

03.04.2023
rpan/05

WPA (H) 12 of 2023
Sri Babulal Mondal
- Versus -
The State of West Bengal & Others

Mr. Nirbanesh Chatterjee,
Mr. Anjan Banerjee
... for the Petitioner.
Mr. Sabir Ahmed,
Mr. Simanta Kabir
... for the State.

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

“a) A writ in the nature of Habeas Corpus do issue directing the respondents, particularly the Respondent no.1 to 5 to forthwith recover and produce the victim women/wife along with her minor son of the petitioner before this Hon’ble High Court;”

Mr. Chatterjee, learned advocate appearing for the petitioner submits that the petitioner, namely, Babulal Mondal (in short, Babulal) married one Minu Mondal (in short, Minu) in the year 2012. They were blessed with a male child, who is presently a student of class – II in a primary school. On 26th January, 2023 Minu along with her minor son, namely, Shayan went to her parental house stating that she would return to her matrimonial house within two days. Surprisingly, Minu and Shayan did not return and as such Babulal desperately tried to contact Minu over mobile phone

and also went to different places but in vain. Babulal thereafter came to learn that Minu and Shayan were last seen together with one Pradip Patra, who is the respondent no.6 in the present petition. Stating the entire facts Babulal lodged a complaint before the police authorities on 14th February, 2023 but no steps were taken and the whereabouts of Minu and Shayan are still not known to Babulal. Aggrieved thereby, Babulal has approached this Court.

Mr. Chatterjee submits that the welfare of Shayan is at peril and considering the facts and circumstances of this case, necessary directions need to be issued for handing over the custody of Shayan to Babulal.

Mr. Kabir, learned advocate appearing for the State submits that on the basis of the complaint lodged by Babulal the police authorities conducted raid at Shivalayam Street, P.S. – One Town, District – NTR in the State of Andhra Pradesh and successfully recovered Minu and Shayan and arrested the respondent no.6. Minu and Shayan were produced before the learned Additional Chief Judicial Magistrate, Uluberia, Howrah on 26th March, 2023 and their statements were recorded under Section 164 of the Code of Criminal Procedure (in short, the said Code). Minu in her statement had stated *inter alia* that she had not been kidnapped by anybody and as she was

being tortured, she voluntarily left her matrimonial house along with Shayan.

Mr. Kabir further submits that on 26th March, 2023 itself Minu and Shayan were handed over to Gourhari Jana (in short, Gourhari), the father of Minu and both Minu and Shayan are presently residing in the house of Gourhari which is at Village Bahadurpur, P.S. – Bhupatinagar, District – Purba Medinipur.

Mr. Kabir informs this Court that on 28th March, 2023 Minu lodged a written complaint against Babulal and others and the same was registered as Bagnan Police Station Case no.118 of 2023 dated 28.03.2023 under Sections 498A/323/325/307/354/406/506/34 of the Indian Penal Code read with Section 75 of the Juvenile Justice Act and Section 3/4 of the Dowry Prohibition Act. Investigation in the said case is still pending. Let all the documents, as produced, be kept on record.

Mr. Chatterjee, in reply, disputes the contention of Mr. Kabir and submits that custody of Shayan should be handed over to Babulal considering the fact that his welfare is at stake.

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

Indisputably, Minu and Shayan had already been recovered and their statements had also been

recorded under Section 164 of the Code. Minu and Shayan had been handed over to Babulal, the father of Minu and they are residing presently at Village Bahadurpur, P.S. – Bhupatinagar, District – Purba Medinipur.

In child custody matter the ordinary remedy lies under the Guardians and Wards Act. There are significant differences between the enquiry under Act VIII and the exercise of powers by a writ court which is summary in nature. From the pleadings and the documents placed before us we do not find any clinching material to infer that welfare of Shayan is at peril. The allegations and the counter-allegations levelled by the parties need to be examined with reference to evidence.

As Minu and Shayan had already been recovered, no further order is required to be passed in the present writ petition.

The *habeas corpus* petition, being WPA (H) 12 of 2023 is, accordingly, disposed of.

There shall, however, be no order as to costs.

Nothing in this order shall, however, prevent the petitioner from taking appropriate steps before the competent forum, if so advised and in accordance with law.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)