

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WRIT PETITION (HABEAS CORPUS) No. 22 of 2017**

Smt. Jyoti Bhatariya W/o Shri Suber Bhatariya Aged About 28 Years R/o Trimurti Nagar, Fafadih, Raipur, Police Station Devendra Nagar, Raipur District Raipur Chhattisgarh.

---- **Petitioner**

Versus

1. State Of Chhattisgarh Through Its Secretary, Department Of Home, Mahanadi Bhawan, Mantralaya, New Raipur, District Raipur Chhattisgarh.
2. Director General Of Police, Police Headquarter, Sector 19, Naya Raipur, District Raipur Chhattisgarh.
3. Inspector General Of Police, Police Headquarter, Sector 19, Naya Raipur, District Raipur Chhattisgarh.
4. Superintendent Of Police, Raipur, Near Ghadi Chowk, Near Collectorate, District Raipur Chhattisgarh.
5. Station House Officer, Police Station Civil Lines, Shankar Nagar, District Raipur Chhattisgarh.
6. Station House Officer, Police Station Devendra Nagar, District Raipur Chhattisgarh.
7. Sub Divisional Magistrate, Raipur, District Raipur Chhattisgarh.
8. Shri Suber Bhatariya, S/o Shri Pahadband Bhatariya, Aged About 32 Years
9. Shri Pahadband Bhatariya, S/o Late Shri Raiguru Bhatariya, Aged About 60 Years
10. Shri Jamuna Bhatariya, W/o Pahadband Bhatariya, Aged About 50 Years

All the respondents No. 8 to 10 are R/o B S U House, Block No. 6, Indraprasth, Raipura, District Raipur Chhattisgarh.

11. State Of Odisha, Through Its Additional Chief Secretary, Home Department, Government Of Odisha, District Bhubaneswar (Odisha).

---- **Respondents**

For Petitioner	: Shri P. Acharya, Advocate
For State	: Shri U.N.S. Deo, Govt. Advocate

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice

Hon'ble Shri Sharad Kumar Gupta, Judge

Order On Board

Per Thottathil B. Radhakrishnan, Chief Justice

05/09/2017

1. This writ petition invoking Article 226 of the Constitution of India seeks issuance of writ in nature of Habeas Corpus in relation to the child covered by Annexure-P/1. Birth certificate which shows that the date of birth of that female child is 13/03/2013. This means that the said girl child is below the age of 5 years.
2. This writ petition is filed by the mother of the child. The 8th respondent is the child's father. These facts are not disputed.
3. Following issuance of *Rule Nisi*, coupled with directions, the jurisdictional Police had reached at the child in the custody of the father. The child is presented before us. We interacted in detail, on different rounds, with the parents and the child. We see that the child is well oriented. She is aware of her school and near relatives. She has clear idea of whatever she disclosed to us, which mainly related to her normal life. She is coherent. Though initially she was apparently against the mother, on our interaction with her we are satisfied that her such situation was the direct result of unsolicited, unlawful tutoring and such other unbecoming impositions with the thought process of that child, who came to the Court from the company of her father, who had, allegedly taken her off sometime in February or March 2017, that

is, nearly about more than six months ago. This obviously has happened at the instance of her father who had taken the child with him. He is now before this Court telling us that he may not be accused of having kidnapped her.

4. Also present before this Court along with the petitioner is Smt. Bhavna Harish Vacchani with whom we interacted. She said that she retired as Scale-I Employee of Bank of Baroda and the petitioner is a domestic help, including in her house. Our assessment is that the said person is providing support, including emotional, to the petitioner. We say this, more particularly because though the child appears to have been tutored to speak against her mother, she was very frankly with Smt. Bhavna Harish Vacchani. This we could see in the manner in which child interacted with her in the Court.
5. We enquired with the 8th respondent about his avocation, habits etc. He candidly stated that he intermittently consumes liquor, though not country made. He does not appear to have any stable mode of living, including income.
6. Our interaction with the petitioner discloses that she is concerned only about the best interest of the child though she had thrown certain accusations of misbehaviour, including physical harm by the 8th respondent and about his alcoholic nature, and expressed firmly that she would not go and stay in the 8th respondent's household which is not congenial to be her matrimonial home. The 8th respondent said that the petitioner is working as maid servant in different houses of her own choice. He did not,

however, mention to us any factor about the petitioner that may be relevant to hold that her company would not be conducive to their daughter. On the whole, we are satisfied that there is no reason why the petitioner, as the biological mother of the girl child in question, should not be permitted to exercise her eligibility in terms of Section 6 (a) of the Hindu Minority and Guardianship Act, 1956 which statute governs the parties. The girl child being one below 5 years, is to be ordinarily with the mother. We see no reason to deprive the petitioner of her eligibility to priority in the matter of custody of the girl child concerned.

7. For the aforesaid reasons, *Rule Nisi* 24.08.2017 is made absolute and it is directed that the girl child Amy will be taken by the petitioner into her custody subject to any order which may be issued through lawful jurisdiction in accordance with law. This means that the private respondents in this writ petition shall not, in any manner, interfere with the right of the petitioner to have the company, custody and care of her daughter as her mother and lawful guardian. This writ petition is so ordered, further directing that the jurisdictional Police will provide such security as may be found necessary for the petitioner and girl child Amy to enjoy the benefits of this order.

8. The writ petition is ordered accordingly.

Sd/-

(Thottathil B. Radhakrishnan)
Chief Justice

Sd/-

(Sharad Kumar Gupta)
Judge