

Court No. - 16

Case :- HABEAS CORPUS WRIT PETITION No. - 172 of 2024

Petitioner :- Master Pratham Singh Alias Pratham Thakur Thru. His Mother, Ruby Singh

Respondent :- The State Of U.P. Thru. The Prin. Secy. Deptt. Of Home, Lko. And Others

Counsel for Petitioner :- Prashant Agarwal

Counsel for Respondent :- G.A.

Hon'ble Shamim Ahmed,J.

Heard Sri Prashant Agarwal, learned counsel for the petitioner and Sri Ashok Kumar Singh, learned AGA-I for the opposite party nos. 1, 2 and 3.

This present writ petition has been filed with the following relief:-

"Rule nisi in the nature of Habeas Corpus be issued commanding to opposite parties to produce the body of the Detnue Master Pratham Singh alias Pratham Thakur aged about 3 years 8 months before this Hon'ble Court and he may be set at liberty according to the best interest of the child/detenue."

Learned counsel for the petitioner submits that the detenue has been illegally detained by the respondent nos. 4, 5, 6 and 7. It was also alleged that the respondent no. 4 is the husband of Ruby Singh and the detenue is the son of both the parties, thus, custody of detunue to be given to the mother, Ruby Singh.

Sri Ashok Kumar Singh, learned AGA submits that except some photographs, nothing has been annexed with the petition to show that the boy was under illegal custody of the father, neither there is any averment in the writ petition that the boy-detenue is involved in any illegal activity like begging or was deprived of food or being kept alone in a room and being tortured. Thus, in absence of such activity, it cannot be said that the boy who is with the father is under illegal custody. If the mother want the custody of the minor child, she has remedy to approach under the Guardian and Wards Act or Hindu Minority and Guardianship Act and file a petition before the competent family court for claiming custody of the child.

Thus, the relief as sought by the counsel for the petitioner in the present writ petition cannot be granted.

After considering the arguments advanced by the learned counsel for the parties and after perusal of the material placed on record, this Court is also satisfied that in the writ petition there is no any pleading with regard to the illegal custody of the minor son, nor there is any averment that the detinue was involved in any illegal activity by the father or was he was deprived of food, cloth, shelter or being tortured.

It is the case, where the mother is claiming the custody of the minor child, who is with the father, respondent no. 4. Thus, there appears force in the argument of the learned AGA-I that if the mother, Ruby Singh, wants custody of her child, she may approach before the competent court under the Guardian and Wards Act or Hindu Minority and Guardianship Act for claiming the custody of the minor child.

With the above observation, the habeas corpus writ petition is **disposed of**.

Order Date :- 6.8.2024

Anurag