

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.67 of 2021

Arising Out of PS. Case No.-96 Year-2017 Thana- OBRA District- Aurangabad

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RITESH SINGH @ RITESH KUMAR S/O ANUGRAH SINGH R/O
VILLAGE TEJPURA, P.S-OBRA, DISTRICT-AURANGABAD (BIHAR).

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR THROUGH THE PRINCIPAL SECRETARY,
DEPTT. OF HOME, GOVT. OF BIHAR, PATNA. BIHAR
2. THE SUPERINTENDENT OF POLICE, AURANGABAD, DISTRICT-
AURANGABAD. AURANGABAD.
3. THE S.H.O., P.S. OBRA, DISTRICT-AURANGABAD.
4. RAVI RANA S/O KANHAIYA SINGH R/O VILLAGE-JINORIA, P.S.-
DAUDNAGAR, DISTRICT-AURANGABAD.
5. SONAKSHI KUMARI D/O RITESH KUMAR
6. MAHI KUMARI D/O RITESH KUMAR
7. YUVRAJ KUMAR S/O RITESH KUMAR
Sl No.5 to 7 are R/O VILLAGE - TEJPURA, P.S-OBRA, DISTRICT-
AURANGABAD, PRESENTLY UNDER ILLEGAL DETENTION AND
CUSTODY OF RAVI RANA S/O KANHAIYA SINGH, R/O VILLAGE-
JINORIA, P.S-DAUDNAGAR, DISTRICT-AURANGABAD.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Amarendra Kumar Singh, Advocate
For the Respondent/s : Mr. A.C to A.G

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE S. KUMAR)

Date : 20-02-2021

Heard learned counsel for the parties.

Petitioner has prayed for following relief(s):-

“For issuance of an appropriate writ/order or
direction(s) in the nature of Habeas Corpus for directing and
commanding the respondent authority particularly respondent
no.4 to release/hand over the minor children i.e., two daughters
and one son (respondent nos.5 to 7) to the petitioner as minor



children of the petitioner have been illegally detained by the respondent no.4 who is mama in relation of the minor children of the petitioner and in spite of several request and local panchayati who has kept them illegally and not releasing or handing over them to the petitioner and the petitioner being a father and natural guardian wants to provide proper education and other facilities to this children.”

This writ petition in nature of *habeas corpus* has been filed by petitioner for custody of his minor children, who are alleged to have been illegally confined by their maternal uncle. Petitioner being father of minor children is their natural guardian and entitle for their custody.

A case was instituted by respondent no.4 on 4.6.2017 against petitioner alleging that his sister was married to petitioner and she was subjected to torture and was set on fire in her matrimonial house and subsequently she died of burn injuries giving rise to Obra P.S. Case No.96/2017 and, thereafter, minor children of petitioner were taken away by their maternal uncle and in spite of several requests, the custody of minor children is not being handed over to him.

In custody matter of minor children, the concern of the Court is welfare and well-being of the minor children and not which party has a better right of custody. In present case, the minor children are in custody of their maternal uncle and as



such, it cannot be said that they are under unlawful confinement.

The writ petition is disposed of with liberty to petitioner to approach the concerned family court and file an application under the Guardians and Wards Act, 1890 for the custody of his minor children and the concerned family court shall decide the issue of custody of minor children including interim custody during pendency of proceeding under the provisions of aforesaid Act and in accordance with law. The issue of interim custody under Section 12 of the Act, if raised, shall be decided by the family court within 60 days from the date of filing of any such petition.

(Sanjay Karol, CJ)

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	03.03.2021
Transmission Date	NA

