

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.95 of 2019

Arising Out of PS. Case No.- Year- Thana- District-

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Sudeshna Vidyarthi, W/o- Prajya Rakshit Vidyarthi, D/o- Shri Arsi Prasad,
R/o- Mohalla- Chitavan, Old Exchange Road Sitamarhi, P.S.- Sitamarhi,
District- Sitamarhi

... .. Petitioner/s

Versus

1. The Union Of India Through The Foreign Secretary Of India, New Delhi
2. The Chief Secretary of Bihar at Patna
3. The Chief Secretary of Jharkhand at Ranchi
4. The Director General of Police, Bihar, Patna
5. Prajya Rakshit Vidyarthi, S/o- Late Dr. P.N. Vidyarthi.
Present Resident of- 7017 Crown Ridge E1 Paso, Texas Zip-79912 USA,
Permanent Resident of- Q. No. 140 Harmu Housing Colony Ranchi, P.S.
Argora, District- Jharkhand

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Uma Shankar Singh, Advocate Dr. Satyendra Kumar Srivastava
For the Union of India	:	Smt. Nivedita Nirvikar, CGC
For the State	:	Mr. Prabhu Narayan Sharma, AC to AG

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 15-01-2019

Heard Shri Uma Shankar Singh, learned counsel
appearing on behalf of the petitioner, along with Shri Satyendra
Kumar Srivastava.

The contention raised is that the petitioner, being the
mother, cannot be deprived of the custody of her children. The
children born from the wedlock of the petitioner and the



respondent No.5 appear to be residing with their father, the 5th respondent, in the United States of America. The first child is a son, 12 years old and the second is also a son, who is 7 years old.

The issue of custody and guardianship has to be necessarily gone into in terms of the Guardian and Wards Act, 1890 and can be contested before the Family Court, but even otherwise, the petitioner being the mother, there cannot be a substitute for her keeping in view the growing age of the children.

Learned Counsel for the petitioner, therefore, contends that a writ in the nature of habeas corpus would be maintainable and, therefore, an appropriate direction may be issued in order to facilitate either the custody of the children or the company of the petitioner with her children. Learned counsel has relied on the Apex Court judgment in the case of Ruchi Majoo Vs. Sanjeev Majoo, reported in (2011) 6 SCC 479.

Learned counsel for the Union of India and for the State of Bihar have submitted that this is an important issue of guardianship and Family Court would only have jurisdiction to adjudicate such a claim inasmuch as the present custody of the children with their father and natural guardian cannot be said to be unlawful. The father being the natural guardian of his children is entitled for the custody of his sons.



Paragraph 7 of the writ petition reads as follows:

“7. That the petitioner is being tortured by Respondent No.5 and by Sasurali People for which **she has taken steps in family court.**”

In the above facts and circumstances, as per the aforesaid admission of the petitioner herself, we find it expedient that in the event the petitioner applies for any such issue of custody or otherwise any other rights in relation to her children before the appropriate forum, the same shall be heard expeditiously, keeping in view the fact that the petitioner claims that she is suffering from a serious ailment.

Consequently, we are not inclined to entertain the writ petition in the above background without prejudice to the rights of the petitioner to approach the appropriate forum for redressal of her grievances.

The application is consigned to records.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

K.C.Jha/Uma/-

AFR/NAFR	NAFR
CAV DATE	N/A
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