

\$~10

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(CRL) 1341/2019**

MOHD. ARMAN & ANR Petitioners
Through: Mr. B. Badrinath, Advocate

versus

STATE OF NCT OF DELHI & ORS Respondents
Through: Mr. Rahul Mehra, Standing Counsel
(Crl.) with Mr. Chaitanya Gosain,
Advocate for State.

%

Date of Decision: 08th May, 2019

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

J U D G M E N T

MANMOHAN, J: (Oral)

1. Present petition has been filed under Article 226 of the Constitution of India seeking issuance of a writ of *habeas corpus* for production of respondent No.2, who is currently in the custody of respondent No.3 (Bal Sahyog) and to hand over his custody to the petitioners after due verification. In essence, the petitioners' claim is that respondent No.2 is their lost son whose custody should be handed over to the petitioners after conducting a paternity test.

2. Learned counsel for the petitioners states that a perusal of the photographs of the parties show a stark resemblance between their lost son Ali Raza and the respondent No.2. He further states that the dialect of the respondent No.2 resembles that of petitioners and the age of respondent No.2 is about the same as it would have been of Master Ali Raza.

3. He contends that the possibility of two failed DNA tests could be attributed to erroneous sampling or contamination of sampling.

4. Having heard learned counsel for the petitioners, this Court is of the view that *habeas corpus* is a writ in the nature of an order calling upon the person who has detained another to produce the latter before the Court, in order to let the Court ascertain on what ground he has been confined and to set him free if there is no legal jurisdiction for the detention. It is the duty of the Court to issue this writ to safeguard the freedom of the citizen against arbitrary and illegal detention. The writ of habeas corpus has been described as a writ of right which is granted *ex debito justitiae*, but the applicant/petitioner must show a *prima facie* case of unlawful detention.

5. However, in a petition asking for the writ of *habeas corpus*, this Court is not entitled to examine the issue of paternity. The primary consideration of the Court in a writ petition for custody of a minor is not the legal right of this or that party, but the welfare of the minor.

6. Since the welfare of the minor is not the issue in the present case and further the minor is not in unauthorised and/or illegal detention of respondent No.3, this Court is of the view that the present writ petition is not maintainable.

7. Consequently, present writ petition is dismissed with liberty to petitioners to file appropriate legal proceedings to seek declaration as

parents and/or custody of respondent No.2 in accordance with law. The rights and contentions of all parties are left open. The Court/Forum/Authority before which any such proceeding is filed, shall decide the matter on its own merits without being influenced by any observation made by this Court.

MANMOHAN, J

SANGITA DHINGRA SEHGAL, J

MAY 08, 2019

js

