

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 1882 OF 2015

Prabhu Kamal Sah and ors. ..Petitioners
Versus
The State of Maharashtra and ors. ..Respondents

Mr. S. Pathak i/b. Ms. Siddh Vidya, advocate for the petitioners.
Mrs. S. V. Sonawane, APP for the State.
Ms. Samina Khan, respondent No.6 in person.

**CORAM : RANJIT MORE &
V. L. ACHLIYA, JJ.**

**DATE : 7th DECEMBER, 2015.
(In Chambers)**

P. C. :

Heard Mr. Pathak, learned counsel for the petitioners, Ms. Sonawane, learned APP for respondent Nos. 1 to 3 and respondent No.6 in person.

2. The petition is filed seeking writ of Habeas Corpus for directions to respondent Nos. 1 to 3 to trace and produce the minor child – Master Amar Anil Sah.

3. Respondent No.6 married to one Anil Sah in the year 2008. Petitioner Nos. 1 and 2 are the parents and petitioner No.3 is the brother of the said Anil Sah. The said Anil Sah expired on 8th February,

2010. About two months prior to death of her husband, respondent No.6 gave birth to a male child viz. Master Amar Anil Sah. After the death of her husband, respondent No.6 left the house of petitioners on 28th October, 2010 and returned to her maternal house without informing petitioners.

4. Learned counsel for the petitioners stated that petitioner Nos. 1 and 2 had filed proceedings for the custody of the child – Master Amar against respondent No.6 in the Family Court by filing petition No.D-107 of 2012. However, the same was disposed of on 3rd June, 2014 with direction to respondent No.6 to provide access to child to petitioners whenever they visit Mumbai near vicinity of her house. It is the petitioners' further case that respondent No.6 and her said son were not found at the house of respondent No.4 and, therefore, they filed a missing complaint which is under investigation. Hence, they have filed this petition on apprehension that respondent Nos. 4 and 5 may have murdered said child viz. Amar.

5. Respondent No.6 appeared in person before us. She submitted that she is the mother and natural guardian of the child – Master Amar. At present, the age of the child is approximately 5 year old. Respondent No.6 stated that the child is pursuing studies and is in

her custody. In support of her contention, she has produced before us some documents, which we have perused and have returned them back to her. Respondent No.6 stated that, in the interest of the child, she does not want him to be exposed to the Court proceedings. She has further stated that in the interest of safety and wellbeing of child and herself, the request for production of child may not be insisted.

6. Having considered the rival submissions, we are not inclined to entertain this petition. The child in question is approximately 5 year old and respondent No.6 is his mother and natural guardian. On the basis of the documents produced before us, we are satisfied that the child is taking education in a school and it is not in the interest of the child to compel his presence before the Court. The Family Court while rejecting the petitioner Nos.1 and 2's application for custody made following observations in paragraph 11 which are reproduced below:

"11. In this case the child is now in the custody of respondent. She is biological mother of the child. Therefore, disturbing custody arrangement of respondent to petitioner would disturb the child. It would also traumatize the child. It would also disturb his future and this will affect his psychological upbringing. Respondent is young lady, therefore, she is more equipped to take care of child for a longer duration than petitioner who are comparatively elder than respondent. Now the emotional argument of petitioners that child

Amar is only sign of their son who has expired suddenly is an attractive argument, but one will have to take care of best interest of child in longer run. Therefore, I am not indinct to allow this petitioner thereby traumatize the child. On the other hand it would be appropriate if petitioner are permitted to have access to the child whenever they come to Mumbai. They can also permitted to make their financial contribution in upbringing of child, so child will also get emotional and financial assistance of grandparents. Therefore, I answer point accordingly and pass the following order:

O R D E R

1. The Petition stands disposed of with following directions:
 - a) The custody of child shall remained with respondent-Soni Arya @ Samina Anil Kumar Sah.
 - b) Respondent is directed to provide access to child to both the petitioners, whenever they visit Mumbai, near vicinity of her house.
 - c) Petitioners are permitted to give financial assistance to respondent for bringing of child Amar, if they chooses to do so."

7. Thus in the light of order passed by Family Court, the request of the petitioners deserves no consideration in exercise of writ jurisdiction under Article 226 of the Constitution of India. If the grievance of petitioners is that, in spite of order from Family Court, the respondent No.6 has not provided access to child, then, it is for the petitioners to adopt the appropriate remedy available under law to

enforce the said order. Same cannot be done by filing such petition for issuance of writ of Habeas Corpus against respondents. In view of these facts and circumstances of the case, we are not inclined to entertain this petition. The writ petition, accordingly, stands dismissed.

[V. L. ACHLIYA, J.]

[RANJIT MORE, J.]