

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.4984 OF 2019

Jacob Yesurathnam Dasari : Petitioner.
Versus
The State of Maharashtra and ors. : Respondents.

Ms. Poona P Bhosale for the Petitioner.
Mrs. M M Deshmukh, APP for the Respondent/State.
Mr. Shantanu R Phanse, Advocate appointed for Respondent No.5.

CORAM : S. S. SHINDE, J
N. B. SURYAWANSHI, JJ
DATE : 08th JANUARY 2020

P.C. (In Chamber)

1 The present Writ Petition under Article 226 of the Constitution of India is filed for the following substantial reliefs :-

- (a) That this Hon'ble Court may be pleased to issue a Writ in the nature of Habeas Corpus of Master Varun Jacob Dasari before this Hon'ble Court and may be given custody to the Petitioner forthwith in accordance with law.
- (b) That this Hon'ble Court may be directed to the Respondent Nos.1 to 4 to take cognizable offence against the Respondent No.5 for kidnapping Master Varun Jacob Dasari from the lawful custody of the Petitioner forthwith.
- (c) That this Hon'ble Court be pleased to grant appropriate compensation to the Petitioner being physical and mental trauma caused not only to the Petitioner but his old aged parents who are senior citizens, in accordance with law.

2 Pursuant to order dated 22/10/2019 the notices have been issued to the Respondent Nos.1 to 4 – State. Respondent Nos.6 to 14 are private Respondents. By order dated 14/11/2019 advocate Mr. Shantanu Phanse has been appointed to represent the 5th Respondent - the contesting Respondent, who is the wife of the Petitioner.

3 Today child Master Varun Jacob Dasari is produced before us in the Chamber. The Petitioner and Respondent No.5 were married on 2nd May 2007. Out of the said wedlock child Varun was born on 21st September 2008. As on today, Master Varun is about 12 years old. When he was alone, we interacted with Master Varun in Chamber. In order to find out, whether Master Varun is competent to give proper answers, we have put him various questions, and we found that Master Varun is very confident and he firmly stated that he wish to reside with 5th Respondent and prosecute his study there. He stated that he wish to continue his study in Gowtham Model School, Payakaraopeta, District Visakhapatnam, Andhra Pradesh. He stated that he wish to reside with Respondent No.5 in his maternal grand-father's house. We made enquiry/asked questions, so as to find out, whether there are other family members to look after him in the family of parents of 5th Respondent. Master Varun stated that there are 10 to 11 family members including grand-mother, maternal uncles etc. in the family of parents of 5th Respondent.

4 Since Master Varun is produced before this Court, and he wish to reside with 5th Respondent in her parent's house, we are not inclined to accede to the prayer of the Petitioner to hand over custody of Master Varun to the Petitioner.

5 In so far as prayer clause (b) is concerned, we cannot undertake exercise of deciding disputed questions of facts. We also do not express any opinion about the relief claimed in terms of prayer clause (b). We cannot grant such relief in a Petition for Habeas Corpus.

6 In so far as relief claimed in prayer clause (c) is concerned, that would also fall out of the purview of Writ for Habeas Corpus, and moreover in the present case when we have interacted with Master Varun, who stated that he is in safe custody of 5th Respondent and expressed his wish to reside with her.

7 For the reasons afore-stated we are unable to persuade ourselves to grant the reliefs claimed in the Petition. Since Master Varun is produced before this Court, we do not think it necessary to keep this Petition pending. Hence the Writ Petition stands disposed of.

8 Needless to state that, the observations made herein above are

confined to the adjudication of the present Writ Petition, and parties to the Petition would not be entitled to derive benefit from the aforesaid observations in any other proceedings.

9 We appreciate the able assistance rendered by advocate Mr. Shantanu R Phanse in reaching to the correct conclusion in the matter. We quantify his fee as per schedule. We direct High Court Legal Services Committee to pay the fee and the expenses actually borne to advocate Mr. Shantanu R Phanse as per schedule within one month from today.

10 At this stage, the learned counsel appearing for the petitioner submits that the Petitioner may be given access to Master Varun as and when there are holidays to the aforesaid school wherein he is studying. The learned counsel for Respondent No.5, on instructions of Respondent No.5 who is present in Chamber, submits that the Petitioner may be allowed to meet Master Varun peacefully for a couple of hours on a particular day if the Petitioner travels at the place of parents of 5th Respondent and subject to no objection of the 5th Respondent. We are not inclined to issue any specific directions in specifying time of such meeting, however as and when there are holidays to the aforesaid school of Master Varun, in that case after intimating 5th Respondent by the Petitioner that on a specific date the Petitioner would visit at the place of parents of 5th Respondent so as to meet Master Varun, and after

confirming the date of such visit from 5th Respondent with the approval of 5th Respondent, the Petitioner would be at liberty to meet Master Varun on such date approved by 5th Respondent, however, such visit should be for couple of hours on the same day.

11 The learned counsel for the Petitioner, on instructions of the Petitioner, who is also present in the Chamber, submits that the Petitioner will explore possibility of depositing some amount in the account of 5th Respondent towards the expenses of school and maintenance of Master Varun so also for medical treatment of 5th Respondent subject to an outcome of the pending proceedings instituted by the parties before concerned Court.

[N. B. SURYAWANSHI, J]

[S. S. SHINDE , J]