

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO. 895 OF 2020**

Atiya Zahra Hussain

... Petitioner

V/s.

The State of Maharashtra & Ors.

... Respondents

Ms.Firoza Daruwala a/w. Ms. Rajvi Mehta i/b. Vashi and Vashi for Petitioner.
Mr. J.P. Yagnik, A.P.P. for Respondent Nos.1 to 3-State.
Mr. Prathamesh Vhanmane i/b. Siddiquee & Associates for Respondent No.4.

**CORAM : A. S. GADKARI AND
SHYAM C. CHANDAK, JJ.**

DATE : 28th March 2024.

P.C. :

1) By the present Petition, the Petitioner has prayed for writ of *habeas corpus* to produce the minor children, namely, Ms. Nafisa and Master Zafar before this Court and for other consequential reliefs.

2) Record indicates that, by Orders dated 11th March 2020, 15th February 2021 and 13th August 2021, different Mediator(s) were appointed to resolve the issues between the Petitioner, wife and Respondent No.4, husband, arising out of their matrimonial discord. It appears that, in last about four years the said amicable settlement has not taken place. Record further indicates that, on the ground that the parties herein are trying to explore the possibility of amicable settlement, several adjournments were

sought and granted by this Court. The Orders passed earlier hereto are self eloquent.

2.1) Today also learned counsel for Petitioner has sought for an adjournment on the same ground. We pointed out to her the earlier Orders and requested her to assist this Court by arguing the Petition. She therefore requested this Court to take up this Petition in the second session for hearing. The Petition is accordingly taken up for hearing in the second session, however learned counsel for Petitioner again requested for an adjournment stating that, the learned Advocate appearing for Respondent No.4 has 'no objection' for that.

2.2) The practice adopted by the Petitioner is not appreciated by this Court. At the request of learned counsel for Petitioner, we leave the said issue at this stage without further commenting upon it.

3) As noted earlier, for last about four years the Petitioner is trying to have an amicable settlement with Respondent No.4 and various Mediator(s) were accordingly appointed. As a matter of record, however till date the said settlement has not taken place. It therefore appears to us that, the Petitioner and Respondent No.4 are more interested in litigation than securing the paramount interest of their children.

4) Record clearly indicates that, Petitioner has already filed Custody Petition bearing M.J. No. D-100 of 2018 before the Family Court at Bandra, Mumbai for the custody of children Ms. Nafisa and Master Zafar.

Respondent No.4 has also filed Custody Petition bearing M.J. No. D-106 of 2018. Admittedly, the children are in custody of their biological father i.e. Respondent No.4.

5) The learned counsel for Petitioner informed us that, presently the children are aged about 16 years and 10 years respectively and since last more than four years, the children are residing with Respondent No.4 i.e. their biological father. By this passage of time, the children must have settled in their life with the Respondent No.4, their father, in India. In a couple of year one child will become major. In that event, said child may exercise his own choices as to further studies, residence etc.

5.1) As noted earlier, the Petitioner and Respondent No.4 have already availed alternate remedy before the Family Court seeking custody of their children.

6) In view thereof, by reserving the liberty in favour of the Petitioner and Respondent No.4 in pursuing their respective Petitions filed before the Family Court at Bandra, Mumbai, the Petition is accordingly dispose off.

7) All contentions of both the parties are expressly kept open to be agitated before the Family Court in their respective Petitions.

(SHYAM C. CHANDAK, J.)

(A.S. GADKARI, J.)