

Court No. - 16

Case :- HABEAS CORPUS WRIT PETITION No. - 183 of 2024

Petitioner :- Master Shaurya Thru. Mother Smt. Arti Gautam Another

Respondent :- State Of U.P. Thru. Prin. Secy. Home Deptt. Lko. And 7 Others

Counsel for Petitioner :- Arjun Kumar Kaushal

Counsel for Respondent :- G.A.

Hon'ble Shamim Ahmed,J.

Sri Anil Kumar Sharma, Advocate has put in appearance on behalf of the respondent nos.4 to 8 by filing vakalatnama, which is taken on record.

Heard Sri Alok Kumar Mishra, holding brief of Sri Arjun Kumar Kaushal, learned counsel for the petitioner, Sri Ashok Kumar Singh, learned A.G.A.-I for the State Opposite Party Nos.1 to 3 and Sri Anil Kumar Sharma, learned counsel for the respondent nos.4 to 8.

This writ petition has been filed seeking following main relief:-

"i. Issue a writ, order or direction in the nature of Habeas Corpus thereby directing the opposite parties 2 to 8 to produce the petitioner no.1/detenu before this Hon'ble Court and after recording his statement, he may be set free at his liberty, otherwise the petitioner no.1/detenu shall suffer irreparable losses, inconveniences and harassment."

Learned counsel for the petitioner submits that the detenu, who is aged about 3.5 years is under illegal detention of respondent nos.4 to 8 without having any right. He further submits that the next friend, mother of the detenu, namely, Arti Gautam was married to the son of respondent no.4, Smt. Shanti Devi on 17.04.2019 as per Hindu Rights and Rituals. Thereafter, on 16.04.2021, husband of Arti Gautam died due to Corona disease and in the meantime from their wedlock, one son, namely, Master Shaurya was born on 07.11.2020.

He further submits that after the death of husband the relation for some time between the next friend, mother and the respondent nos.4 to 8 were cordial, however, later on their behavior changed towards the next friend, mother as they started torturing her and causing cruelty to her. The respondent nos.4 to 8 blamed the next friend, mother for death of her husband and ultimately on 24.06.2024 at 10:00 A.M., the respondent nos.4 to 8 kept the minor child alongwith them and thrown out the next friend, mother out of their house.

He further submits that in this regard, the next friend, mother had made a complaint to the Station House Officer, Police Station Madiyaon, District Lucknow and has also filed a complaint on I.G.R.S. Portal, however, no action was taken. Thus, she approached this Court for the prayer as aforesaid.

He further submits that the respondent nos.4 to 8 have no authority as per law to keep the minor child, Master Shaurya with them as the real mother is alive and the detinue is minor and the next friend, mother is natural guardian of the minor child. He further submits that the next friend, mother has good means of source of income as she is doing business of making tiffins for working people as well as for students and she will enhance her business in future for welfare of her child i.e. food, clothing and shelter. He further submits that even father, mother and brother of the next friend are also in agreement for looking after them, thus, there is no financial crisis.

He further submits that the business of tent house was of the next friend's husband, however, the respondent nos.4 to 8 have captured the same and they are not even giving singly penny as a profit.

On the other hand, learned counsel for the respondent nos.4 to 8 also submits that there is no dispute that the next friend, mother is natural guardian of the detinue but since the detinue had born in front of the respondent nos.4 to 8, thus, they may be given a visitation right till the child attains majority for their love and affection towards the child as they are his natural grand mother, uncle and aunts.

Learned A.G.A.-I for the State Opposite Party nos.1 to 3 has also made an agreement with the proposal given by learned counsel for the respondent nos.4 to 8 and submits that since the respondent nos.4 to 8 are close relatives and the detinue is living with them since 24.06.2024, thus, love and affection attracts towards the minor child, thus, they may be permitted to meet the detinue at least once in a week till the detinue attains the age of majority or till any other order passed by this Court.

After considering the entire evidence on record as well as arguments as advanced by learned counsel for the respective parties, this Court deems it appropriate that the custody of the minor child, namely, Master Shaurya aged about 3.5 years be given to the next friend, mother, namely, Smt. Arti Gautam forthwith before this Court. Accordingly, the custody of minor child, namely, Master Shaurya, aged about 3.5 years is being handed over to Smt. Arti Gautam, the next friend, mother of the child from the custody of respondent nos.4 to 8. She also

undertakes before this Court that she will fulfill all the requirements of the child regarding food, clothing, shelter and education in good school.

This Court further feels it appropriate to give visitation right to the respondent nos.4 to 8 as per proposal given by their counsel. Thus, the following arrangement is being made:-

1. The respondent nos.4 to 8 are permitted to meet the child i.e. Master Shaurya on every Sunday w.e.f. 04.08.2024 at the residence of mother i.e. House No.529K/1506 Pant Nagar, Khurram Nagar, Police Station Indira Nagar, District Lucknow from 11:00 A.M. till 02:00 P.M. with the condition of giving a day's prior information to the mother i.e. Smt. Arti Gautam regarding their arrival on mobile phone. It is made clear that both the parties will not create any nuisance at the time of meeting. In case, the mother i.e. Smt. Arti Gautam wants to change her residential address, she will inform the respondent nos.4 to 8 regarding her new address at least 15 days prior to the changing of address so that the respondent nos.4 to 8 may meet the child at new address.

2. If the respondent nos.4 to 8 want to give any gifts on account of love and affection or do anything for well being of child then mother i.e. Smt. Arti Gautam or any of her family members will not make any objection. However, respondent nos.4 to 8 shall keep in mind that such thing will be given, which are for use and safe for the child's health.

3. It is further provided that the respondent nos.4 to 8 may have conversation with the minor child, namely, Master Shaurya by mobile phone, whats app call or video call from 07:45 P.M. to 8.00 P.M. on every Wednesday.

With the above observations/directions, this habeas corpus writ petition is finally **disposed of**.

Sri Bhanu Pratap Singh, Sub Inspector of Police is directed to take Smt. Arti Gautam alongwith minor Child, namely, Master Shaurya to their residence i.e. House No.529K/1506 Pant Nagar, Khurram Nagar, Police Station Indira Nagar, District Lucknow safely today itself.

Order Date :- 29.7.2024/Saurabh