

Court No. - 16

Case :- HABEAS CORPUS WRIT PETITION No. - 189 of 2024

Petitioner :- Israt Bano Thru. Natural Guardian Elder Father Kaleem Khan And Another

Respondent :- State Of U.P. Thru. Prin. Secy. Deptt. Of Home Lko. And 4 Others

Counsel for Petitioner :- Dinesh Kumar Ojha, Anju Singh

Counsel for Respondent :- G.A.

Hon'ble Shamim Ahmed, J.

Sri Manoj Kumar Gupta, Advocate has put in appearance on behalf of the opposite party no.5 by filing vakalatnama, which is taken on record.

Heard Sri Dinesh Kumar Ojha, learned counsel for the petitioner, Sri Manoj Kumar Gupta, learned counsel for the opposite party no.5 and Sri Bhasker Mal, learned A.G.A. for the State.

The instant writ petition has been filed seeking a writ, order or direction in the nature of Habeas Corpus directing the opposite parties to produce the petitioners (Detenues) before this Hon'ble Court from the illegal custody of opposite party no.5, in the interest of justice.

Learned counsel for the petitioner submits that the detenues are minor children and their father had died in a police encounter, thus, they are under illegal detention of their mother.

On the other hand learned counsel for the opposite party no.5 submits that in this case the next friend is elder brother of the father of the corpus (i.e. Tau Ji) whereas the mother of the corpus is alive and both the children are residing with their mother, who is natural guardian. He further submits that as per law the natural guardian is mother and she is having custody of both the children, namely, Israt Bano aged about 05 years (daughter) and Tauhid aged about 02 years (son). Thus, he submits that the next friend has no locus at all to keep the minor children with him as the natural guardian is alive and she is fully capable to maintain both the children as she is having sufficient means to maintain studies and day to day expenditure i.e. food, clothing and shelter.

He further submits that the entire episode has been played only with intention to grab the property of husband of respondent no.5 as he has died in a police encounter. He further submits that the respondent no.5 has also lodged an F.I.R. against the next friend bearing Case Crime No.0227 of 2024, under Sections 498-A, 323, 504, 506 I.P.C. at Police Station Lilapur, District Pratapgarh. Thus, he submits that the instant writ petition be dismissed with heavy cost.

Learned A.G.A. for the State has also made an agreement with the arguments made by learned counsel for the respondent no.5.

After considering the arguments as advanced by learned counsel for the respective parties and after perusal of record, this Court finds that both the minor children are living with their natural guardian i.e. mother and the next friend, who is elder brother of the father of the detenues has no locus to keep the children when their mother is alive. Further, there also appears force in the argument of learned counsel for the respondent no.5 that the next friend is trying to grab the property of husband of the opposite party no.5. Thus, this Court is not inclined to entertain this petition which is liable to be dismissed and is hereby accordingly **dismissed**.

Order Date :- 8.7.2024

Saurabh