

11.07.2024  
Item No.1  
Ct. No.26  
CHC  
(disposed of)

**WPA(H) 47 of 2024**

**S. M. Subhendu & anr.**

**Vs.**

**State of West Bengal & ors.**

Mr. Tapas Kumar Bhanja, Advocate  
...for the writ petitioners

Mr. Rana Mukherjee, Ld. A.P.P.  
Mr. Simanta Kabir, Advocate  
...for the State

Ms. Sibangi Chattopadhyay, Advocate  
...for the private respondents

Hebeas Corpus Petition is taken up for consideration subsequent to the order dated July 3, 2024.

Rejoinder filed on behalf of the writ petitioners be taken on record.

State and the private respondents are represented.

Report submitted on behalf of the State be also taken on record.

Report of the State shows that, the victim was with the private respondents as stated in the writ petition. The minor was produced before the jurisdictional Child Welfare Committee, who exercised jurisdiction under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015. By an order, Child Welfare Committee placed the

minor in the custody of the maternal grand-father and the maternal uncle of the minor.

Minor was also produced before the jurisdictional Magistrate for the purpose of recording her statement under Section 183 of the Bhartiya Nagrik Suraksha Sanhita, 2023.

Statement of the minor recorded under Section 183 of the Bhartiya Nagrik Suraksha Sanhita, 2023 form part of the report submitted by the State.

Statement of the minor recorded under Section 183 of the Bhartiya Nagrik Suraksha Sanhita, 2023 incriminates both the petitioners before us for the offences punishable.

Learned advocate appearing for the State submits that, although the First Information Report registered in respect of the incident under the provisions of the Indian Penal Code, 1860 necessary steps will be taken to correct the same before the jurisdictional Court.

Learned advocate appearing for the State makes over a copy of the report to the learned advocate for the writ petitioners in Court without the statements of the minor recorded under Section 183 of the Bhartiya Nagrik Suraksha Sanhita, 2023.

Learned advocate appearing for the writ petitioners submits that, the writ petitioners were arrested in violation of the directions of the Supreme

Court as passed in D. K. Basu's case. He submits that, police was wrong in invoking the provisions of the Indian Penal Code on July 7, 2024 when the provisions of the new Act came into operation.

Contention of the writ petitioners with regard to the arrest and the criminal proceeding are kept open and may be raised before an appropriate forum.

So far as the minor is concerned, which is the subject-matter of the Habeas Corpus Writ petition, we find from the materials disclosed on record that, the minor was placed in the custody of the maternal grandfather as also the maternal uncle by the jurisdictional Child Welfare Committee.

Writ petitioners are at liberty to take appropriate steps with regard thereto.

In view of the Child Welfare Committee exercising jurisdiction in respect of the minor involved, we are not in a position to return a finding that, jurisdictional facts exists to invoke the writ jurisdiction of the Habeas Corpus.

W.P.A.(H) 47 of 2024 is disposed of accordingly, without any order as to costs.

**(Debangsu Basak, J.)**

**(Partha Sarathi Sen, J.)**