare of the child requires that the present custody should be changed and the child should be left in the care and custody of someone else. It is equally well settled that in case of dispute between the mother and father regarding the custody of their child, the paramount consideration is welfare of the child and not the legal right of either of the parties. [See Veena Kapoor (Dr.) v. Varinder Kumar Kapoor and Syed Saleemuddin v. Dr. Rukhsana] It is, therefore, to be examined what is in the best interest of the child Rose Mala and whether her welfare would

be better looked after if she is given in the custody of the appellant, who is her father."

24. Keeping in view, the above legal principles enunciated by Hon'ble Supreme Court, it reveals that primary consideration pertaining to deciding the custody of a child is to ascertain at first as to whether, the existing custody of the child can be termed as unlawful or illegal and once it is ascertained that the custody is illegal or unlawful, it is further to be visualized as to whether the welfare of the children or child requires that the present custody should be changed? There would not be two views pertaining to the fact that in any proceeding pertaining to the custody of a child, the paramount consideration is the welfare of the child.

25. Hon'ble Supreme Court in ***Syed Saleemuddin vs. Dr. Rukhsana and Others***; (2001) 5 SCC 247 has held as under:

"11. From the principles laid down in the aforementioned cases it is clear that in an application seeking a writ of Habeas Corpus for custody of minor children the principal consideration for the Court is to ascertain whether the custody of the children can be said to be unlawful or illegal and whether the welfare of the children requires that present custody should be changed and the children should be left in care and custody of somebody else. The principle is well settled that in a matter of custody of a child the welfare of the child is of paramount consideration of the Court. Unfortunately, the Judgment of the High Court does not show that the Court has paid any attention to these important and relevant questions. The High Court has not considered whether the custody of the children with their father can, in the facts and circumstances, be said to be unlawful. The Court has also not adverted to the question whether for the welfare of the children they should be taken out of the custody of their father and left in the care of their mother. However, it is not necessary for us to consider this question further in view of the fair concession made by Shri M.N. Rao that the appellant has no objection if the children remain in the custody of the mother with the right of the father to visit them as noted in the judgment of the High Court, till the

Family Court disposes of the petition filed by the appellant for custody of his children."

26. Hon'ble Supreme Court in ***Nithya Anand Raghavan vs. State (NCT of Delhi) and Another***, (2017) 8 SCC 454 has held as under:

"44. The present appeal emanates from a petition seeking a writ of habeas corpus for the production and custody of a minor child. This Court in Kanu Sanyal v. District Magistrate, Darjeeling [Kanu Sanyal v. District Magistrate, Darjeeling, (1973) 2 SCC 674 : 1973 SCC (Cri) 980] , has held that habeas corpus was essentially a procedural writ dealing with machinery of justice. The object underlying the writ was to secure the release of a person who is illegally deprived of his liberty. The writ of habeas corpus is a command addressed to the person who is alleged to have another in unlawful custody, requiring him to produce the body of such person before the court. On production of the person before the court, the circumstances in which the custody of the person concerned has been detained can be inquired into by the court and upon due inquiry into the alleged unlawful restraint pass appropriate direction as may be deemed just and proper. The High Court in such proceedings conducts an inquiry for immediate determination of the right of the person's freedom and his release when the detention is found to be unlawful.

45. In a petition for issuance of a writ of habeas corpus in relation to the custody of a minor child, this Court in Sayed Saleemuddin v. Rukhsana [Sayed Saleemuddin v. Rukhsana, (2001) 5 SCC 247 : 2001 SCC (Cri) 841] , has held that the principal duty of the court is to ascertain whether the custody of child is unlawful or illegal and whether the welfare of the child requires that his present custody should be changed and the child be handed over to the care and custody of any other person. While doing so, the paramount consideration must be about the welfare of the child. In Elizabeth [Elizabeth Dinshaw v. Arvand M. Dinshaw, (1987) 1 SCC 42 : 1987 SCC (Cri) 13] , it is held that in such cases the matter must be decided not by reference to the legal rights of the parties but on the sole and predominant criterion of what would best serve the interests and welfare of the minor. The role of the High Court in

examining the cases of custody of a minor is on the touchstone of principle of parens patriae jurisdiction, as the minor is within the jurisdiction of the Court [see Paul Mohinder Gahun v. State (NCT of Delhi) [Paul Mohinder Gahun v. State (NCT of Delhi), 2004 SCC OnLine Del 699 : (2004) 113 DLT 823] relied upon by the appellant]. It is not necessary to multiply the authorities on this proposition.

46. The High Court while dealing with the petition for issuance of a writ of habeas corpus concerning a minor child, in a given case, may direct return of the child or decline to change the custody of the child keeping in mind all the attending facts and circumstances including the settled legal position referred to above. Once again, we may hasten to add that the decision of the court, in each case, must depend on the totality of the facts and circumstances of the case brought before it whilst considering the welfare of the child which is of paramount consideration. The order of the foreign court must yield to the welfare of the child. Further, the remedy of writ of habeas corpus cannot be used for mere enforcement of the directions given by the foreign court against a person within its jurisdiction and convert that jurisdiction into that of an executing court. Indubitably, the writ petitioner can take recourse to such other remedy as may be permissible in law for enforcement of the order passed by the foreign court or to resort to any other proceedings as may be permissible in law before the Indian Court for the custody of the child, if so advised.

47. In a habeas corpus petition as aforesaid, the High Court must examine at the threshold whether the minor is in lawful or unlawful custody of another person (private respondent named in the writ petition). For considering that issue, in a case such as the present one, it is enough to note that the private respondent was none other than the natural guardian of the minor being her biological mother. Once that fact is ascertained, it can be presumed that the custody of the minor with his/her mother is lawful. In such a case, only in exceptionable situation, the custody of the minor (girl child) may be ordered to be taken away from her mother for being given to any other person including the husband (father of the

child), in exercise of writ jurisdiction. Instead, the other parent can be asked to resort to a substantive prescribed remedy for getting custody of the child."

27. Hon'ble Supreme Court in ***Tejaswini Gaud and Others v. Shekhar Jagdish Prasad Tewari and Others***, (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."

28. Hon'ble Supreme Court, still later, considered the question in ***Yashita Sahu vs. State of Rajasthan and Others***, (2020) 3 SCC 67, where it was held as under:

"10. It is too late in the day to urge that a writ of habeas corpus is not maintainable if the child is in the custody of another parent. The law in this regard has developed a lot over a period of time but now it is a settled position that the court can invoke its extraordinary writ jurisdiction for the best interest of the child. This has been done in Elizabeth Dinshaw v. Arvand M. Dinshaw, Nithya Anand Raghavan v. State (NCT of Delhi) and Lahari Sakhamuri v. Sobhan Kodali among others. In all these cases, the writ petitions were entertained. Therefore, we reject the contention of the appellant wife that the writ petition before the High Court of Rajasthan was not maintainable."

29. There is little doubt about the issue that though both the mother and the father are natural guardians, a writ of habeas corpus may be issued, because the Court can still determine the legality of the custody, only in view of the limited question of the minor's welfare. Thus it is not the rights of the parents to an exclusive custody of the child, but the consideration is child's welfare. It is, therefore, lawful for the Court to exercise its jurisdiction and issue a writ of habeas corpus in appropriate cases to place the child in a custody, where the welfare of the child appears to the Court of having best prospects for the child.

30. No doubt, the father and the mother, are both natural guardians, in all the personal laws, but what is important while deciding the issue of custody between two natural guardians, is as to where the minor's welfare would be best secured. Some statutes indicates a preference for the mother, so far as a child below five years is concerned, but as indicated earlier it is the question of a child's welfare which should always be a consideration for the Court's decision vis-a-vis allegations and counter allegations.

31. There may not be a straight jacket formula to assess the welfare of a minor and every case has distinct features of its own, where the Court has to think for itself, at a human level with all the experiences in its command as to where the minor's welfare would be best secured. In this connection, reference may be made to the decision of the Supreme Court in ***Nil Ratan Kundu and another vs. Abhijit Kundu***, (2008) 9 SCC 413. It is held as under:

"52. In our judgment, the law relating to custody of a child is fairly well settled and it is this: in deciding a difficult and complex question as to the custody of a minor, a court of law should keep in mind the relevant statutes and the rights flowing therefrom. But such cases cannot be decided solely by interpreting legal provisions. It is a human problem and is required to be solved with human touch. A court while dealing with custody cases, is neither bound by statutes nor by strict rules of evidence or procedure nor by precedents. In selecting proper guardian of a minor, the paramount consideration should be the welfare and well-being of the child. In selecting a guardian, the court is exercising parens patriae jurisdiction and is expected, nay bound, to give due weight to a child's ordinary comfort, contentment, health, education, intellectual development and favourable surroundings. But over and above physical comforts, moral and ethical values cannot be ignored. They are equally, or we may say, even more important, essential and indispensable considerations. If the minor is old enough to form an intelligent preference or judgment, the court must consider such preference as well, though the final decision should rest with the court as to what is conducive to the welfare of the minor."

32. Generally speaking the custody of a minor child of tender years, specially below the age of five years, ought to be with the mother. There could be exceptions to this Rule. Human affairs can never be disposed of by a rule of thumb approach or on the principle of uniform application, or with mathematical precision. But, the general rule about custody of a child, below the age of five years, is not to be given a go-by unless there is

something exceptional which may be detrimental to the welfare of the child. If the mother is to be denied custody of a child, below five years, something exceptional derogating from the child's welfare is to be shown.

33. In the present case also, Navpreet Singh, the father has not come up with any such case, where the mother may be judged unsuitable to raise the minor. There is nothing on record to show that her case falls into that kind of an exceptional category, where she may be deprived of the minor's care and custody. To the contrary, this Court finds that the mother appears to be a matured and responsible woman. The welfare of the minor child is not dependent only on material resources, It requires a lot more. The need of mother would be more during first few years after birth. This Court finds that welfare of the child would be better secured with the mother than the father. So far as the financial support is concerned, that in any case, would be the father's responsibility and the law would take care of it.

34. In the result, this habeas corpus writ petition succeeds and is **allowed**. It is ordered that the minor, Gurisha, who is presently in the custody of his father/respondent no.6 - Navpreet Singh, shall be delivered into the custody of his mother, Smt. Gurmeet Kaur within seven days of receipt of a copy of this judgment.

35. In case, the minor's custody is not made over to his mother within time i.e. till 01.06.2024, the learned Chief Judicial Magistrate, Pratapgarh and the Superintendent of Police, Pratapgarh, acting in aid of the learned Chief Judicial Magistrate, Pratapgarh, shall cause the minor to be delivered into the custody of her mother, Smt. Gurmeet Kaur, after taking her out of the custody of her father, Navpreet Singh.

36. However, the father will have visitation rights to meet his daughter, 'Gurisha' at Smt. Gurmeet Kaur's home situated at Ram Nagar, Police Station Manak Nagar, Commissionerate Lucknow. The father - Navpreet Singh, shall be permitted by Smt. Gurmeet Kaur to meet his daughter,

'Gurisha' twice in a week on all Sundays and Wednesdays of each month between 10:00 a.m. to 2:00 p.m. During these visitations, Smt. Gurmeet Kaur shall ensure that due courtesy is extended to Navpreet Singh and the meeting between the father and the daughter is facilitated.

37. Let a copy of this order be sent to Navpreet Singh/respondent no.6 by the Senior Registrar through the learned Chief Judicial Magistrate, Pratapgarh.

38. A copy of this order be also sent by the Senior Registrar of this Bench to the learned Chief Judicial Magistrate, Pratapgarh and the Superintendent of Police, Pratapgarh for strict compliance.

39. A copy of this order be also sent to the learned District Judge, Pratapgarh and the Chief Judicial Magistrate, Pratapgarh for compliance.

Order Date :- 25.05.2024
Anupam S/-