

Court No. - 16

Case :- HABEAS CORPUS WRIT PETITION No. - 330 of 2023

Petitioner :- Master Eshank Thakur Thru. His Mother Smt. Poonam Singh

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

Counsel for Petitioner :- Puttu Lal Misra

Counsel for Respondent :- G.A.,S.K. Mishra Nagraha,Vashu Deo Mishra

Hon'ble Shamim Ahmed,J.

This writ petition has been filed with the following prayer:

"(i) issue a writ, order or direction in the nature of 'Habeas Corpus' commanding and directing the respondents/opposite parties to produce the corpus of detenue namely Master Eshank Thakur at the earliest before this Hon'ble Court and to handover custody of the said minor to the petitioner being his mother/natural guardian.

(ii) issue a writ, order or direction in the nature of 'Mandamus' commanding and directing the respondent No. 04 through respondent No. 02 and 03 for making necessary provisions for interaction and conversations between the petitioner/mother and the minor child/detenue by mode of voice and video calls."

On a request made by the learned counsel for the petitioner, this court vide order dated 07.11.2023 referred this matter to the Mediation and Conciliation Center of this court. Order dated 07.11.2023 is reproduced hereinbelow:

"Heard learned counsel for the petitioner, learned A.G.A. for the respondent State and Shri Vashu Deo Mishra, learned counsel for respondent no.4.

The petitioner is directed to implead the father of the detenu Sudhir Singh as respondent no.5 during the course of the day.

Mr. Vashu Deo Mishra, learned counsel for respondent no.4 submits that he will accept notice on behalf of respondent no.5 and file Vakalatnama on his behalf in due course.

In compliance of the order dated 16.10.2023, the detenu Master Eshank Thakur has been produced by respondent no.4, who is his uncle and S.I. Ved Prakash Sharma.

Upon a query made by this Court to the detenu, the detenu submits that he is residing with his uncle and grand-mother and he wants to reside with them.

The deponent Smt. Poonam Singh, the mother of the detenue, who is present in court, has stated that she is willing to reside with her husband. She prays for visiting rights to meet her son.

Learned counsel for the parties have expressed their desire to reconcile the matter through mediation once respondent no.5 comes to this country, who is presently abroad.

Let counter affidavit be filed by learned counsel for the State as well as respondent no.4 within a period of two weeks' from today.

So far as visiting rights to the deponent is concerned, the deponent is permitted to meet the detainee today outside the court till 4 O'clock. Further visiting rights to the deponent shall be considered on the next date of listing.

List this case on 28.11.2023."

Thereafter, this court on 28.11.2023 passed the following order, which is also reproduced hereunder:

"Counter affidavit filed by the State-respondent is taken on record.

Heard learned counsel for the parties, Smt. Poonam Singh, mother of the detainee, and respondent No.5-Sudhir Singh.

Both Smt. Poonam Singh and Sudhir Singh have expressed their willingness to enter into the mediation.

In view of the above, parties are directed to appear before the mediation and conciliation centre of this Court on 20.12.2023.

The respondent No.5-husband who has come from abroad submits that he shall remain in this country till completion of mediation is directed to deposit a sum of Rs.50,000/- within a period of ten days from today with the Mediation Centre by way of a bank draft drawn in favour of the Senior Registrar, Mediation and Conciliation Centre, High Court, Lucknow, out of which Rs.45,000/- shall be payable to the deponent of the petition Smt. Poonam Singh as and when she appears before the mediation centre of this Court and remaining amount, i.e. Rs.5,000/- to be retained by mediation centre for mediation proceedings.

A report shall be sent by the mediation and conciliation centre of this Court within further period of three months.

List this case on 26.03.2024.

It is provided that the respondent No.5 while coming to mediation centre on every date shall bring the detainee with him and during the course of the day before the mediation centre, the mother of the detainee Smt. Poonam Singh will be permitted to meet the detainee in the children play room of the mediation centre of this Court in private.

The respondent No.5 who is present here before the court has undertaken that the mother of the detenu is permitted to call the detainee on phone. The deponent of the petition also undertakes that she will not use any abusive words."

Thereafter, the Mediation proceeding initiated and ultimately

the Mediator submitted his report dated 14.03.2024, in which it is mentioned that 'Mediation completed. No Agreement.', thus, the mediation fails. Copy of the Mediation and Conciliation Center is also on record.

Sri Vashu Deo Mishra, learned counsel for the opp. party Nos. 4 and 5 as well as Sri Ashok Kumar Singh, learned A.G.A. appearing for the opp. party Nos. 1, 2 and 3, submit that the relief as sought by the petitioner, cannot be granted by this court, as there is no agreement in the mediation proceeding and the mediation is failed, and the minor child in his statement has stated that he wants to live with the opp. party Nos. 4 and 5. If the mother wants to seek custody of the minor child, then she has a remedy under the Guardian and Wards Act, 1890 and under the Hindu Minority and Guardianship Act, 1956 and she may move an application before the competent court.

After considering the arguments, advanced, and going through the record, this writ petition is finally **disposed of**, with the observations made above.

At this stage, learned counsel for the petitioner prays for visitation rights.

Accordingly, the petitioner/petitioner of the corpus is allowed to meet the corpus/minor child on every third Saturday between 10:00 a.m. to 1:30 p.m. at the residence of opp. party Nos. 4 and 5. She can also take any gift item, food item in regard to her love and affection towards the minor child.

During the meeting of the petitioner with the child, the respondent Nos. 4 and 5 or their family members shall not create any hindrance.

The petitioner is also allowed to talk with the corpus/minor child on mobile, whatsapp or video call between 7:30 to 8:00 p.m. twice in a week, i.e., on Monday and Friday.

(Shamim Ahmed, J.)

Order Date :- 5.7.2024
A.Nigam