

Court No. - 16

Case :- HABEAS CORPUS WRIT PETITION No. - 219 of 2024

Petitioner :- Baby Boy Tanay Kumar Thru. His Mother Manju Devi

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

Counsel for Petitioner :- Hari Om Pandey, Sarvesh Kumar

Counsel for Respondent :- G.A.

Hon'ble Shamim Ahmed, J.

1. List of fresh cases has been revised.

2. Heard Shri Hari Om Pandey, learned Counsel for the petitioner, Shri Ashok Kumar Singh, learned A.G.A-I for the State-respondent Nos.1 to 3 and perused the material placed on record.

3. The present petition has been filed on behalf of detainee, namely-Tanay Kumar through his mother, namely-Manju Devi seeking following main relief:-

"1. Issue a writ, order or direction in the nature of Habeas Corpus against the respondents for the production of the corpus (Baby Boy Tanay) before this Hon'ble Court so her life and liberty may be protected."

4. As per the averments made in the present petition, learned counsel for the petitioner submits that the petitioner is the mother of the minor child and the father and his family members have illegally detained the minor child with them, thus, this Court may issue a direction in this regard so that the custody of the minor child be given to the mother, the next friend.

5. In support of his arguments, he has placed reliance on a Full Bench judgment of this Court passed in ***Writ Petition (Habeas Corpus) No.3264 of 1980 dated 25.01.1985; Iqbal Ahmad vs. Shaban Ali Khan and Another*** and submits that keeping in view the facts and circumstances of the case and law laid down by this Court, the custody of the minor child may be given to his mother i.e. the petitioner.

6. Learned A.G.A-I for the State-respondent Nos.1 to 3 submits that the relief sought in this Habeas Corpus Writ Petition could

not be granted by this Court as the mother of the minor child is unable point out any illegality or any infirmity regarding the custody with the father. He further submits that no averment has been made on behalf of the petitioner in this petition that the father of the minor child is being cruel to his son or has deployed him in begging or is keeping him in a closed room. He further submits that there is nothing on record to demonstrate this fact that the family members of the respondent No.4 are committing cruelty to the detinue. He further submits that the judgment referred above by learned Counsel for the petitioner is not applicable in the present case as the case of the petitioner is totally different from the facts and circumstances of the case referred above, thus, the prayer made in this petition could not be granted by this Court and if the mother wants custody of the minor child, 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 child in accordance with law.

7. After going through the averments made in the petition and after hearing, learned Counsel for the petitioner and learned A.G.A. for the State-respondent Nos.1 to 3, this Court does not find any ground to entertain this petition. Further, this Court is satisfied with the arguments advanced by learned A.G.A-I for the State-respondent Nos.1 to 3 and is of the opinion that there is nothing on record to demonstrate this fact that the respondent No.4 i.e. the father of the detinue is being cruel to him or has deployed him in begging or is keeping him alone in a closed room. Further, the judgment referred above by learned Counsel for the petitioner is passed on a totally different footing of the case and this Court distinguishes the judgment referred above from the facts and circumstances of the present case. However, if the petitioner is aggrieved regarding custody of a minor child she may approach the competent court in accordance with law under the Guardians and Wards Act, 1890 or Hindu Minority and Guardianship Act, 1956 for claiming the custody of minor child.

8. Accordingly, the present writ petition is **disposed of** with liberty to the petitioner to approach the appropriate forum in accordance with law for claiming the custody of minor child.

Order Date :- 26.7.2024

Piyush/-