

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2795 OF 2017

Pramod S. Zagade

...

...Petitioner

v/s.

Hema Shah and ors.

...

...Respondents

None for the Petitioner.

Mr.Sandesh D.Patil a/w Jeet J. Gandhi for the Respondents Nos.9 and 11.

Mr.Y.M.Nakhawa, APP for the State.

...

**CORAM : A.A. SAYED &
 SARANG V.KOTWAL,JJ.**

DATED : 16 AUGUST 2017

P.C.:

The matter was called out twice in the morning session, however, none was present on behalf of the Petitioner. Even in the afternoon session when the matter is called out, none appears on behalf of the Petitioner.

2. By this Petition filed under Articles 226 and 227 of the Constitution, the Petitioner seeks issuance of a writ of habeas corpus for production of two minor children and to hand over custody of the said two minor children to him being the father and also allow him to go to United Kingdom alongwith them.

3. Admittedly, the two minor children are in the custody of their mother-Hema (Respondent No.4). In paragraphs 11 and 12 of the Petition, the Petitioner has averred as follows:

“11. The Petitioner states that by order dated 25-01-2012 the Hon'ble Luton Country Court, UK was pleased to make the decree absolute and dissolve the marriage between the Petitioner and his ex-wife Hema.

12. The Petitioner states that as per the arrangement of custody of children between the Petitioner and his ex-wife Hema, it was agreed that the Petitioner and his ex-wife Hema will have joint custody of the children. It was categorically agreed that the Petitioner and Hema will have free access to children as and when needed and required.”

3. Learned Counsel for the Respondents Nos.9 and 11 has pointed out the judgment of the Supreme Court in **Nithya Anand Raghavan v/s. State of NCT of Delhi and ors.**, 2017 (7) SCALE 183 and in particular paragraph 43, which reads thus:

“43. In the present case, we are of the considered opinion that taking the totality of the facts and circumstances of the case into account, it would be in the best interests of the minor (Neha) to remain in custody of her mother (Appellant) else she would be exposed to harm if separated from the mother. We have, therefore, no hesitation in overturning the conclusion reached by the High Court. Further we find that the High Court was unjustly impressed by the principle of comity of courts and the obligation of the Indian Courts to comply with a pre-existing order of the foreign Court for return of the child and including the “first strike” principle referred to in Surya Vadanani's case(supra)”.

5. The two minor children are admittedly in the custody of their mother and in the facts and circumstances of the case, in our opinion, their custody cannot be said to be unlawful. The overriding consideration must be the interest and welfare of the minor children and considering the facts of the case, in our view, it would not be appropriate to issue directions to handover the custody of the two minor children to the Petitioner and allow the Petitioner alongwith the minor children to return to United Kingdom, as prayed.

6. In our view, this not a fit case to exercise jurisdiction of this Court to issue a writ of habeas corpus. The Petition is dismissed. There shall be no order as to costs. The Petitioner would be at liberty to take recourse to appropriate remedies available to him in law.

(SARANG V.KOTWAL, J.)

(A.A.SAYED, J.)