

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.393 of 2020

Arising Out of PS. Case No.-217 Year-2019 Thana- SONEPUR District- Saran

MADHURI KUMARI W/o Vikki Kumar Sah, D/o Krishna Lal Resident of Kharika, P.S.- Sonpur, District- Saran (Chapra) permanent resident of Village- Kharika, P.O. Pahleja, P.S.- Sonpur, District- Saran (Chapra).

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Home, Govt. of Bihar, Patna. BIHAR
2. The Director General of Police, Patna, Bihar
3. The superintendent of Police, Saran, Bihar
4. The SHO, Sonpur Police Station, Saran, Bihar
5. VIKKI KUMAR SAH S/o Resident of Village- Kharika, P.O.- Pahleja, P.S.- Sonpur, District- Saran (Chapra). (Husband).
6. SUNITA DEVI W/o Lal Mohan Sah Resident of Village- Kharika, P.O.- Pahleja, P.S.- Sonpur, District- Saran (Chapra)- Mother- in- Law)

... .. Respondent/s

Appearance :

For the Petitioner/s : Ms.Chhaya Kirti, Adv
For the Respondent/s : Mr. Pawan Kumar AC to A.G.

(The proceedings of the Court are being conducted through Video Conferencing and the Advocates joined the proceedings through Video Conferencing from their residence.)

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE S. KUMAR)

Date : 14-12-2020

Heard learned counsel for the parties.

This writ petition in the nature of *Habeas Corpus* has been filed to produce minor children of petitioner namely Rhea Kumari (F) aged about 6 years and Bholu Kumar (M) aged about 4 years as they are in illegal custody and to hand over the



custody of both minor children to the petitioner, who is their mother and natural guardian, and has a better right of custody, as the father of children is in judicial custody in an excise matter and the children are living with their grandmother.

Petitioner and respondent no. 5 got married under Hindu rites and rituals on 11.11.2011 and from said wedlock two children were born. Petitioner was ousted from her matrimonial home by respondent no 5 (husband) on 11.02.2019 and petitioner had filed a complaint case being Complaint Case No. 496(c) of 2019 before the Court of CJM, Saran, which was subsequently registered as Sonapur PS Case No. 217 of 2019 dated 29.03.2019 for the offences punishable under Sections 323, 498A, 307, 406, 504 read with 34 of IPC, in which provisional bail was granted to respondent no.5(husband). An FIR being Sonapur PS Case No. 117 of 2020 dated 10.02.2020 was lodged against respondent no. 5(husband) for the offences punishable under Sections 30(a), 38 & 41 of Bihar Prohibition and Excise Act, 2016, in which he was arrested and sent to Judicial custody.

Respondent No. 5 (husband) has filed matrimonial (divorce) Case No. 148 of 2019 dated 24.07.2019 before the Principal Judge, Family Court, Chapra, Saran.



Divorce case between the petitioner and respondent no. 5 (husband) is pending before the Family Court, Chapra (Saran) which has also jurisdiction to pass order/orders with respect to interim custody/custody of the minor children under Section 26 of the Hindu Marriage Act as well as Section 7(1)(g) of the Family Courts Act. Accordingly, the writ petition is disposed of with liberty to the petitioner to file petition for interim custody/custody of her minor children before the Family Court, Chapra (Saran), and if any such petition is filed by petitioner, same to be decided by the Family Court Judge, within 60 days from the date of its filing, in accordance with law and after hearing both the parties.

(Sanjay Karol, CJ)

(S. Kumar, J)

Rajiv/veena-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	
Transmission Date	NA

