

Court No. - 16

Case :- HABEAS CORPUS WRIT PETITION No. - 169 of 2024

Petitioner :- Master Naman Thru. His Mother Smt. Nazia Khan @ Asha Arya

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

Counsel for Petitioner :- Rohan Pathak, Akhand Pratap Singh, Vineet Mani Tripathi

Counsel for Respondent :- G.A., Ravindra Jaiswal

Hon'ble Shamim Ahmed, J.

Heard Shri Rohan Pathak, learned Counsel for the petitioner, Shri Shailendra Mishra, learned Counsel for respondent No.4, Shri Ashok Kumar Singh, learned A.G.A-I for the State-respondent Nos.1 to 3 and perused the material placed on record.

The present petition has been filed on behalf of the detenue-Master Naman through his mother Smt. Nazia Khan @ Asha Arya praying for following main reliefs:-

"(1) issue a writ, order or direction in the nature of Habeas Corpus commanding and directing the respondents/opposite parties to produce the corpus detenue, namely-Master Naman at the earliest before this Hon'ble Court and to hand over custody of the said minor to the petitioner being his mother/natural guardian.

(2) Issue a writ, order or direction in 'Mandamus' commanding and directing the respondent No.4 through respondent No.2 and 3 for making necessary provisions for interaction and conversation between the petitioner/mother and the minor child/detenue by mode of voice and video calls."

In compliance of the order dated 02.07.2024 passed by this Court, the petitioner, namely-Nazia Khan @ Asha Arya and respondent No.4, namely-Manjit Singh are present before this Court in person, who have been identified by their respective counsel.

This Court vide order dated 02.07.2024 passed the following order:-

"Sri Shailendra Mishra, Advocate has put in appearance for the opp. party No. 4, Sri Manjit Singh, by filing his vakalatnama, alongwith counter-affidavit of the opp. party No. 4, Sri Manjit Singh,

which are taken on record.

In compliance of order dated 20.06.2024, the detainee Master Naman is present before this court alongwith his father Sri Manjit Singh and Sri Rohan Pathak, Advocate.

The applicant Smt. Nazia Khan alias Asha Arya is also present before this court alongwith her Advocate Sri Shailendra Mishra.

After some arguments, both the parties Smt. Nazia Khan alias Asha Arya as well as Sri Manjit Singh agreed to live together. They also submits before this court that whatever the disputes have arisen between them, they both will keep them aside. They also assure this court that both of them may live together with their child, Master Naman, and in future they will avoid any unnecessary discussion and altercation between them.

Mr. Manjit Singh/opp. party No. 4 also assures this court that within a week he will search the rented accommodation and will shift the wife Smt. Nazia Khan there and live with her and the child. Smt. Nazia has also no objection.

Both counsels Sri Rohan Pathak, learned counsel for the applicant as well as Sri Shailendra Mishra, learned counsel for the opp. party No. 4, Sri Manjit Singh, also made an agreement with the proposal given by the parties before this court.

The agreement between the parties could be arrived at by a good interference of Sri Rakesh Chaudhary, Former President of the Bar, who intervened and suggested the parties to live together, thus, this court also thanks Mr. Rakesh Chaudhary for better advice to the parties.

Accordingly, list this case on 22.07.2024 before this court. On that date both the parties, in person, shall appear before the court alongwith their respective counsel and inform the court regarding the procurement of rented accommodation and living together of the parties in compliance of this order."

Further, in compliance of the order dated 02.07.2024 passed by this Court, the respondent No.4, namely-Manjit Singh stated before this Court that he has arranged a rented accommodation and is ready to shift there with his wife i.e. the petitioner and the detainee, namely-Master Naman.

On query made by this Court to the petitioner, whether she is ready to live with the respondent No.4 in a rented accommodation with his husband i.e. respondent No.4 on which she replied negatively and stated before this Court that she wanted her husband to rent an accommodation in the centre of the city but he has arranged an accommodation in Ashiyana, Lucknow, thus, she does not want to shift there and she denied the proposal made by respondent No.4 before this Court.

Thus, in view of the above, chances of an amicable settlement between the parties also got demolished after the statement of the petitioner and this Court has no option but to finally decide this case on merits.

Learned counsel for the petitioner submits that the petitioner is mother of the minor child and the father has illegally detained the minor child with him, thus, this Court may issue a direction in this regard so that the custody of the minor child be given to the mother, the next friend.

Learned A.G.A.-I as well as learned Counsel for respondent No.4 submit that the relief sought in this Habeas Corpus Writ Petition can 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 can not be granted by this Court and if the mother wants custody of the minor child, then the remedy lies before the appropriate forum under the Guardians and Wards Act, 1890 or Hindu Minority and Guardianship Act, 1956 for claiming the custody of minor child in accordance with law.

After some argument, learned counsel for the petitioner submits that he may be permitted to approach the competent court in accordance with law under the Guardians and Wards Act, 1890 or Hindu Minority and Guardianship Act, 1956 for claiming the custody of minor child.

Accordingly, the present writ petition is **disposed of** with liberty to the petitioner to approach the appropriate forum in accordance with law for claiming the custody of minor child.

Order Date :- 22.7.2024

Piyush/-