

Court No. - 16

Case :- HABEAS CORPUS WRIT PETITION No. - 123 of 2024

Petitioner :- Saksham Patel Thru. Father Sri Shyam Shekhar And Another
Respondent :- State Of U.P. Thru. Prin. Secy. Deptt. Of Home Lko And 3 Others

Counsel for Petitioner :- Farhan Alam Osmany

Counsel for Respondent :- G.A., Vijay Shankar Trivedi, B/V0079

Hon'ble Shamim Ahmed, J.

Sri Vijay Shankar Trivedi, Advocate has filed his Vakalatnama today in Court on behalf of opposite party No.4. The same is take on record.

Heard Sri Farhan Alam Osmany, learned counsel for the petitioners as well as Sri Vijay Shankar Trivedi, learned counsel for the opposite party No.4 and Sri Ashok Kumar Singh, learned A.G.A.-I for the State.

Learned A.G.A.-I has filed affidavit alongwith instruction today in Court. The same is taken on record.

This habeas corpus petition has been filed with the following reliefs:

"issue a writ, order or direction in the nature of Habeas Corpus commanding the opposite party no. 2 to 4 to produce the petitioners/detenuue namely Saksham Patel and Kanha @ baby before this Hon'ble Court and set them at liberty, in the interest of justice."

The allegation of the petitioner is that the corpus are in illegal detention of opposite party No.4.

Sri Ashok Kumar Singh, learned A.G.A. raised a preliminary objection regarding the maintainability of this petition and submits that there is an order passed by the Child Welfare Committee, by which the custody of the minor children has been given to the opposite party No.4, thus the present habeas corpus petition is not maintainable.

Sri Ashok Kumar Singh, learned A.G.A. further submits that in a Full Bench judgment rendered by this Court in HABEAS CORPUS WRIT PETITION No.362 of 2020:Km. Rachna and another Vs. State of U.P. decided on 08.03.2021 has already held that any order passed by the Child Welfare Committee is appealable under Section 101 of the Juvenile Justice (Care and

Protection) Act and the petitioner has a remedy to file an appeal against the order dated 03.03.2023 under Section 101 of the Juvenile Justice (Care and Protection) Act.

After considering the arguments of learned counsel for the parties and the objection raised by the learned A.G.A, this Court is of the view that this habeas corpus petition is not maintainable, as there is an order passed by the Child Welfare Committee, by which the custody of the minor children has been given to the opposite party No.4, and if the petitioner is aggrieved by that order, he may approach to competent forum by filing appeal under Section 101 of the Juvenile Justice (Care and Protection) Act, thus the petitioner may avail the remedy as available in this Act.

Accordingly, this habeas corpus petition is **disposed of** with a direction that the petitioner may avail the remedy order passed by the Child Welfare Committee, by which the custody of the minor children has been given to the opposite party No.4 before the competent court under Section 101 of the Juvenile Justice (Care and Protection) Act.

Order Date :- 4.7.2024

Arvind