

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.561 of 2022

Arising Out of PS. Case No.-55 Year-2021 Thana- MAHISHI District- Saharsa

Shambhu Sharma, Male Aged about 64 years, Son of Jamun Sharma Resident of Village - Bherdhari, Ward no.37, P.S.- Sadar, District Saharsa.

... .. Petitioner/s

Versus

1. The State of Bihar through the Director General of Police, Bihar, Patna.
2. The District Magistrate, Saharsa.
3. The Senior Superintendent of Police (SSP), Saharsa.
4. The S.H.O., Mahishi Police Station, District Saharsa.
5. Muskan Kumari daughter of Sanjay Kumar Resident of Village - Bherdhari, Ward no.37, P.S.- Sadar, District Saharsa.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Subesh Sharma, Advocate
For the State	:	Mr. Prabhu Narayan Sharma, A.C. to A.G.

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
and
HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH)

3 18-08-2022 Heard Mr. Subesh Sharma, learned counsel for the petitioner and Mr. Prabhu Narayan Sharma, learned A.C. to learned Advocate General for the State.

2. The present writ petition has been filed for the following relief:

A. For issuance of writ in nature of Habeas Corpus for release of respondent no. 5 who is a pregnant women presently lodged at 'Short Stay Home'(अल्पवास गृह), Supaul in connection with the Mahishi P.S. Case No. 55/2021 registered U/s



363, 366(A)/34 of the IPC.

B. And for any other relief/reliefs for which the petitioner is found to be entitled under the provision of law involved in the present case.

3. The petitioner, who claims to be the father-in-law of the respondent no. 5 has moved the Court seeking her custody on the ground that she has married his son and also has an infant child with her.

4. Learned counsel for the petitioner submits that as per the order impugned in Mahishi P.S. Case No. 55 of 2021/Criminal Case No. 664 of 2021, dated 05.01.2022, the learned A.C.J.M.-II, Saharsa has refused to pass any order with regard to release of the respondent no. 5, who is presently lodged at Short Stay Home, Supaul.

5. Learned State counsel submitted that the Court below had passed the order at the time when on the basis of the admitted date of birth the respondent no. 5 i.e., 24.05.2004, she was a minor and rightly she was not released in the custody where the petitioner and his family members were accused in a case lodged by the father of the respondent no. 5 alleging her kidnapping.

6. Learned counsel for the petitioner submits that the writ petition be disposed of with liberty to the respondent no. 5



to move before the appropriate forum for her release.

7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the writ petition stands disposed of with liberty to the respondent no. 5 to move an appropriate application before the Court where the matter is pending with regard to releasing her from the Short Stay Home, Supaul. If such a petition is filed, the Court concerned shall take the evidence of the respondent no. 5 and shall ascertain with regard to her having attained majority and if so found, shall take her views into consideration as to where she would like to go if she is released along with her minor child. Upon being satisfied of the *bona fide* of the prayer, the Court shall pass appropriate orders. However, the Court shall ensure that the person/persons in whose house the respondent no. 5 wants to reside, give an undertaking and also execute a bond with regard to the safety and well-being of the respondent no. 5 and the infant child as also with regard to all the expenses of the respondent no. 5 and her child being borne by them including fooding and lodging as also medical. Any violation of the terms and conditions of the undertaking and the bond by the persons with whom the respondent no. 5 expresses her desire to reside shall give cause of action for instituting appropriate



proceedings, in accordance with law, against them.

(Ahsanuddin Amanullah, J)

(Purnendu Singh, J)

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