

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.1609 of 2019

Arising out of PS. Case No.-394 Year-2016 Thana- GANDHIMAIDAN District- Patna

SUMIT SAURAV, Son of Shankar Saran, Resident of House No. B/135,
Harivansh Smriti, Anishabad, P.S.-Fulwarisharif, District-Patna.

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR THROUGH THE DIRECTOR GENERAL OF POLICE, PATNA, BIHAR
2. The Senior Superintendent of Police, Patna, Bihar
3. The S.H.O., P.S.-Gandhi Maidan, Patna.
4. Laxmi Narayan Mishra Son of Ramdahin Mishra Resident of 403, R.K. Plaza, P.S.-Gandhi Maidan, Patna.
5. Vinita Mishra Wife of Laxmi Narayan Mishra Resident of 403, R.K. Plaza, P.S.-Gandhi Maidan, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Ansul, Advocate
		Mrs. Salma Naaz, Advocate
For the Respondent/s	:	Mr. Prabhu Narayan Sharma, A.C. to A.G.

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)



Date : 25-11-2019

Heard learned counsel for the petitioner and learned counsel for the respondents.

2. Petitioner has prayed for the following reliefs:-

“(A). For issuance of a writ in the nature of Habeas Corpus, directing the respondents to immediately produce his son, Shardul before this Court, who has been in custody of Respondent Nos. 4 and 5 since the death of petitioner’s wife.

(B). For issuance of a writ in the nature of Mandamus, or appropriate writ/order/direction:

i. To hold that the petitioner is the natural guardian of the child, Shardul, as per the provision of Section 6 of Hindu Minority and Guardianship Act, 1956 and he fully satisfies all legal tests to be given the custody of the child, as he has a preferential right to custody of the child.

ii. To further hold that in order to satisfy the terms as set under Section 13 of Hindu Minority and Guardianship Act, 1956, it will be in the best interest of the child and his welfare that his custody is given to the petitioner.

iii. To direct the Respondent Nos. 4 and 5 to handover the custody of petitioner’s child to him as the petitioner is the father of the child



and thereby is the natural guardian of the child and it is in the best interest of his welfare and healthy growth that he be directed to be given under the guardianship of his father.

iv. To direct the Respondent Nos. 4 and 5 not to interfere with the custody of the child with the petitioner and not lead to any untoward incident in context of the child.”

3. Inviting attention of the decision rendered by the Hon'ble Apex Court in the case of **Tejaswini Gaud and Ors. Vs. Shekhar Jagdish Prasad Tewari and others in Cr. Appeal No. 838 of 2019, Gohar Begam Vs. Suggi Alias Nazma Begam and others, reported in 1960 SCR (1) 597, Capt. Dushyant Somal Vs. Smt. Sushma Somal and another, reported in (1981) 2 SCC 277, Syed Saleemuddin Vs. Dr. Rukhsana & Ors. in Appeal (crl.) 520 of 2001, Surya Vadanani Vs. State of Tamil Nadu & Ors. in Criminal Appeal No. 395 of 2015, Ruchika Abbi & Anr. Vs. State of National Capital Territory of Delhi & Anr. In Cr. Appeal No. 1683 of 2015, Mrs. Kanika Goel Vs. The State of Delhi in Cr. Appeal No. 635640 of 2018; judgment of Delhi High Court in the case of Puran Chand Vs. Commissioner of Police and Ors, reported in 1994 (30) DRJ 13; judgment of**



Kerala High Court in the case of Marggaeate Maria Pulparampil Nee ... Vs. Dr. Chacko Pulparampil and Ors., reported in AIR 1970 Ker 1; judgment of Bombay High Court in the case of Amol Ramesh Pawar Vs. The State of Maharashtra & Ors. in Criminal Writ Petition No. 1698 of 2013, as also the Hindu Minority and Guardianship Act, 1956, learned counsel with vehemence argues-

(a) that the present petition in its form is fully maintainable;

(b) the petitioner being the natural guardian is entitled to the custody of the minor child, aged four years.

4. Certain facts are not in dispute. Petitioner Sumit Saurav was married to Smt. Shraddha Mishra on 2nd of May, 2014. From the wedlock, one child, whose custody is sought for, was born. Unfortunately, on 23rd of August, 2016 Shraddha Mishra committed suicide in the house of her parents. On 8th of October, 2016, F.I.R. No. 394 of 2016 was registered against the petitioner-husband for the offence under Sections 306, 304-B/34 of the Indian Penal Code. It is also not in dispute that vide order dated 24th of May, 2017 passed in Cr. Misc. No. 17391 of 2017, titled as Sumit Saurav @ Sumit Saurabh Vs. The State of Bihar, petitioner stood enlarged on bail. Copy of the order is annexed



as Annexure-1.

5. The provisions of the Hindu Minority and Guardianship Act, 1956 are absolutely clear. It is a settled principle of law that what needs to be considered and factored alone is the paramount interest of the child.

6. We notice that in Paragraph 18 of the report [Tejaswini Gaud and Ors.] (supra) the Hon'ble Supreme Court has categorically held that a writ of Habeas Corpus is maintainable where it is proved that detention of the minor child by a parent or others is illegal and without the authority of law.

7. Now, coming to the instant facts, who are the persons with whom custody of the four year old child is today. They are the grand parents and certainly, such custody cannot be said to be illegal or without any authority of law, in any manner. The child has been with the grand parents since the date of death of his mother, who in certain proceedings, referred to in the petition had expressed her desire of the child being brought up by her parents. More so, for the fact that a criminal case is pending against the petitioner-husband under Section 304 I.P.C. We notice that on record there is no allegation of improper upbringing of the child or the child being deprived of the natural motherly love and affection from the grand parents. The petition



is also silent about the fact as to who are in his family to look after the child.

8. In view of the aforesaid facts and circumstances, we see no reason to issue any direction in the present petition, which is accordingly dismissed, leaving it open for the petitioner to take appropriate action seeking custody of the child in accordance with law, and more so under the provisions of the relevant statutes.

(Sanjay Karol, CJ)

(Dinesh Kumar Singh, J)

P.K.P./-

AFR/NAFR	
CAV DATE	
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