

WPA (H) 58 of 2023

(Sumit Agarwal Vs. The State of
West Bengal & Ors.)

Mr. Brajesh Jha
Mr. Neel Chakraborty
Ms. Megha Datta

..... For the petitioner

Mr. Debabrata Chatterjee
Ms. Amrita Panja Moulick

..... For the State

Mr. Soumya Nag
Mr. Abhinav Rakshit

.... For the private respondent

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

“(a) A writ in the nature of Habeas Corpus commanding respondents concern to produce the petitioner’s two minor daughters Tanishka Agarwal (5 years) and Tisha Agarwal (9 months) in their person forthwith before the Hon’ble Court and to be set him at liberty, after declaring their detention to be illegal and bad in law.”

Mr. Jha, learned advocate appearing for the petitioner submits that on a trivial issue the private respondent no. 4 has withdrawn herself from the society of the petitioner and she has gone to her parents’ house along with her two minor children aged about 5 years and 9 months respectively. On the basis of a complaint lodged by her, a case under Section 498A and other provisions of the Code was started against the petitioner. The petitioner

was nabbed but on the very next date, the petitioner was released on bail. He submits that he just wants to exercise his visitation rights. Accordingly, an appropriate direction may be given upon the private respondent to allow the petitioner to enjoy some quality times with his children.

The learned advocate appearing for the private respondents submits that being subjected to mental and physical torture, the private respondent has been constrained to take shelter in her parents' house along with two children. He submits that if the petitioner wants to get custody of the children or if he wants to exercise visitation right, he should approach the appropriate forum by taking out proper application under the relevant provisions of the Guardians and Wards Act. He contends that this is not the appropriate forum to agitate such issue, moreso when there is no illegality.

Mr. Chatterjee, learned Additional Public Prosecutor appearing for the State submits that on the basis of the complaint lodged by the private respondent, case under Section 498A/377/323/503/509/34 IPC and 3 & 4 of Dowry Prohibition Act was instituted against the petitioner and the petitioner was arrested in connection with that case. He submits that the children are lying in custody of the mother and the mother is now staying in her parents' house. He contends that there is no inaction on the part of the police authority.

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

From the record it transpires that on the basis of a complaint lodged by the private respondent, Burtolla Police Station Case No. 143 dated 21st August, 2023 under Sections 498A/406/377/323/506/509/34 of the Indian Penal Code read with Sections 3 & 4 of the Dowry Prohibition Act was instituted against the writ petitioner and the petitioner was arrested. Subsequent thereto, the petitioner was enlarged on bail.

From the statements made on behalf of the respective parties and from the materials on record it appears that the children are residing with their mother and the mother is staying in her parents' house.

So, we have not found any material to infer that the children have been illegally detained and hence, no interference in this *habeas corpus* petition is called for.

However, it is clarified that this order shall not preclude the writ petitioner from approaching the appropriate forum for getting the custody of the children and for visitation rights.

With this observation, the *habeas corpus* petition being **WPA (H) 58 of 2023** is disposed of.

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.)