

Neutral Citation No. - 2024:AHC-LKO:11738

Reserved on 29.01.2024

Delivered on 08.02.2024

A.F.R.

Court No. - 16

Case :- HABEAS CORPUS WRIT PETITION No. - 330 of 2022

Petitioner :- Malav Dwivedi Thru. His Mother Smt. Sudha Dwivedi

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

Counsel for Petitioner :- Shobh Nath Pandey

Counsel for Respondent :- G.A.,Dr.Manoj Kumar Dubey

Hon'ble Shamim Ahmed,J.

1. Heard Shri Shobh Nath Pandey, learned Counsel for the petitioner, Dr. Manoj Kumar Dubey, learned Counsel for respondent Nos.4 to 8 and Shri Ashok Kumar Singh, learned A.G.A-I for the State-respondent Nos.1 to 3.

2. The petitioner- Smt. Sudha Dwivedi has filed this Habeas Corpus petition seeking following reliefs:-

“i) issue a writ, order or direction in the nature of Habeas Corpus commanding the opposite party Nos.4 to 8 to produce the corpus of detainee, namely Malav Dwivedi son of Shwetang Dwivedi who is in the illegal detention of the opposite party No.4 to 8, before this Hon'ble Court.

ii) issue a writ, order or direction in the nature of Habeas Corpus commanding and directing the opposite parties to get released the detainee Malav Dwivedi from the illegal detention of opposite party No.4 to 8 forthwith, and after recording his statement set him free at his liberty, forthwith.

iii) issue any other suitable order or direction which this Hon'ble Court may deem just, fit and proper under the facts and circumstances of the case.

iv) Allow the writ petition with cost.”

3. The Coordinate Bench of this Court on 14.10.2022 had passed the following order:

“Dr. Manoj Kumar Dubey filed his Vakalatnama on behalf of respondents no. 4 to 7 and the same is taken on record.

He further submits that respondent no. 8 is living in Surat (Gujrat) and the Vakalatnama on her behalf shall also been filed very soon.

It is further submitted by him that two weeks' time be granted for the purpose of filing counter affidavit in response to the petition filed by the petitioner.

Having regard to the request made by learned counsel for the respondents no. 4 to 7 two weeks' further time is granted for the purpose of filing counter affidavit.

Accordingly list on 3.11.2022.

It is further provided that respondent no.4, namely, Shwetang Dwivedi shall bring the corpus/ detenue, namely, Master Malav Dwivedi with him to the Mediation Centre of this Court on 18.10.2022 at 11.A.M. in the Mediation Centre of this Bench and the Incharge Mediation Centre of this Bench shall provide a space to the next friend/ mother of the corpus, namely, Smt. Sudha Dwivedi to interact with the corpus/ detenue Master Malav Dwivedi for about one hour. It is also provided that during the meeting with the detenue the Incharge Mediation Centre shall permit the mother of the corpus Smt. Sudha Dwivedi to offer some gifts or eatable items to the corpus and no objection in this regard shall be raised by opposite party no.4.

A copy of this order be immediately provided to the Incharge Mediation Centre of this Bench.

This Court hope and trust that the order pertaining to he meeting of the corpus with his mother, namely, Sudha Dwivedi on 18.10.2022 at 11.00 A.M. in the mediation centre of this Court shall be complied in letter and spirit by the opposite party no.4.”

4. On 03.08.2023 the Coordinate Bench of this Court had passed the following order:

“1. A preliminary objection has been raised by respondent No.4 regarding maintainability of the petition. It is submitted that the detenue is with respondent No.4 who is his natural guardian being father and it cannot be said that it is a case of illegal detention.

2.Rebutting this submission, learned counsel for the petitioner has relied on judgment of Supreme Court in Yashita Sahu versus State of Rajasthan and others passed in Crl. Appeal No.127 of 2020 (Special Leave Petition(Crl) No.7390 of 2019) (Emphasis is on para 9) wherein similar objection was rejected by the Supreme Court and the appeal was entertained.

3.In view of the above, the objection raised by respondent No.4 is rejected.

4.Both the deponent and respondent No.4 have levelled allegation against each other that both are unemployed and have no source of livelihood. The court in a habeas corpus petition is to ensure overall welfare of the child. Neither the deponent nor the respondent No.4 has disclosed his/her source of income while filing affidavit(s) to show that they have at least minimum resources to take care of vaccination, medical needs and other basic needs of the detenue.

5.Accordingly, the deponent and respondent No.4 both are directed to file supplementary affidavit stating their source of income. They shall also file their income tax return, if any.

6.Learned counsel for the deponent petitioner submits that the deponent being the mother and natural guardian of the child cannot be deprived her visiting rights.

7.The submission carries weight.

8.It is provided that the respondent No.4 Shwetang Dwivedi shall bring the detenue Master Malav Dwivedi with him to Mediation Centre of this Court on 7.8.2023 at 03.00 p.m. and the Incharge Mediation Centre shall provide a space to the next friend/mother of the corpus, namely Smt. Sudha Dwivedi to interact with the detenue for about two hours. It is further provided that during the meeting with the detenue, the incharge Mediation Centre shall permit Smt Sudha Dwivedi to offer gift, if any or eatable items to the corpus and no objection in this regard shall be raised by respondent No.4.

9.List on 18.8.2023.”

5. Learned counsel for the petitioner submitted that the petitioner-Smt. Sudha Dwivedi got married to respondent No.4-Shwetang Dwivedi, in Faizabad (now Ayodhya) on 29.01.2015 as per Hindu Rites and Ceremonies. Thereafter, due to their wedlock, one male child namely Master Malav Dwivedi was born on 11.02.2019 and after the child was born the relationship between the husband and wife started to turn absurd and regular dispute arose.

6. Learned counsel for the petitioner further submitted that after some time the behavior of respondent No.4 turned very abnormal and the petitioner came under suspicion and started to feel very unsafe regarding the welfare of her child.

7. Learned Counsel for the petitioner further submitted that since the time of marriage the respondent Nos.4 to 8 used to harass and torture the petitioner for want of dowry as well as for other filthy reasons and used to level filthy allegations on her in the name of her family members, thereafter, the respondent No.4 brutally tortured the petitioner and ousted her from her matrimonial home forcibly on 03.09.2022 and kept the child, detinue-Malav Dwivedi in his illegal detention.

8. Learned counsel for the petitioner further submitted that the petitioner moved a complaint on 04.09.2022 before the Station House Officer concerned for giving custody of her son from the illegal detention of respondent Nos.4 to 8, thereafter, the petitioner lodged a First Information Report against the respondent Nos.4 to 8 on 05.09.2022 which was registered as Case Crime No.0560/2022, under Section 323, 498-A, 504 and 506 I.P.C. and Section 3/4 Dowry Prohibition Act at Police Station-Gomti Nagar, District-Lucknow in regard to harassment done upon her by respondent Nos.4 to 8 and also requested therein that the custody of her son may be given to her.

9. Learned counsel for the petitioner further submitted that the petitioner has also given an application before the respondent No.2 i.e. Commissioner of Police, Lucknow but of no avail and till date no action has been taken in regard to release of the detinue from the illegal detention by the respondent Nos.4 to 8.

10. Learned counsel for the petitioner further submitted that the petitioner brought into the notice about the entire incident to the concerned police authorities, but they did not conduct the investigation to locate the whereabouts of the child of petitioner. He further submitted that the respondent No.4 has no love and affection

towards the child and the petitioner being mother is legally entitled to get the custody of her child being natural guardian.

11. Learned counsel for the petitioner further submitted that the petitioner is a Fashion Designer and presently she is working as Assistant Fashion Designer in Greenwear Fashion Pvt. Ltd., 301-389, Safedabad, Faizabad Road, Barabanki and drawing a salary of about Rs.15,000/- per month as well as other perks and incentives. He further submitted the petitioner is living with her father and mother at 437, Vishwanath Puram Colony, Matiyari, Chinhat, Lucknow and they have sufficient property and assets and as such the petitioner is in good position to take good care of her child.

12. Learned counsel for the petitioner further prayed for handing over the custody of said minor child to the petitioner who is biological mother of minor child, so that the child may live with her mother with his free will and the present Habeas corpus petition may be allowed by this Hon'ble Court.

13. Per Contra, learned counsel for the respondent Nos.4 to 8 filed counter affidavit and one supplementary affidavit, which are on record and submits that the petitioner-Smt. Sudha Dwivedi is a most irresponsible lady who does not have any respect or love and care for any relation neither for her husband and nor for her minor child. The petitioner left the house of the respondent No.4 in a pre-planned manner taking all her educational documents, ornaments, clothes, jewelry etc. while the detinue was playing with his grand-parents in separate house and the respondent No.4 was in Court, she left the house after locking the door possessing the keys. The petitioner and her maternal uncle and her father tried to mislead the police after lodging the first information and compelled them to arrest the respondent No.4 and despite 'cooling period' the police mischievously obtained N.B.W. but the learned C.J.M. has recalled and set-aside the same when it was presented before him. The petitioner is suffering from genetic mental disorder i.e. Border Line Personality Disorder. He further submitted that the respondent No.4 is working in Lucknow Development Authority and is getting good salary and at this verge of services, no liabilities is upon him except the welfare of detinue, all expenses, study, foods, clothes of detinue is arranged by the respondent No.4, thus, he submitted that the present petition is nothing but a ploy to harass the respondent No.4 and his family members so that in grab of some order by this Court, the petitioner

may torture the respondent Nos.4 to 8 and blackmail them to compromise the situation in fear of harassment and torture.

14. Learned counsel for the respondent Nos.4 to 8 further submitted that the respondent Nos.4 to 8 do not have any objection if the petitioner-Smt. Sudha Dwivedi wishes to visit the child in Lucknow, provided the same does not create any dispute.

15. Shri Ashok Kumar Singh, learned A.G.A-I has also supported the argument advanced by learned counsel for the respondent Nos.4 to 8.

16. After considering the arguments as advanced by learned counsel for the parties this Court finds that minor child should not be deprived of the love and affection of both the parents as deprivation results in a grave physiological impact upon the impressionable and innocent disposition of a child in his formative years and in this case the minor child is being deprived of love and affection of his parents and the parents are not able to interact with their child affectionately. Whenever a question arises before a court pertaining to the custody of the minor child, the matter is to be decided not on consideration of the legal rights of the parties but on the sole and predominant criterion of what would best serve the interest and welfare of the child. The primary object of a Habeas Corpus petition, as applied to minor child, is to determine in whose custody the best interests of the child will probably be advanced. Further the question of custody cannot be determined by weighing the economic circumstances of the contending parties. The matter will not be determined solely on the basis of the physical comfort and material advantages that may be available in the home of one contender or the other. It is further held that the welfare of the child must be decided on a consideration including the general psychological, spiritual and emotional welfare of the child. While resolving the disputes between the rival claimants for the custody of a child, the aim of the Court must be to choose the course which will best provide for the healthy growth, development and education of the child so that he or she will be equipped to face the problems of life as a mature adult.

17. In the present case it is not in dispute that the petitioner- Smt. Sudha Dwivedi got married to respondent No.4-Shewtang Dwivedi. Thereafter, due to their wedlock, one male child namely Master Malav Dwivedi was born 11.02.2019. After some time the relationship between the husband and wife started to turn absurd and regular dispute arose. Thereafter, the petitioner and respondent No.4 tried to settle their dispute on their own terms but all in vain and the

petitioner lodged an F.I.R., which was registered as Case Crime No.0560/2022, under Section 323, 498-A, 504 and 506 I.P.C. and Section 3/4 Dowry Prohibition Act at Police Station-Gomti Nagar, District-Lucknow in regard to harassment done upon her by respondent Nos.4 to 8 and also requested therein that the custody of her son may be given to her, thus, this type of situation where parents of the child are unable to resolve their dispute keeping in mind the future of their child gives a negative impact on the psychological behavior of the minor child and is also not in the welfare of the child in the long run.

18. In the case of *Nithya Anand Raghvan v State (NCT of Delhi) and another 2017 8 SCC 454*, it was held by Hon'ble Apex Court that the principal duty of the court in such matters is to ascertain whether the custody of the child is unlawful and illegal and whether the welfare of the child requires that his present custody should be changed and the child be handed over to the care and custody of any other person. The relevant observations made in para 44 to 47 in the judgement are being reproduced herein below:

"44. The present appeal emanates from a petition seeking a writ of habeas corpus for the production and custody of a minor child. This Court in Kanu Sanyal v. District Magistrate, Darjeeling, (1973) 2 SCC 674, has held that habeas corpus was essentially a procedural writ dealing with machinery of justice. The object underlying the writ was to secure the release of a person who is illegally deprived of his liberty. The writ of habeas corpus is a command addressed to the person who is alleged to have another in unlawful custody, requiring him to produce the body of such person before the court. On production of the person before the court, the circumstances in which the custody of the person concerned has been detained can be inquired into by the court and upon due inquiry into the alleged unlawful restraint pass appropriate direction as may be deemed just and proper. The High Court in such proceedings conducts an inquiry for immediate determination of the right of the person's freedom and his release when the detention is found to be unlawful.

45. In a petition for issuance of a writ of habeas corpus in relation to the custody of a minor child, this Court in Sayed Saleemuddin v. Rukhsana, (2001) 5 SCC 247, has held that the principal duty of the court is to

ascertain whether the custody of child is unlawful or illegal and whether the welfare of the child requires that his present custody should be changed and the child be handed over to the care and custody of any other person. While doing so, the paramount consideration must be about the welfare of the child. In Elizabeth Dinshaw v. Arvand M. Dinshaw, (1987) 1 SCC 42, it is held that in such cases the matter must be decided not by reference to the legal rights of the parties but on the sole and predominant criterion of what would best serve the interests and welfare of the minor. The role of the High Court in examining the cases of custody of a minor is on the touchstone of principle of parens patriae jurisdiction, as the minor is within the jurisdiction of the Court relied upon by the appellant]. It is not necessary to multiply the authorities on this proposition.

46. The High Court while dealing with the petition for issuance of a writ of habeas corpus concerning a minor child, in a given case, may direct return of the child or decline to change the custody of the child keeping in mind all the attending facts and circumstances including the settled legal position referred to above. Once again, we may hasten to add that the decision of the court, in each case, must depend on the totality of the facts and circumstances of the case brought before it whilst considering the welfare of the child which is of paramount consideration. The order of the foreign court must yield to the welfare of the child. Further, the remedy of writ of habeas corpus cannot be used for mere enforcement of the directions given by the foreign court against a person within its jurisdiction and convert that jurisdiction into that of an executing court. Indubitably, the writ petitioner can take recourse to such other remedy as may be permissible in law for enforcement of the order passed by the foreign court or to resort to any other proceedings as may be permissible in law before the Indian Court for the custody of the child, if so advised.

47. In a habeas corpus petition as aforesaid, the High Court must examine at the threshold whether the minor is in lawful or unlawful custody of another person (private respondent named in the writ petition). For considering that issue, in a case such as the present one, it is enough to note that the private respondent

was none other than the natural guardian of the minor being her biological mother. Once that fact is ascertained, it can be presumed that the custody of the minor with his/her mother is lawful. In such a case, only in exceptionable situation, the custody of the minor (girl child) may be ordered to be taken away from her mother for being given to any other person including the husband (father of the child), in exercise of writ jurisdiction. Instead, the other parent can be asked to resort to a substantive prescribed remedy for getting custody of the child."

Similarly, in the case of ***Dhanwanti Joshi Vs Madhav Unde (1998) 1 SCC 112***, the Hon'ble Apex Court was pleased to observe in para 27, 29, 30 of the judgment as under:

"27.....However, in view of the fact that the child had lived with his mother in India for nearly twelve years, this Court held that it would not exercise a summary jurisdiction to return the child to the United States of America on the ground that its removal from USA in 1984 was contrary to the orders of US courts. It was also held that whenever a question arises before a court pertaining to the custody of a minor child, the matter is to be decided not on considerations of the legal rights of the parties but on the sole and predominant criterion of what would best serve the interest of the minor." (emphasis supplied) Again in paragraphs 29 and 30, the three-judge bench observed thus:-

"29. While dealing with a case of custody of a child removed by a parent from one country to another in contravention of the orders of the court where the parties had set up their matrimonial home, the court in the country to which the child has been removed must first consider the question whether the court could conduct an elaborate enquiry on the question of custody or by dealing with the matter summarily order a parent to return custody of the child to the country from which the child was removed and all aspects relating to the child's welfare be investigated in a court in his own country. Should the court take a view that an elaborate enquiry is necessary, obviously the court is bound to consider the welfare and happiness of the child as the paramount consideration and go into all

relevant aspects of welfare of the child including stability and security, loving and understanding care and guidance and full Nithya Anand Raghavan vs State Of Nct Of Delhi on 3 July, 2017 development of the child's character, personality and talents. While doing so, the order of a foreign court as to his custody may be given due weight; the weight and persuasive effect of a foreign judgment must depend on the circumstances of each case.

30. However, in a case where the court decides to exercise its jurisdiction summarily to return the child to his own country, keeping in view the jurisdiction of the court in the native country which has the closest concern and the most intimate contact with the issues arising in the case, the court may leave the aspects relating to the welfare of the child to be investigated by the court in his own native country as that could be in the best interests of the child. The indication given in *Mckee v. McKee* that there may be cases in which it is proper for a court in one jurisdiction to make an order directing that a child be returned to a foreign jurisdiction without investigating the merits of the dispute relating to the care of the child on the ground that such an order is in the best interests of the child has been explained in *L (Minors)*, *In re* and the said view has been approved by this Court in *Dhanwanti Joshi*. Similar view taken by the Court of Appeal in *H. (Infants)*, *in re* has been approved by this Court in *Elizabeth Dinshaw*."

Similarly, in the case of ***Shradha Kannaujia (Minor) and Another ,Vs State of U.P. and 5 others in Habeas Corpus No. 716 of 2020*** a co-ordinate Bench of this Hon'ble court was pleased to observe as under:

"It is well settled that writ of habeas corpus is a prerogative writ and an extraordinary remedy. The object and scope of a writ of habeas corpus in the context of a claim relating to custody of a minor child fell for consideration and it was held that in a habeas corpus petition seeking transfer of custody of a child from one parent to the other, the principal consideration for the court would be to ascertain whether the custody of the child can be said to be

unlawful or illegal and whether the welfare of the child requires that the present custody should be changed.”

19. The question of maintainability of a Habeas Corpus petition under Article 226 of the Constitution of India for custody of a minor was examined by Hon’ble Apex Court in the case of ***Tejaswini Gaud and others vs. Shekhar Jagdish Prasad Tewari and others Criminal Appeal No. 838 of 2019 order dated 06.05.2019*** and it was held that the petition would be maintainable where detention by parents or others is found to be illegal and without any authority of law and the extraordinary remedy of a prerogative writ of habeas corpus can be availed in exceptional cases where ordinary remedy provided by the law is either unavailable or ineffective.

The observations made in the judgment in this regard are as follows:-

"14. Writ of habeas corpus is a prerogative process for securing the liberty of the subject by affording an effective means of immediate release from an illegal or improper detention. The writ also extends its influence to restore the custody of a minor to his guardian when wrongfully deprived of it. The detention of a minor by a person who is not entitled to his legal custody is treated as equivalent to illegal detention for the purpose of granting writ, directing custody of the minor child. For restoration of the custody of a minor from a person who according to the personal law, is not his legal or natural guardian, in appropriate cases, the writ court has jurisdiction.

x x x

19. Habeas corpus proceedings is not to justify or examine the legality of the custody. Habeas corpus proceedings is a medium through which the custody of the child is addressed to the discretion of the court. Habeas corpus is a prerogative writ which is an extraordinary remedy and the writ is issued where in the circumstances of the particular case, ordinary remedy provided by the law is either not available or is ineffective; otherwise a writ will not be issued. In child custody matters, the power of the High Court in granting the writ is qualified only in cases where the detention of a minor by a person who is not entitled to his legal custody. In view of the pronouncement on the issue in question by the Supreme Court and the High Courts, in our view, in child custody matters, the

writ of habeas corpus is maintainable where it is proved that the detention of a minor child by a parent or others was illegal and without any authority of law.

20. In child custody matters, the ordinary remedy lies only under the Hindu Minority and Guardianship Act or the Guardians and Wards Act as the case may be. In cases arising out of the proceedings under the Guardians and Wards Act, the jurisdiction of the court is determined by whether the minor ordinarily resides within the area on which the court exercises such jurisdiction. There are significant differences between the enquiry under the Guardians and Wards Act and the exercise of powers by a writ court which is of summary in nature. What is important is the welfare of the child. In the writ court, rights are determined only on the basis of affidavits. Where the court is of the view that a detailed enquiry is required, the court may decline to exercise the extraordinary jurisdiction and direct the parties to approach the civil court. It is only in exceptional cases, the rights of the parties to the custody of the minor will be determined in exercise of extraordinary jurisdiction on a petition for habeas corpus."

20. A co-ordinate Bench of this in ***Master Manan @ Arush Vs State of U.P & 8 others, decided on 18.02.2021*** was pleased to observe in para 16 and 17 as under :

"16. In the present case, it is undisputed that the child is with his father since 22.8.2019 under his care and custody. It is not the case of either party that the child was forcibly taken away by the father from the custody of the mother. The pleadings and the material on record indicates the existence of a dispute with regard to the handing over the custody of the child to the mother, pursuant to some agreement between the parties, the terms of which, are now being disputed.

17. It has been pointed out that the date of birth of the child is 09.08.2013, and accordingly, the child being more than 5 years of age, the custody of the child with the father, in view of the provisions under Section 6 (a) of The Hindu Minority and Guardian ship Act, 1956, cannot be said to be prima facie illegal."

21. Another co-ordinate Bench of this Court in ***Habeas Corpus Writ Petition No. 467 of 2021 Vahin Saxena (Minor Corpus) ans Another Vs State of U.P. and three others decided on 27-08-2021*** was pleased to observe in para 22 as under:

“22. In a child custody matter, a writ of habeas corpus would be entertainable where it is established that the detention of the minor child by the parent or others is illegal and without authority of law. In a writ court, where rights are determined on the basis of affidavits, in a case where the court is of a view that a detailed enquiry would be required, it may decline to exercise the extraordinary jurisdiction and direct the parties to approach the appropriate forum. The remedy ordinarily in such matters would lie under the Hindu Minority and Guardianship Act, 1956¹³ or the Guardians and Wards Act, 1890¹⁴, as the case may be.”

22. It is, therefore, seen that in an application seeking a writ of habeas corpus for custody of minor child, as is the case herein, the principal consideration for the court would be to ascertain whether the custody of the child can be said to be unlawful and illegal and whether the welfare of the child requires that the present custody should be changed and the child should be handed over in the care and custody of somebody else other than in whose custody the child presently is.

23. It is well settled law by a catena of judgments that while deciding the matter of custody of child, primary and paramount consideration is welfare of the children so demands then technical objections cannot come in the way. However, while deciding the welfare of minor child it is not the view of one spouse alone which has to be taken into consideration. The courts should decide the issue of custody only on the basis of what is in the best interest of the children. A child, especially a child of tender years requires the love, affection, company, protection of both parents. This is not only the requirement of the child but is his/her basic human right. Just because the parents are at way with each other, does not mean that the child should be denied the care, affection, love or protection of any one of the two parents.

Habeas corpus proceedings is not to justify or examine the legality of the custody. Habeas corpus proceedings is a medium through which the custody of the child is addressed to the discretion of the court. Habeas corpus is a prerogative writ which is an

extraordinary remedy and the writ is issued where in the circumstances of the particular case, ordinary remedy provided by the law is either not available or is ineffective; otherwise a writ will not be issued. In child custody matters, the power of the High Court in granting the writ is qualified only in cases where the detention of a minor by a person who is not entitled to his legal custody.

24. Thus, this Court is not going into various allegations and counter allegations made by both the spouses on each other. I am clearly of the view that it is in the best interest of the child to have parental care of both the parents, if not joint then at least separate. I have no doubt that the child needs both parents and he would be equally happy, if not happier, in the company of the mother as well, the child would perhaps be happier if he could have both their parents. Unfortunately, the parents are unable to resolve their differences and stay together. Be that as it may, the child has a right to access both parents, and get the love and affection of both parents. Whatever the differences arose between the spouses, the child cannot be denied company of both.

25. In view of the observations/discussions made and judgments referred above, this Court is of the view that the child Master Malav Dwivedi shall remain in custody with her father in the interest of Justice as the welfare love affection company protection is in the custody of the father/ respondent no. 4. Further, this court issues following directions:

(i) The custody of child; Master Malav Dwivedi shall remain with father respondent No.4-Shwetang Dwivedi.

(ii) Since the mother-Smt. Sudha Dwivedi lives in Lucknow, she is permitted to meet the child on every third Sunday of each Month starting from February, 2024 between 10:30 A.M. to 2:30 P.M. at the current residence of respondent no. 4 i.e E-3/268, 69 Vinay Khand-3, Gomti Nagar, Lucknow with the condition of giving one day prior information to the respondent No.4-Shwetang Dwivedi (father) regarding meeting at his residence in Lucknow. It is further provided that the petitioner is allowed to have conversation with her child Master Malav Dwivedi son by mobile phone, whats app call or video call whenever she wants between 7.00 p.m to 7.30 p.m. as per Indian Standard Time.

(iii) If the mother of child wants to give any gifts on account of love and affection or do anything for well being of child then father/ respondent no. 4 or any of his family members will not make any

objection. However, mother shall keep in mind that such thing will be given, which are for use and safe for the child health.

(iv) The petitioner Smt. Sudha Dwivedi is at liberty to approach the appropriate forum for claiming the custody of the child under the Hindu Minority and Guards Act 1956 or under the Guardians and Wards Act, 1890 as the case may be in accordance with law.

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

(Shamim Ahmed, J.)

Order date :- 08.02.2024

Piyush/-