



\$~S-6

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Delivered On: 18.08.2023

W.P.(CRL) 838/2023, CRL.M.A. 10080/2023 (for directions) & CRL.M.A. 15191/2023 (for directions), CRL.M.A. 22162/2023 (for urgent and necessary directions with regard to the mutual settlement)

NEHA DAS

..... Petitioner

Versus

STATE THROUGH SHO, PS DWRKA SEC-9

.... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Tanuj Khurana, Advocate with petitioner in-person.
For the Respondents : Mr. Sanjay Lao, Standing Counsel (Criminal) along with Ms. Priyam Agarwal, Advocate.
Mr. S. Rajappa and Mr. R. Gourishankar, Advocates for R-6 (through *video-conferencing*).
Mr. Anil Panwar, Advocate for R-7.

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MR. JUSTICE ANISH DAYAL

J U D G M E N T

SIDDHARTH MRIDUL, J. (OPEN COURT)

Signature Not Verified

Digitally Signed
By: DURGESH NANDAN
Signing Date: 23.08.2023
11:12:33

W.P.(CRL) 838/2023

Page 1 of 11



1. The present *habeas corpus* writ petition under Article 226 of the Constitution of India, read with Section 482 of the Code of Criminal Procedure, has been instituted on behalf of Neha Das, the petitioner, praying as follows:

'It is most respectfully prayed that this Hon'ble Court may graciously be pleased to:-

a) Pass writ/order/directions in the nature of habeas corpus directing the respondents to produce the 7 year old son of the Petitioner namely A, and/or,

b) Pass writ/order/directions in the nature of mandamus directing the Respondents to hand over the custody of child A, to the Petitioner and not to interfere with Petitioner's lawful custody and guardianship of her minor' son; and/or,

c) Pass writ/order/directions in the nature of mandamus directing the Respondent no. 1 to 5 to take action against Respondent no.6 to 7 for their illegal acts and omissions; and/or,

d) Pass such other and further order(s) as this Hon'ble Court deems fit and proper;'

2. At the outset, it is relevant to highlight, that in the present *habeas corpus* writ petition, a joint application being **CRL.M.A. 22162/2023**, under Section 482 of the Code of Criminal Procedure, 1973, has been



filed on behalf of Ms. Neha Das and Mohd. Firoz, the petitioner and the respondent no. 7 respectively *herein*, seeking to place on record the Memorandum of Understanding (MoU) arrived at between the estranged couple, in relation to the interim custody of their minor son Master 'A', aged above 07 years.

3. A copy of the Memorandum of Understanding (MoU) dated **11.08.2023**, which is annexed as **Annexure-1** with the accompanying application, reflects that both the parties have mutually agreed upon the terms and conditions specified therein, which is extracted *hereinbelow*:



15



MEMORANDUM OF UNDERSTANDING

This Memorandum of understanding is being made on this the 10th day of August, 2023,

BETWEEN

NEHA DAS, resident of C-3/170, Plot No.170, Khasra No.15/21, Gubadwara Road, Mahaveer Enclave, Palam Village, South West Delhi-110045, being hereinafter referred to as the party of the first part, which expression shall mean and include its legal heirs and assignees.

AND

MOHAMMAD FIROYZ, resident, RZ-34 35, Flat No204 Westend Residences Matiala Extension, Uttam Nagar, Delhi-110059 hereinafter referred to as the party of the second part, which expression shall mean and include its legal heirs and assignees.

WHEREAS the party of the first part and Second Part, got married on 06.06.2011 and from the wedlock a son i.e. Master Arhaan Firoyz, was born on 01.02.2016.

WHEREAS certain disputes and differences have so arisen between the party of the first part and Second Part, because of which they are living separately since December 2019.

WHEREAS the party of the first part and Second Part, as an interim arrangement, qua the custody of their minor son, had mutually entered into a Memorandum Of Understanding (MoU), dated:-06.05.2023, which was made part and parcel of the Order, dated 01.06.2023, as passed by the Division Bench of The Hon'ble High Court of Delhi, in

Page 1 of 4

Neha Das 11 AUG 2023

[Signature]



W.P. (Crl.) 838 of 2023, thereby directing both the parties to remain bound by their reciprocal obligations, as undertaken in the MoU and to comply with the terms thereof, without any demur.

WHEREAS the party of the first part and Second Part, have now mutually decided to further amend the mutual interim understanding, as arrived at between the parties, vide Memorandum Of Understanding (MoU), dated:-06.05.2023, qua the interim custody of their minor son, by virtue of this final Memorandum Of Understanding (MoU), till the issue of the custody of the minor child is finally decided by the family court, Dwarka.

That now this Memorandum Of Understanding, is witnessed as under:

1. That it is mutually decided between the parties, that the custody of the minor son would be joint and both the parties, would be equally responsible for the upbringing and welfare of their Minor Son.
2. That it has been mutually and clearly decided between the parties, without any demur that the Custody of the Minor Son, would be with the Mother i.e. Party of the First Part from each Friday Afternoon(after the school hours) or in case of a School Holiday/Vacations, after picking up the son from 2:30 P.M onwards, from the residence of the Party of the Second Part, on Friday upto Monday Morning(till dropping of the son to the School by the Party of the First Part) or in case the school is closed/Vacations, the Party of the Second Part, would pick up the



Neha Das

11 AUG 2023

Page 2 of 4



Signature Not Verified

Digitally Signed
By: DURGESH NANDAN
Signing Date: 23.08.2023
11:12:33

W.P.(CRL) 838/2023

Page 6 of 11



minor son from the residence of the Party of the First Part, after 9:00 A.M, on Monday. That on rest of the days of the week, the custody of the minor son would be with the father, except as agreed above.

3. That in case the minor son for any reason is not attending the school on Monday morning, that in this scenario the Party of the First Part, would drop the minor son to the residence of the party of the Second Part at 10:00 A.M.

4. That it has been further mutually agreed that, on the Fourth Sunday of each Calendar Month, the Custody of the Minor Son, would be with the Father i.e. Party of the Second Part. The Party of the Second Part, would pick up the minor son from the residence of the Party of the First Part, after 8:00 P.M on Saturday Night and would be responsible to drop the son to the school on Monday Morning.

5. That it is further agreed that the Party of the First Part and the Second Part, would render their utmost cooperation to each other to make sure that the interim arrangement as agreed above, works well and would furnish an undertaking to the Hon'ble High Court of Delhi, in W.P. (Crl.) 838 of 2023, pending adjudication before the Division Bench, to remain bound by the terms of this MoU.

6. That this agreement would come into effect from 14.08.2023 i.e. the date fixed before the Hon'ble High Court, in W.P. (Crl.) 838 of 2023, pending adjudication before the Division Bench and upon both parties furnishing their undertakings to remain bound by this agreement.



Neha Das

11 AUG 2023

[Signature]



Signature Not Verified

Digitally Signed
By: DURGESH NANDAN
Signing Date: 23.08.2023
11:12:33

W.P.(CRL) 838/2023

Page 8 of 11



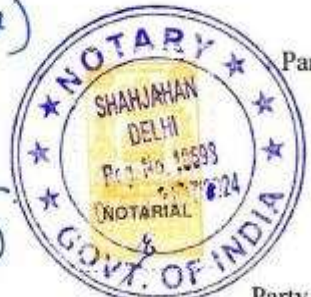
18

7. That it has been further mutually decided that the Minor Son, would continue to study at Maxfort School, Dwarka, during this academic session. It is further agreed that for the purpose of the studies of the Minor Son, both the Party of the First Part and the Second Part, would be Guardians and name of both the parents would be mentioned in the school. The monthly school fees and all other expenditure towards the education of the minor son would be shared equally, by both the parties.
8. That the parties have entered into this MoU out of their own free will and without any duress, pressure or coercion from any quarters.

This MoU is executed on the date and place first mentioned hereinabove in the presence of the following witnesses:

Witnesses: 11 AUG 2023

1. (ANUJ SHARMA)  Party on the First Part
2. (Siddharth)  Party on the Second Part





ATTESTED
NOTARY DELHI

Page 4 of 4

11 AUG 2023

Signature Not Verified

Digitally Signed
By: DURGESH NANDAN
Signing Date: 23.08.2023
11:12:33

W.P.(CRL) 838/2023

Page 9 of 11



4. A perusal of the abovementioned Memorandum of Understanding reflects that the terms and conditions of the settlement arrived at, between the parties are legal and lawful; and the same be made the order of the Court. The parties have appended their signatures with the present application, which are duly supported by affidavits; and the same be taken on record.

5. Accordingly we direct, that the parties shall remain bound by their reciprocal obligations, elaborated in the Memorandum of Understanding dated **11.08.2023**, and shall comply with the said terms and conditions, without demur.

6. No further relief is prayed for.

7. In view of the foregoing, the present habeas corpus writ petition, is allowed and disposed of, in the agreed terms and conditions, directing *thereby* that the interim arrangement arrived at, between the parties, in terms of the abovementioned Memorandum of Understanding, shall remain in place, till the time, it is modified by a court of competent jurisdiction, in accordance with law. The joint application instituted on



behalf of the parties is allowed and disposed of accordingly. Pending applications, if any, also stand disposed of.

8. Copy of this judgment be uploaded on the website of this Court *forthwith*.

**SIDDHARTH MRIDUL
(JUDGE)**

**ANISH DAYAL
(JUDGE)**

AUGUST 18, 2023
Aanchal

[Click here to check corrigendum, if any](#)