

16.10.2023
Item No.03
Court No.11
Avijit Mitra

WPA (H) 61 of 2023

Abhay Raj
- Versus -
The State of West Bengal & ors.

Mr. Balaram Pandit (Through Video Conferencing),
Mr. Krishna Deo Das,
...for the petitioner
Mr. Debabrata Chatterjee,
Ms. Amrita Panja Moulick,
....for the State
Mr. Bharat Chandra Simai,
Ms. Sanchayita Das
...for the respondent no.5

Affidavit of service filed by the petitioner be kept on record.

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

‘(a) A Writ in the nature of Habeas Corpus do issue commanding upon the respondent state authorities particularly the Superintendent of Police (SP), Paschim Medinipur, the state respondent No.3 herein, and the Inspector-in-Charge (I.C.), Mohanpur Police Station, the state respondent No.4 herein, to forthwith trace out, rescue and produce the body of the baby daughter of the petitioner, before this Hon’ble Court, who is/has been in illegal and/or wrongful confinement of the private respondents.’

Mr. Pandit, learned advocate appearing for the petitioner submits that the petitioner, namely, Abhay Raj (in short, Abhay) married the respondent no.5, namely, Jyoti Raj (in short, Jyoti) on 12th June, 2015 and they were blessed with a female child on 6th October, 2017, who was named as Aayanika Raj (in short, Aayanika). Thereafter,

Abhay along with Jyoti and Aayanika were peacefully residing at Boral and Aayanika was admitted at Path Manjil Primary School at Boral. Surprisingly, on 23rd May, 2023 Jyoti left her matrimonial house along with Aayanika and started residing at her parental house. In view thereof, Aayanika could not attend her school since then. Abhay thereafter on several occasions went to Jyoti's parental house to meet with Aayanika but in vain. Such fact was intimated to the respondent no.4 on 17th September, 2023 but no steps were taken.

Mr. Pandit submits that Abhay is the natural guardian of Aayanika and is entitled to meet and spend time with her. Answering our query, he submits that no custody application had yet been filed by Abhay before the competent Court. However, as the Durga Puja is going to commence soon, he should at least be granted an opportunity to meet and talk with Aayanika during the puja vacation.

Mr. Simai, learned advocate appearing for the respondent no.5 vehemently opposes Abhay's prayer and submits that Jyoti was forcibly driven out from her matrimonial house along with Aayanika and that as such she had no other option but to return to her parental house at Village and Post Nilda, Police Station Mohanpur, District Paschim Medinipur. Reporting such incident, Jyoti lodged a complaint before the Mohanpur Police Station and the same was registered as Mohanpur Police Station Case No. 191 of

2023 dated 5th August, 2023 under Sections 498A/323/406/34 of the Indian Penal Code. Aayanika has presently been admitted at EMET Mohanpur Public School and she is studying in the said school. Let the said documents, as produced, be kept on record.

He further submits that Abhay is in the habit of creating disturbances and safety of the child would be at stake if he is allowed to visit the child.

Mr. Chatterjee, learned advocate appearing for the State respondents submits that the allegations levelled against the police authorities are unfounded. There is a matrimonial dispute between Abhay and Jyoti. Presently, Jyoti is residing at her parental house along with Aayanika and there is no material on record to infer any case of illegal detention.

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

In child custody matters, the ordinary remedy lies under the Guardian 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. The child, who is presently aged about 6 years, is residing with her mother and such custody cannot be construed to be an illegal one. In view thereof, we are unable to accede to Abhay's prayer for issuance of necessary directions upon Jyoti to hand over custody of Aayanika.

However, we may not be understood to have expressed any opinion on the merits of custody and in the event any application is filed before the competent Court, the same shall be decided on its own merits without being influenced by the observations made in this order.

Abhay is the father of Aayanika and taking into consideration the fact that Durga Puja is going to commence soon, Abhay should be allowed to have conversation with Aayanika through video conferencing.

Accordingly, this Court directs that Jyoti and her family members shall provide access through video conferencing on Fridays and Sundays to Abhay for conversation and interaction with Aayanika during the period from 5.00 pm to 7.00 pm.

It is, however, made clear that such direction would be subject to any order that may be passed in custody proceedings before the appropriate forum.

With the aforesaid observations and directions, the *habeas corpus* petition is disposed of.

There shall 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.

(Siddhartha Roy Chowdhury, J.) (Tapabrata Chakraborty, J.)