

\$~9.

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

+ W.P. (CRL) 800/2020

KV DEEPAK

..... Petitioner

Through: Ms. Jasmine Damkewala, Adv.

versus

NCT OF DELHI & ANR.

..... Respondent

Through: Mr. Rahul Mehra, Standing Counsel
along with Mr. Chaitanya Gosain,
Advocate for the State/ GNCTD.
Mr. Murari Tiwari, Adv. for R-2.
With the respondent in person.

CORAM

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

%

12.05.2020

CRL. M.A. 6253/2020

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

CRL. M.A. 6254/2020

The Court Fees be filed within two weeks.

The application stands disposed of.

W.P. (CRL) 800/2020 & CRL. M.A. 6252/2020

1. The petitioner has preferred the present writ petition to seek a writ of habeas corpus directing respondent No.2/ his wife to produce the minor child of the parties, namely Kaustav. The petitioner also seeks a direction to

respondent No.2 to make available the said minor child to the petitioner on daily/ regular basis on video-call for a period of thirty minutes daily. The petitioner also seeks a direction to respondent No.2 to produce the child and handover the custody of the child to the petitioner after once the national lock-down opens.

2. The petitioner and respondent No.2 got married on 24.04.2010. The petitioner moved for work to Bahrain in October 2012 and started residing there. Soon thereafter, respondent No.2 also moved to Bahrain, and both the parties were working there. Kaustav was born on 05.01.2014, according to the petitioner, at Bahrain. On 07.03.2014, respondent No.2 came to India with the infant child and did not return to reside with the petitioner ever again. The petitioner made a complaint to the Indian Embassy complaining about respondent No.2 taking away the minor child to India. Respondent No.2 filed a complaint under Section 498-A of the Indian Penal Code, whereon FIR No.23/2015 stands registered. Respondent No.2 also initiated proceedings under the Protection of Women from Domestic Violence Act, 2005 –before the concerned Court at Tis Hazari Courts, Delhi. The same stands transferred to Dwarka Courts, Delhi – we are informed. The petitioner states that throughout, he has not been permitted by respondent No.2 to interact with his child. It appears that divorce proceedings have also been instituted by respondent No.2, wherein the petitioner has moved applications seeking visitation rights and custody of the minor child, i.e. in H.M.A. No.884/2018.

3. The submission of learned counsel for the petitioner is that – as per the petitioner's information, the minor child is not residing with respondent No.2 and he has been left to be looked after by some other relatives.

4. In view of the fact that the petitioner has already moved the Family Court to seek visitation rights and custody of the minor child – which is the competent court for grant of the said relief, in these proceedings, we are not inclined to pass any orders in that respect.

5. The only aspect that needs consideration is the petitioner's submission that Kaustav is left by respondent No. 2 and that he is residing with her relatives. Respondent No.2 has also appeared along with the minor child. Respondent No.2 has informed the Court that she is working at a Call Centre, and her shift is from 12:00 noon to 09:00 p.m. She submits that Kaustav is attending school, and while she is away to work, he is being looked after by his maternal aunt, and maternal grandparents – who live nearby. The child Kaustav has also appeared on screen with respondent No. 2 and he states that he is residing with his mother. This position is disputed by the petitioner.

6. In view of the aforesaid, it cannot be said that Kaustav is in illegal custody of any other person, other than respondent No. 2, since he appears to be residing with his mother. Merely because the child may be spending some time with his maternal aunt, or maternal grand parents while respondent No.2 is working, it does not follow that he is permanently not residing with respondent No.2. In these circumstances, no writ of habeas corpus would lie.

7. The submission of learned counsel for the petitioner is that, at least, the petitioner may be allowed to talk to the minor child on daily basis through video call, so that they could interact and a bond could be developed between them. Respondent No.2 has pointed out that over the years – ever since the birth of the minor child, the child has hardly ever met the petitioner

and, in these circumstances, to expect the minor child to talk to the petitioner through video call is not justified. In our view, such requests should properly be considered and addressed by the Family Court.

8. In these circumstances, we are not inclined to grant any relief to the petitioner.

9. The petition stands dismissed in the aforesaid terms.

10. The observations made in this order have been made only for the purpose of this order in these proceedings, and they shall not be used by any party, or cause any prejudice to either of the parties, in other proceedings.

VIPIN SANGHI, J

RAJNISH BHATNAGAR, J

MAY 12, 2020

B.S. Rohella