

... Petitioner

State of Maharashtra and others

... Respondents

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Mr. Ashok Yadav for Respondent No.3.

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CORAM : NITIN JAMDAR AND
N.R. BORKAR, JJ.

DATED : 12 JULY 2022

P.C. :-

By this Petition, the Petitioner has sought the following reliefs :

“(A) That this Hon’ble Court be pleased to issue a writ in the nature of Habeas Corpus or any other writ, order or direction as, may be deemed appropriate by this Hon’ble Court, AND/OR by exercise its inherent jurisdiction u/s 482 of Code of Criminal Procedure, 1973, directing the Respondents herein to produce the minor son and minor daughter namely Vikramaditya Singh and Simran Singh, before this Hon’ble Court and ;

(B) To direct the Respondent No.3 to satisfy this Hon'ble Court that the illegal detention and unjust refusal to permit the Petitioner to meet minor children is not illegal."

2. The learned Counsel for the Petitioner states that the custody of the children with Respondent No.3 be treated as illegal detention, since the Petitioner has not been given access to meet the children for a period of three years. The learned Counsel for the Petitioner submits that in light of this position, the Court may use its extra ordinary jurisdiction to issue the Writ of Habeas Corpus.

3. That in matters pertaining to the custody of children, in certain circumstances, the high prerogative writ of habeas corpus can be issued is without any doubt, however, it is not in every case. The parties in the present Petition are already before the Family Court where orders are passed. The position is admitted in the Petition itself that even the issue of visitation rights is under consideration before the Family Court and orders have been passed. As regard violation of the orders of the Family Court as alleged, the Petitioner can always bring it to the notice of the Family Court where the said issue of visitation rights is pending. This grievance of the Petitioner that he is not allowed to meet the children for a long period of time can be brought to the notice of the Family Court. By-passing the Family

Court proceedings and starting the parallel proceedings would not be proper.

4. Therefore, while we dispose of this Petition keeping the rights of the parties open to be agitated in the Family Court where dispute is pending, we do observe that if in fact the case of the Petitioner-father that he is not allowed to meet the children for a period of three years, is found to be true, the Family Court will no doubt look into grievance and if necessary take up the matter for early hearing, subject to earlier time bound directions and commitments.

5. The Writ Petition is accordingly disposed of.

(N.R. BORKAR, J.)

(NITIN JAMDAR, J.)

KANCHAN
PRASHANT
DHURI

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by KANCHAN
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Date: 2022.07.15
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