

WPA (H) 36 of 2021

(Shilpi Banerjee Sarkar Vs. The State of
West Bengal & Ors.)

Mr. Amitabha Ghosh

..... For the petitioner

Mr. Sabir Ahamed

..... For the State

Mr. Subir Sanyal

Mr. Sajal Kanti Bhattacharyya

Mr. Sankar Halder

Mr. Sarthak Burman

..... For the respondent no. 6

The present *habeas corpus* petition was preferred by Shilpi Banerjee Sarkar (in short, Shilpi) alleging that her two minor children, namely, Swastik Sarkar (in short, Swastik), a male child presently aged about 10 years and Siddika Sarkar (in short, Siddika), a female child presently aged about 5 years, have been illegally detained by her husband, namely, Soumak Sarkar (in short, Soumak), with whom the petitioner's marriage was solemnized on 29th July, 2009. Shilpi further alleged that she had been forcibly ousted from her matrimonial house and was subjected to cruelty and as such, she was constrained to lodge a complaint which was registered as Balurghat Women Police Station Case No. Blg. WPS C/No. 42/2020 dated 20th September, 2020 under Sections 498A/323/ 307/506 of the Indian Penal Code with Sections 3/4 of the

Dowry Prohibition Act. The said criminal proceeding is still continuing.

Records reveal that initially an order was passed by a coordinate Bench of this Court on 24th May, 2021 issuing a *Rule NISI* in terms of prayers (a) and (b) of the *habeas corpus* petition to be answered by the respondent no. 2/Director General of Police, West Bengal. Pursuant to such direction, the children were produced before the Child Welfare Committee and thereafter, Swastik was allowed to reside with Soumak and Siddika was allowed to reside with Shilpi.

In the midst thereof, Soumak filed an application under the Guardianship Act in which an order was passed by the learned Additional District and Sessions Judge, Gangarampur at Balurghat, District – Dakshin Dinajpur on 29th April, 2022. The operative part of the said order runs as follows:-

“That both the children namely, Swastik Sarkar and Siddika Sarkar, are allowed to spend some time together with the petitioner and Opposite Party No. 1 respectively, being the father and mother of the two children at any near by park, on every Sunday, from 5.00 PM till sun set and after such togetherness, the respective parties are at liberty to have their kids into their safe custody, until further order.”

The said order was subsequently modified by an order dated 1st June, 2022. The operative part of the said order runs as follows:-

“That both the children namely, Swastik Sarkar and Siddika Sarkar, are allowed to meet and there by to spend some time exclusively, with their father on the first and third Sunday and exclusively with the mother on second and

fourth Sunday, of every Month, in a nearby children park, at least for one hour until sun sets and after such togetherness.”

It is well settled that for determination of the issue of custody of children, it is not the right of the parties but the welfare of the children which is of determinative significance.

We do not find any material on record to infer that the children have been illegally detained. A guardianship application has already been filed in which orders have been passed granting visitation rights and the competent Court is still in seisin of the matter. There are allegations and counter-allegations amongst the parties as regards the compliance of the said orders passed by the competent Court in the guardianship application.

In view thereof, the parties would be at liberty to take appropriate steps in the pending guardianship proceedings and no further interference is called for in the present *habeas corpus* petition and the same is, accordingly, disposed of.

We have been informed that the regular Court hearing guardianship proceedings is not in session and next date of hearing has been fixed on 6th July, 2023.

In view thereof, we direct the learned Court which would be in charge of the guardianship proceedings to hear the Misc Act - VIII Case No.01 of 2020 and application, if any, filed in connection with the said

case by the parties in the meantime, on the returnable date.

There shall, however, 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.

(Partha Sarathi Chatterjee, J.)

(Tapabrata Chakraborty, J.)