

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.1526 OF 2014

Hussain Jumman Pathan

..Petitioner

Vs.

The State of Maharashtra and Ors

..Respondents

Ms. M. J. Reena Rolland, for the Petitioner.

Mr. L. M. Shukla i/b Shaikh Abdul Kalam, for Respondent No.6.

Mrs. G. P. Mulekar, APP, for the State.

CORAM :- **SMT. V. K. TAHILRAMANI AND
SHRI. B. P. COLABAWALLA, JJ**

DATE :- **MAY 7, 2015.**

P. C.:

Heard the learned counsel appearing for the Petitioner, learned counsel appearing for Respondent No.6 and the learned APP for Respondent Nos. 1 to 5.

2 The Petitioner is the father of minor child Jishan born on 04.12.2012. Respondent No.6 is the sister of wife of the Petitioner i.e. she is the maternal aunt of child Jishan. It is the case of the Petitioner that his wife died due to Jaundice on 01.01.2014. On that day, the child was snatched away from

the Petitioner by Respondent No.6 who is the maternal aunt of the child. The maternal relatives of the child told that the child will be returned after 10 days. Hence, on 12.01.2014, he asked that baby be given back to him, however, even thereafter the child was not returned back to him and instead he was threatened with dire consequences. Thus, the allegation of the Petitioner is that the minor child was forcibly taken away from him by Respondent No.6. Respondent No.6 as well as the child is present before us. The child is just two years and four months old.

3 Having heard the learned counsel appearing for the parties, we find that the case of the Petitioner i.e. the minor son is unlawfully detained by Respondent No.6, cannot be accepted. As stated earlier, Respondent No.6 is the maternal aunt of the child, at the highest it can be said that the Petitioner is deprived of the custody of his minor child.

4 It is well settled that in the matters concerning the custody of minor children, the paramount consideration is the welfare of the minor and not the legal right of this or that particular party. It is difficult for us in this habeas corpus petition to take evidence without which the question as to what is in the interest of the child cannot satisfactorily be determined.

5 It is an admitted fact that Respondent No.6 has filed a Petition for custody of the child under the Guardian and

Wards Act, 1890 which is numbered as Petition No. D 113 of 2014 and it is pending before the Family Court at Bandra. The Family Court at Bandra, would be the appropriate forum to decide what is in the interest of the child and then decide to whom the custody of the child should be given.

6 It would be appropriate that the parties pursue the matter before the Family Court. In this writ jurisdiction, we are not inclined to entertain the present Petition and we leave it to the parties to pursue the remedy before the Family Court. The Family Court to decide the matter without being influenced by any observations in this order. The Family Court to further decide the Petition for custody as expeditiously as possible.

7 The Petition stands disposed of in above terms.

[SHRI. B. P. COLABAWALLA, J.] [SMT. V. K. TAHILRAMANI, J.]