

HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY  
AND  
HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

WRIT PETITION No.11007 of 2018

Date: 12.06.2018

Between :

Nilofer Khan

... Petitioner

And

The State of Telangana, rep. by its  
Principal Secretary, Women Development and  
Child Welfare Department,  
Secretariat, Hyderabad and others.

... Respondents

COUNSEL FOR PETITIONER : Muhammad Veqar Hussain

COUNSEL FOR RESPONDENTS : A.G.P. attached to A.G. (T.S.)  
R.1 to R.3  
Mr. M.A. Wahab for R.5

THE COURT MADE THE FOLLOWING:

**ORDER :** (per Hon'ble Sri Justice C.V. Nagarjuna Reddy)

This writ petition is filed by the petitioner for issue of Habeas Corpus directing respondent No.4 to produce her three children, by name (1) Ghazala (14 years), (2) Imran Khan (8 years), and (3) Jamal Khan (6 years) before the Court and handover their custody to her.

The facts in brief are that the petitioner is an Afghanistan citizen, who evidently because of unrest in the said country, came on exodus to India and is presently living in India. There appears to be some differences between the petitioner and Mr. Mohammed Masood, s/o. Mohammed Yaqub, with whom the former claimed to have divorced legally, but the latter denies the same. Be that as it may, Crime No.318/2018 is registered against the petitioner by P.S. Rajendranagar, for the offences punishable under Sections 497, 420, 468, 471 IPC and Section 14 of the Foreigners Act and she was arrested in connection with the said crime and sent to judicial custody by the jurisdictional Court with a request to the Childrens' Homes to admit the three minor children. Accordingly, two minor boys were produced before the Child Welfare Committee (CWC), Ranga Reddy District, who passed orders on 24.02.2018 for their placement at Boys Home at Saidabad, Hyderabad. Accordingly, they were admitted in the said Home. As regards the girl child, she was

produced before the CWC on 24.02.2018 and orders were passed on 02.03.2018 to keep the girl at Girls Home, Nimboliadda, Hyderabad.

The petitioner approached the CWC on 17.03.2018 and submitted a petition wherein she has stated that she was enlarged on bail on 13.03.2018 and requested the CWC to handover custody of the children. She also attended the CWC Meeting on 23.03.2018 at Nimboliadda and requested to handover the children to her. The biological father of the children also approached the CWC and submitted a representation on 04.04.2018 and requested to handover custody of the children. As no decision was taken by the CWC, the petitioner has filed this writ petition.

In pursuance of the directions issued by this Court on 04.06.2018, all the three children have been produced before us today. We have interacted with the children, who in unison, have expressed their strong urge to join their mother by stating that she is very compassionate towards them and they are missing her love and affection.

Sri M.A. Wahab, learned counsel representing Mr. Mohammed Masood, the biological father of the children, opposed the request of the petitioner stating that the petitioner being involved in a criminal case, if the children are entrusted to her

custody, they will not be safe. The petitioner, however, submitted that after divorcing Mr. Mohammed Masood, she has married one Mr. Jalal Akbar and that they are living happily. Learned counsel representing Mr. Mohammed Masood, however, submitted that Mr. Jalal Akbar is facing a criminal case for allegedly raping his own daughter. The counsel for the petitioner seriously contradicted this submission and stated that the first wife of Mr. Jalal Akbar foisted a false case due to her disputes with her husband.

We are faced with a situation where three minor children have got into a whirlpool of litigation involving their parents. Admittedly, they were in the custody of the petitioner before the latter was arrested and they were later put in Children's Homes. The only perceivable objection against handing over the custody of the children to the petitioner is that, in the event of her being convicted, the safety of the children would be in jeopardy. In our opinion, in contemplation of future conviction, we cannot deprive the children of the company, love and affection of their mother. Therefore, we are inclined to grant relief to the petitioner, subject to the rider that in the event of conviction of the petitioner, the State shall protect the welfare of the children by putting them in the Children's Homes till such time as the criminal case ends or any person, who is legally entitled to take their custody, secures an order

for their custody from the competent Court of Law, as the case may be.

As regards the claim of Mr. Mohammed Masood, who filed the implead petition, he shall be free to avail appropriate legal remedies in Common Law Courts for exercising his visitation rights. Subject to this liberty given to him, the writ petition is allowed. The three children are set free and the petitioner is permitted to take their custody, forthwith.

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C.V. NAGARJUNA REDDY, J

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GUDISEVA SHYAM PRASAD, J

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Msr



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