

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 4251 OF 2014

Zaibunisa Shaikh.

..Petitioner.

Versus

State of Maharashtra & Others.

..Respondents.

Mr. A. H. Ponda, Mr. Vijay Dhingreja, Mr. Prashant Pandey, Ravish Mishra for the Petitioner.

Mrs. U. V. Kejiwal, APP for the State.

Mr. Nilesh Tribhuvan and Khan Fakhruddin for Respondent Nos.5 to 9.

Mr. Subhash Jha and Rushita Jain i/b Law Global for Respondent No. 4.

Mr. Shaikh, PI BKC Police Station, Mumbai.

Coram : RANJIT MORE &
V. L. ACHLIYA, JJ.

Date : **January 8, 2016.**

P. C. :

1. Heard the learned Counsel appearing for the respective parties. This petition is filed seeking following reliefs :

“(a) the Hon'ble Court be pleased to issue writ of habeas corpus directing Respondent Nos. 4 to 9 to restore the custody of the minor children Master Hamrah and Master Abdulla back to the Petitioner;

(b) the Hon'ble Court may be pleased to issue appropriate writ or order directing the Commissioner of Police, Mumbai to produce the minor children minor children Master Hamrah and Master Abdulla back to the Petitioner;

(c) the Hon'ble Court may be pleased to issue

appropriate order and directions, directing the concerned authority to cancel the passports of minor children Master Abdulla Suhaib Mulla holding passport No. H9843061 and Master Hamrah Suhaib Mulla holding passport No. K4553525;

- (d) the Hon'ble Court may be pleased to direct the concerned authority to open look out notice for the minor children Master Hamrah and Master Abdulla across all airports in India;*
- (e) the Hon'ble Court may be pleased to issue the concerned authority to issue Red corner notice against Respondent No. 4.*
- (f) the Hon'ble Court may be pleased to direct the Commissioner of Mumbai to find out whether the minor children Master Hamrah and Master Abdulla have travelled outside the country and restore their custody back to the Petitioner."*

2. The Petitioner is the maternal grand-mother and Respondent No.4 is the father of Master Hamrah and Master Abdulla. Zeenat – Daughter of the Petitioner was married to Respondent No.4 on 30th July 2006 and out of that wedlock Master Hamrah and Master Abdulla were born. Unfortunately, Zeenat expired in the year 2013. It is the case of the Petitioner that at the time of Zeenat, Hamrah and Abdulla were in her custody and Respondent No. 4 has kidnapped them from her custody and she has filed complaint to that effect against Respondent No.4.

3. During the course of the pendency of this writ

petition, Respondent No.4 has filed a writ petition seeking relief to quash the FIR against him with BKC Police Station registered at the instance of the Petitioner herein.

4. On 22nd December 2015, Respondent No.4 made a statement through his counsel that he will produce the minor children before this Court. Pursuant to the statement made, Respondent No.4 has produced the minor children before us today. We have interviewed the children in the Chambers and held separate interactions with the Petitioner, viz., the maternal grand-mother of the children as well as Respondent No.4, viz., father of the children.

5. Abdullah, who is now 7 years old, is studying in 2nd standard in MET School at Udappi, Karnataka. Hamrah, who is now 4 years old, is studying in junior KG at Alvivad School at Udappi, Karnataka.

6. Both the children expressed their wish to continue to remain with their father, i.e., Respondent No.4. They are not willing to go to reside with their grand-mother. Admittedly, the Petitioner, i.e., the maternal grand-mother had filed proceedings for custody of said children. Those proceedings are stated to be dismissed for default. The purpose of this petition to issue writ of habeas corpus is to produce the children Abdullah and Hamrah and since they are produced before us by Respondent No.4 and

we allowed the Petitioner to meet the children, the petition is worked out. Nothing survives in the petition and hence it is accordingly disposed of.

7. We, however, expressly keep open all rights and contentions of the respective parties to approach appropriate authority / Court seeking relief as to custody of said children.

8. At this stage, it needs to be noted that we have spent nearly about two hours in convincing the parties to settle the matter amicably. Suggestion was made keeping in mind the welfare of the children as paramount consideration. Unfortunately, parties are not willing to settle the matter amicably.

9. Before parting with the matter, we also wish to put on record note of appreciation for the efforts made by the police officers in securing the presence of Respondent No.4 and children.

10. In view of the disposal of the main writ petition, Criminal Application No.352 of 2015 does not survive and the same is accordingly dismissed.

[V. L. ACHLIYA, J.]

[RANJIT MORE, J.]