

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1205 of 2023

Arising Out of PS. Case No.- Year-0 Thana- District- Patna

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GURIYA KUMARI @ KAJAL DEVI wife of Late Bijlesh Kumar, D/o- Late Prakash Mahto R/o- Gali No-01, Kanzanchi Road Po- Bankipur Ps- Pirbahore, Dist- Patna P/A- C/o- Late Prakash Mahto muskan Eqarium Arya Kumar road Po Ps- kadamkuan Dist- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna Bihar.
2. The Principal Secretary, Department of Home, Govt. of Bihar, Patna Bihar.
3. The Director General of Police, Govt. of Bihar, Patna Bihar.
4. The Senior Superintendent of Police, Bihar, patna Bihar.
5. The Officer In Charge, Police Station Pirbahore, Patna Bihar.
6. Ganesh Mahto not given Gali no-1, Khanzanchi Road Po- Bankipur Ps- Pirbahore, Patna.
7. Dinkal @ Kaushal Kumar son of Mahesh Mahto Gali no-1, Khanzanchi Road Po- Bankipur Ps- Pirbahore, Patna.
8. Ms. Muskan D/O Late Bijlesh Kumar through mother Guriya Kumari @ Kajal Devi, resident of - Gali No. 01 Khazanchi Road, P.O. Bankipur, P.S.- Pirbahore, District- Patna -800004, at present residing at C/O Late Prakash Mahto, Muskan Aquarium, Arya Kumar Road, P.O. and P.S.- Kadamkuan, District-Patna-800003.

... .. Respondent/s

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Appearance :

For the Petitioner	:	Mr. Rohit Mishra, Advocate
For the State	:	Mr. Prabhu Narayan Sharma, AC to AG

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CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

6 06-09-2023 The present petition has been filed under Article 226 of the Constitution of India in which the petitioner, who is mother of the *corpus*, has prayed that writ of *habeas corpus* be issued and thereby concerned respondent authority be directed to hand over



the custody of the *corpus*, i.e., minor daughter of the petitioner to the petitioner.

2. Heard Mr. Rohit Mishra, learned counsel for the petitioner and Mr. Prabhu Narayan Sharma, learned A.C. to A.G. for the respondent authorities.

3. Learned Advocate for the petitioner referred to the averments made in the memo of petition and thereafter submitted that the petitioner is the mother of the minor daughter, i.e., the *corpus*. It is submitted that the minor daughter of the petitioner was taken by the grandfather of the *corpus* and the uncles of the minor daughter, i.e., respondents no.6 and 7. However, thereafter the minor daughter of the petitioner did not return and it is alleged that she was kept in illegal detention by the private respondents. It is submitted that, in the meantime, husband of the petitioner died on 17.06.2023 and thereafter the respondent no.6 along with some other persons came at the house of the petitioner and took the daughter of the petitioner with them under the pretext to perform several other rituals. The petitioner also participated in the last rituals of her husband. However, thereafter, as contended herein above, the minor daughter of the petitioner was illegally confined by the private respondents.

4. Learned Advocate for the petitioner thereafter submitted that petitioner tried to lodge the FIR against the private



respondents, however, the same was not registered by the concerned police officer. The petitioner thereafter filed representation/written complaint to the Senior Superintendent of Police, Patna. Pursuant to the representation made by the petitioner, the concerned police authority has immediately taken the steps and thereafter *corpus* was found out and produced before the Chief Judicial Magistrate, Patna where the statement of the *corpus* was recorded and thereafter her custody was handed over to the Child Welfare Committee, Patna and thereafter Child Welfare Committee, Patna kept the corpus in Asha Kiran Home for Girl, Patliputra Colony, Patna. However, at this stage, learned counsel for the petitioner submitted that the petitioner came to know that her minor daughter wants to come with the petitioner and, therefore, now the minor daughter, i.e., the *corpus* is in illegal confinement of the concerned authority. The learned Advocate, therefore, urged that appropriate order be passed.

5. On the other hand, learned counsel appearing for the respondents pointed out that after filing of the representation by the petitioner, the concerned police authority has immediately found out the *corpus*/minor daughter of the petitioner and thereafter she was immediately produced before the learned Chief Judicial Magistrate, Patna. Her willingness was ascertained by the concerned learned Judge and thereafter her custody was handed



over to the concerned Committee as contended by learned counsel for the petitioner. Thus, the *corpus* is not in illegal confinement as alleged by the petitioner. Learned Government Counsel, therefore, urged that petitioner's petition may not be entertained.

6. After hearing the submissions canvassed by learned counsel appearing for the parties, this Court asked the learned Government Counsel to produce the *corpus* before this Court so that her wish can be ascertained. Learned Government Counsel, therefore, informed the Asha Kiran Home for Girl, Patliputra Colony, Patna and, in turn, today the *corpus* is produced before us. Looking to the nature of litigation and the controversy involved in the petition, the matter was taken up in the Chamber with consent of the learned Advocates.

7. The *corpus* is present. Her name is Miss. Muskan. We have ascertained her willingness and she has specifically informed in presence of both the counsels appearing for the parties as well as the Superintendent of Asha Kiran Home for Girl, Patliputra Colony, Patna and the grandfather of the *corpus* that now she wants to go with her mother, i.e., the present petitioner.

8. In the aforesaid facts and circumstances of the present case, we are of the view that though initially the custody of the *corpus*, i.e., minor daughter of the petitioner was obtained by the private respondents, however, when the learned Magistrate had



ascertained the wish of the girl, the custody was handed over to the concerned Committee. Looking to the age of the minor daughter of the petitioner, the matter was taken up in the Chamber, as observed hereinabove, in presence of all concerned. Now the *corpus* has specifically stated that she wants to go with her mother, i.e., the present petitioner and, therefore, we are of the view that though the corpus was not in illegal custody of the private respondents or at present in Asha Kiran Home for Girl, Patliputra Colony, Patna, fact remains that today *corpus* has shown her willingness to go with the present petitioner who is her mother.

9. Accordingly, we dispose of this petition with a direction to the Superintendent of Asha Kiran Home for Girl, Patliputra Colony, Patna to hand over the custody the *corpus*, namely, Miss. Muskan to the present petitioner who is her mother, after completing the required procedure.

(Vipul M. Pancholi, J.)

(Chandra Shekhar Jha, J.)

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