

Chief Justice's Court

Case :- SPECIAL APPEAL No. - 293 of 2024

Appellant :- Sajjad Hasan Masood and 2 others

Respondent :- State of U.P. Thru. The Prin. Secy. Home Deptt. Lko and 3 others

Counsel for Appellant :- Abhishek, Mayur Narang, Shobhit Mohan Shukla assisted by Lokenath Chatterjee and Mr.B. K. Singh with Gantavya Advocate

Counsel for Respondent :- C.S.C., Avanindra Singh Parihar, Anurag Verma (AGA-I) assisted by Ajit Singh (State Law Officer for opposite party no.1 to 3.), Avanish Kumar Singh (Counsel for respondent no.4).

Hon'ble Arun Bhansali, Chief Justice

Hon'ble Jaspreet Singh, J.

1. This appeal is directed against the order dated 12.12.2024 passed by the learned Single Judge in Habeas Corpus Writ Petition No. 295 of 2024 whereby the learned Single Judge has inter alia directed production of the Corpus before the Court on the next date of listing i.e. 19.12.2024.

2. The petition in the nature of Habeas Corpus was filed by the respondent mother making allegations against the appellants inter alia of kidnapping the corpus and seeking his custody.

3. Learned Single Judge after hearing the parties and noticing the facts that in the previous proceedings initiated in the nature of Habeas Corpus by the appellants, a direction was given on 29.01.2024 that the Corpus would go with the mother, the fact that FIR/Case Crime No. 0269 of 2024 was lodged on 16.07.2024 under Section 137(2) of BNS dealing with the offence of kidnapping against which the writ petition by High Court and Special Leave Petition filed by them was rejected by Hon'ble Supreme Court, coupled with the fact of filing of a suit under Guardians and Wards Act, 1890 and initiation of proceedings under Juvenile Justice Act, 2015, by the appellants before the court at Hooghly/ C.W.C., Hooghly observed that the custody of child was taken forcibly by the appellants and directed production of the corpus.

4. Various submissions have been made pertaining to the maintainability of the writ petition in the nature of Habeas Corpus as well as the fact that Court has recorded opinion regarding the custody of the child being taken forcibly.

5. Further submissions have been made that in the previous round of litigation in the nature of Habeas Corpus, observations were made regarding parties not disputing that it is difficult to ascertain the wishes of the child looking to the age. Submissions have been made that the order passed is not justified.

6. Learned counsel for the respondents supported the order impugned.

7. The law pertaining to maintainability/entertainability of the petition in the nature of Habeas Corpus between warring parents has been dealt with in the case of ***Tejaswani Gaud and others Vs. Shekhar Jagdish Prasad Tiwari 2019 (7) SCC 42*** wherein Hon'ble the Supreme Court has inter alia laid down that for the purpose of ascertaining the welfare of the child the powers under Article 226 of the Constitution of the India in a petition filed in the nature of Habeas Corpus can be exercised by the Court and therefore apparently it cannot be said that on the allegations made in the petition, the petition is not maintainable/entertainable.

8. Coming to the observations made by the learned Single Judge, at the present stage based on the sequence of events noted by the learned Single Judge, pertaining to the custody of the child having been taken forcibly are apparently prima facie only and it cannot be said to be a final opinion and therefore the plea raised in this regard cannot be countenanced.

9. So far as the direction given by the learned Single Judge for production of the corpus is concerned, in the circumstances of the case wherein the child admittedly at one stage was in custody of the respondents and presently in custody of the appellants and serious allegations pertaining to kidnapping have been made, the directions given by the learned Single Judge for production of the Corpus cannot be faulted.

10. In view thereof, we do not find any reason to interfere with the order impugned. There is no substance in the appeal, the same is therefore, ***dismissed***.

Order Date :- 18.12.2024

Asheesh/Harshita

(Jaspreet Singh, J.) (Arun Bhansali, CJ.)