

Court No. - 16

Case :- HABEAS CORPUS WRIT PETITION No. - 229 of 2024

Petitioner :- Smt. Noori Thru. Her Husband Mo. Shraj @ Sirajuddin

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

Counsel for Petitioner :- Vikas Sharma, Pranshu Maurya

Counsel for Respondent :- G.A.

Hon'ble Shamim Ahmed, J.

Heard Sri Vikas Sharma, learned counsel for the petitioner and Sri Ashok Kumar Singh, learned A.G.A.-I for the State.

The instant writ petition has been filed seeking issuance of writ, order or direction in the nature of Habeas Corpus commanding and directing the opposite parties to produce the petitioner (detenue) before this Hon'ble High Court and she may be set at liberty under the care and custody of her husband.

Learned counsel for the petitioner submits that the marriage of the Smt. Noori (the detenue) and Mo. Shraj @ Sirajuddin (the next friend of the detenue) was solemnized on 10.05.2006 and they were living happily. Thereafter, on 10.12.2014, the respondent nos.4 to 7 had illegally took the detenue along with them and are not allowing the detenue to meet her husband i.e. the next friend. He further submits that in this regard, a Suit No.1253 of 2022 for Rukhsati has also been filed before the learned Additional Principal Judge, Family Court, Hardoi, which is still pending.

On the other hand, learned A.G.A.-I for the State submits that the detenue is not under illegal custody as she is willingly living with her brothers and mother and respondent nos.4 to 6 are brothers of the detenue whereas respondent no.7 is mother of detenue. He further submits that it cannot be said that the major girl living with her brothers and mother after marriage is under illegal detention. The detenue is major and she is free to live anywhere she wants on her own sweet will.

Learned A.G.A.-I further submits that if the detenue is legally wedded wife and she is not coming from her brothers' house to live with the next friend, Mo. Shraj @ Sirajuddin, then the next friend may pursue the Suit No.1253 of 2022 for Rukhsati which

has already been filed by him before the learned Additional Principal Judge, Family Court, Hardoi but not the present petition of Habeas Corpus for custody of wife claiming that she is under illegal detention. He further submits that the instant writ petition may be dismissed on the ground of delay and latches as the same has been filed after ten years of the alleged detention.

After hearing learned counsel for the respective parties, this Court finds that the detenue is not under illegal custody as she is willingly living with her brothers and mother and it cannot be said that the major girl living with her brothers and mother after marriage is under illegal detention as the detenue is major and she is free to live anywhere she wants on her own sweet will. This Court further finds that the next friend has already filed a suit for Rukhsati bearing Suit No.1253 of 2022 before the learned Additional Principal Judge, Family Court, Hardoi, therefore, he may pursue the same. This Court also finds that the date of alleged detention is 10.12.2014 whereas this petition is filed in the year 2024 i.e. about 10 years have been passed, as such, this Court is not inclined to entertain this petition on the ground of delay and latches.

With the above observations, the instant writ petition is **dismissed** with liberty to the petitioner to approach the learned Additional Principal Judge, Family Court, Hardoi for expediting the proceedings of Suit No.1253 of 2022 which is still pending.

Order Date :- 5.8.2024
Saurabh