

Court No. - 16

Case :- HABEAS CORPUS WRIT PETITION No. - 178 of 2024

Petitioner :- Adya Thru. Father Nikhil Srivastava And Another

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

Counsel for Petitioner :- Vatsala Singh,Vivek Singh

Counsel for Respondent :- G.A.,Prashant Shukla,Vivek Srivastava

Hon'ble Shamim Ahmed,J.

This writ petition has been filed with the following prayer:

"i.) To issue a writ, order or direction in the nature of Habeas corpus for securing liberty of the petitioners by affording effective means of immediate release from an improper and illegal custody of the Opposite Parties no 2,3 and 4.

ii) To restore the custody of petitioners to their biological father who being natural guardian has been wrongfully deprived.

iii) To grant immediate and unfettered access of petitioners to their father and paternal grandparents."

Ms Vatsala Singh, learned counsel for the father/next friend submits that the minor children are under the custody of mother/opp. party No. 2 as well as opp. party Nos. 3 and 4, who are father-in-law and mother-in-law of the husband/next friend. She submits that custody of the minor children be given to the father.

Sri Prashant Shukla, learned counsel for the opp. party nos. 2, 3 and 4 makes objection to the entire arguments, as advanced by the learned counsel for the father/next friend. He submits that the relief as sought in the present writ petition cannot be granted, as there is no law in India, which says that the minor children living with mother or father are under illegal custody, unless an specific case is made out by the petitioner that they are under illegal detention. In the entire petition there is no plea as such made by the husband/next friend that the minor children are involved in some illegal activity or they are under illegal detention. He further submits that if the father/next friend wants to claim the custody of the minor children, then he has remedy before the competent forum either under the Guardians and Wards Act, 1890 or under the Hindu Minority and Guardianship Act, 1956, by filing an application in accordance with law.

Sri Ashok Kumar Singh, learned A.G.A. also makes an agreement with the arguments advanced by Sri Prashant Shukla, Advocate.

Ms. Vatsala Singh, learned counsel for the father/next friend, at this stage, submits that she will file the petition under the Guardians and Wards Act, 1890 in accordance with law, but the father/next friend be given visitation rights to meet his children.

Sri Prashant Shukla, Advocate, has no objection on behalf of the opposite party Nos. 2, 3 and 4.

Accordingly, till the children attains the age of majority, the husband/next friend Nikhil Srivastava is allowed to -

1. Meet the children, namely, Adya and Ina, on every IIInd and IVth Sunday between 11.00 a.m. to 2:00 p.m. at the residence of the wife. In case wife changes the residence, she will inform about the same to the father/next friend 15 days prior to the change of the address.
2. Take any gift item including the toys, clothes and other items in respect of love and affection towards the minor children, keeping in mind that the items are not injuries to the health of the minor children.
3. Talk to his minor children on mobile, whatsapp and video-call on every IIInd and IVth Wednesday between 7:30 p.m. to 8:00 p.m.

With the above observations, this writ petition is **disposed of**.

(Shamim Ahmed, J.)

Order Date :- 2.8.2024

A.Nigam