

Court No. - 16

Case :- HABEAS CORPUS WRIT PETITION No. - 256 of 2024

Petitioner :- Bhagirathi Thru. His Daughter Reetu Devi

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

Counsel for Petitioner :- Saurabh Kumar

Counsel for Respondent :- G.A.

Hon'ble Shamim Ahmed,J.

1. Vakalatnama filed today in the Court by Shri Anil Kumar Tiwari, Advocate on behalf of respondent No.4 is taken on record.

2. Heard Shri Saurabh Kumar, learned Counsel for the petitioner, Shri Anil Kumar Tiwari, learned Counsel for the respondent No.4, 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. This is the second habeas corpus writ petition filed by the petitioner seeking following reliefs:-

"i. Issue a writ order or direction in in nature of HABEAS CORPUS, directing the opposite party No.1 to 3 to immediately produce and set free the detainee, who has been illegally detained by the opposite party No.4 & 5 i.e. grandsons of the detainee.

ii. Issue any writ order or direction which this Hon'ble Court may deem fit and proper under the circumstances of the case.

iii. Allow this writ petition with cost in favour of the petitioner."

4. Learned counsel for the petitioner submits that the petitioner is the daughter of the detainee, namely-Bhagirathi and respondent No. 4 and 5 are the grand sons of the detainee and they have illegally detained the corpus with them, thus, this Court may issue a direction in this regard so that the custody of the detainee be given to the daughter, the next friend.

5. Learned A.G.A. for the State-respondent Nos.1 to 3 and learned Counsel for the respondent No.4 submit that the relief sought in this Habeas Corpus Writ Petition cannot not be granted by this Court as the daughter of the detainee is unable to point out any illegality or any infirmity regarding the custody

with the grandsons. They further submit that the petitioner had already approached this Court by way of filing a Habeas Corpus Writ Petition bearing HABEAS CORPUS WRIT PETITION No. 103 of 2024 and the Coordinate Bench of this Court vide a detailed order dated 14.06.2024 has dismissed the said petition. The order dated 14.06.2024 passed by a Coordinate Bench of this Court is reproduced hereinunder:-

"Rejoinder affidavit filed by the petitioner in Court today is taken on record.

Heard learned counsel for the petitioner and learned Standing Counsel appearing for the State-respondent.

The instant writ petition has been filed with the main relief:

"i. Issue a writ, order or direction in the nature of habeas corpus directing the opp. party no. 2 & 3 to get release of the petitioner/detenué forthwith.

ii. Issue a writ, order or direction in the nature of habeas corpus directing the opposite parties to produce the detenué before this Hon'ble Court."

Taking note of the contents of the petitioner and the submissions advanced by learned counsel for the petitioner, this Court, vide order dated 01.05.2024, directed the State to file counter affidavit.

As per counter affidavit filed by the State, Bhagirathi (detenué) is living with her daughter namely Gita Yadav and her family members on his own freewill, who are taking care of Bhagirathi (detenué) and in support of the same, a letter signed by Bhagirathi (detenué) is also annexed as Annexure No. CA-1 to the counter affidavit.

The counter affidavit also indicates that Bhagirathi (detenué) had lodged an FIR No. 0388 of 2023 on 31.12.2023 against Ashok Yadav (husband of Reetu Yadav) and Reetu Yadav (another daughter of Bhagirathi (detenué), who has instituted this petition alleging that Bhagirathi (detenué) is in illegal custody of respondents no. 4 and 5.

In the rejoinder affidavit, the averments made in the writ petition have been reiterated and it has been alleged that the thumb impression of Bhagirathi (detenué) is forged one.

Upon due consideration of aforesaid including the letter of Bhagirathi (detenué) filed as Annexure No. CA-1 to the counter affidavit also the FIR lodged by Bhagirathi (detenué) against Ashok Yadav and Reetu Yadav, this Court finds that there is no force in the petition and accordingly, the writ petition is dismissed."

6. Thus, they submit that the prayer made in this second petition cannot not be granted by this Court as the first petition has

already been dismissed by this Court for same cause of action and the second petition is not maintainable praying for same relief. They further submit that the present petition lacks merit and substance and is liable to be dismissed.

7. After hearing learned Counsel for the parties and after perusal of record, this Court does not find any ground to entertain this petition as the first petition praying for same relief has already been dismissed by a Coordinate Bench of this Court vide a detailed order dated 14.06.2024 and further the petitioner is unable to point out any illegality and infirmity regarding the custody of the detenue with his grandsons, thus, the petition being devoid of merit and substances is liable to be dismissed.

8. Accordingly, the present writ petition is hereby ***dismissed***.

9. No order as to cost(s).

Order Date :- 2.9.2024

Piyush/-