

Court No. - 16

Case :- HABEAS CORPUS WRIT PETITION No. - 206 of 2024

Petitioner :- Diwakar Yadav Thru. His Mother Sangeeta Yadav And 2 Others

Respondent :- State Of U.P. Thru. Prin. Secy. Home Lko. And 6 Others

Counsel for Petitioner :- Suresh Kumar Upadhyay

Counsel for Respondent :- G.A.

Hon'ble Shamim Ahmed,J.

Heard Sri Suresh Kumar Upadhyay, learned counsel for the petitioner, Sri Ashok Kumar Singh, learned A.G.A.-I for the State as well as perused the record.

The instant writ petition has been filed seeking following main relief:-

"(i) to issue a writ, order or direction in the nature of Habeas Corpus directing the opposite parties to produce the detainees before this Hon'ble Court and set them free at their own liberty and sweet will i.e. to their mother."

Learned counsel for the petitioner submits that the detainees are minor children, who are living with respondent no.4, 5, 6 and 7, who are grandfather, grandmother and uncles respectively of the detainees. He further submits that husband of the next friend i.e. father of the detainees had already been expired, thus, this Court may issue a direction so that custody of the minor children may be given to the natural guardian i.e. the mother of the minor children.

On the other hand, learned A.G.A.-I for the State submits that the mother of the minor children is accused of murdering her husband i.e. real father of the detainees as her name came during the investigation. He further submits that there is apprehension that the mother may tamper the children as they are witness of murder of their father. He further submits that the children are safely living with their grand parents and even though the petitioner fails to demonstrate that the children are under illegal custody of their grand parents nor any application has been moved before the competent authorities i.e. police or magistrate that the children are under illegal custody and whatever the application has been moved that appears to be manufactured and forged.

He further submits that the prayer made in this petition could not be granted by this Court and if the mother wants custody of the minor children, 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 children in accordance with law. Thus, he submits that the present writ petition is liable to be dismissed.

After considering the arguments as advanced by learned counsel for the parties as well as after perusal of record, this Court finds that the mother is accused of murdering her husband i.e. father of the detenues and may be the children are witnesses of murder of their father, thus, the relief sought in this petition cannot be granted by this Court, however, the petitioner is at liberty to approach the appropriate forum in accordance with law for claiming the custody of minor children.

With the aforesaid observations, the instant writ petition is **dismissed**.

Order Date :- 22.7.2024
Saurabh