

17.08.2022
Item No.13
Court No.32
Avijit Mitra

WPA (H) 10 of 2022

**Anil Kamilya & anr.
- Versus -
The Government of West Bengal & ors.**

Mr. Purnasis Bhuniya
...for the petitioners
Mr. Debabrata Chatterjee,
Ms. Ipsita Banerjee,
Mr. Simanta Kabir
....for the State
Mr. Balaram Pandit (Through Video Conferencing),
Mr. Krishna Deo Das,
Ms. Smriti Das
...for the respondent nos. 6 to 14

The present writ petition has been preferred
primarily praying for the following relief :

“(a) Issue a writ in the nature of Habeas Corpus directing the respondent authorities to find out and produce the missing granddaughter of your petitioners before this Hon’ble Court”.

Mr. Bhuniya, learned advocate appearing for the petitioners submits that the petitioners’ daughter, namely, Chumki married the respondent no.6 on 23rd February, 2015. After marriage, their daughter and the respondent no.6 started residing at Daman. They were, thereafter, blessed with two daughters, namely, Shreya Das (in short, Shreya) and Shruti Das (in short, Shruti), who are presently aged about six years and four years respectively. Subsequent thereto, there was a marital discord and the petitioners’ daughter was murdered on

11th March, 2021. After the alleged incident, the petitioner no.1 went to the rented house of the respondent no.6 at Daman. The police authorities rescued Shruti from the custody of the respondent no.6 and handed her over to the petitioner no.1. Shruti is presently residing with the petitioners. The custody of Shreya had been illegally retained by the parents of the respondent no.6 and her whereabouts is unknown to the petitioners. On 31st December, 2021 the petitioners visited the house of the respondent no.6 but they were forcibly driven away. Reporting the entire episode, a complaint was lodged by the petitioner no.1 before the police authorities but in vain. Aggrieved thereby, the petitioners have approached this Court.

Mr. Bhuniya submits that the petitioners are not being allowed by the private respondents to meet with their grandchild, namely, Shreya. The petitioners, being the maternal grandparents, are entitled to the custody of Shreya.

Mr. Pandit, learned advocate appearing for the respondent nos. 6 to 14, however, submits that the custody of the younger daughter of the respondent no.6, namely, Shruti had been illegally retained by the petitioners herein. Aggrieved thereby, the respondent no.6 has already filed an Act VIII application being no.588 of 2022 pending in the Court of the learned District Judge, Paschim Medinipur, as would be explicit

from the document annexed at page 32 of the affidavit-in-opposition.

Ms. Banerjee, learned advocate appearing for the State submits that the present petition is not maintainable. It is not a case that the whereabouts of Shreya is not known to the petitioners. Acting on the complaint lodged by the petitioners, the police authorities went to the residence of the respondent nos.6 to 8 and found that Shreya was residing along with them at Rosulpur, Police Station Belda, District Paschim Medinipur. She has also been admitted in a school there. Let the report, as filed, be kept on record.

Heard the learned advocates appearing for the respective parties and considered the materials on record.

It appears that there is an acrimonious relationship between the family of the respondent no.6 and the family of the petitioners' daughter. It appears that after the unfortunate death of the petitioners' daughter, the custody of the younger daughter, namely, Shruti was handed over to the petitioners and she is presently residing with the petitioners. However, the elder daughter, namely, Shreya is presently residing with the family of the respondent no.6. The whereabouts of Shreya is not unknown to the petitioners and she is residing at Rosulpur and is also attending a school there. There is no

material on record to infer that Shreya has been illegally detained by the respondent no.6 or his parents.

In view thereof, no interference is called for in exercise of extraordinary jurisdiction on a petition for *habeas corpus*.

There is a dispute as regards the custody of the daughters amongst the paternal grand-parents and the respondent no.6. In child custody matters, the ordinary remedy lies under the Guardian and Wards Act or the Hindu Minority and Guardianship Act as the case may be. The respondent no.6 had already filed an Act VIII application and the same is pending. In such fact situation and till any order is passed by the competent Court exercising ordinary jurisdiction, it would be proper to issue necessary direction to ensure that the parties avail access to speak and interact with the minor children.

In view thereof, it is directed as follows:

- a) the respondent nos. 6 to 8 shall provide access through video conferencing on every Saturday and Sunday to the petitioners for conversation and interaction with Shreya during the period from 6.00 p.m. to 8.00 p.m.;
- b) the petitioners shall also provide access through video conferencing on every Saturday and Sunday to the respondent nos. 6 to 8 for conversation and

interaction with Shruti during the period from 6.00 p.m. to 8.00 p.m.;

It is also made clear that the competent forum would consider the Act VIII application as filed by the respondent no.6 without being influenced by the observations made in the present order.

With the aforesaid observations and directions, the *habeas corpus* petition is disposed of.

There shall be no order as to costs

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

(Raja Basu Chowdhury, J.) (Tapabrata Chakraborty, J.)