

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO.114 OF 2024

Faruk Kabir

.. Petitioner

vs.

The State of Maharashtra & Ors.

.. Respondents

Mr. Jitendra Tiwari with Ms. Kunickaa Sadanand for the Petitioner.

Ms. A. A. Takalkar APP for the Respondent No.1-State.

Ms. Padma Shelatkar with Dharmesh Gogri for Respondent Nos.4, 5 and 6.

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

DATE : 5th FEBRUARY, 2024

P. C.:-

1) By this Petition under Article 226 of the Constitution of India, the Petitioner, biological father of the minor child 'A', a baby girl aged about two months as of today, has prayed for a writ of *habeas corpus* of the said child.

2) The Respondent No.6 is the wife of the Petitioner and biological mother of the said child. The said child is produced before this Court on every date of hearing. It is an admitted fact that, the said child is in the custody of the Respondent No.6 her biological mother.

3) This Court on earlier atleast three occasions tried to persuade the Petitioner and the Respondent No.6 for an amicable settlement, taking

into consideration the paramount interest of the child aged about two months. However, our efforts could not yield positive results. At this stage we do not want to discuss the non-cooperation by either of the parties, as it is not an issue to be decided in the present Petition.

3.1) Be that as it may. It is an admitted fact, on the record that marriage of the Petitioner and the Respondent No.6 is solemnised in India as per Muslim Personal Law. The corpus i.e. child 'A' is born in Mumbai, India and therefore by birth the said child is an Indian Citizen.

4) Record *prima facie* indicates that, after the relations between the Petitioner and Respondent No.6 were strained, Crime bearing No.756 of 2023, has been lodged by the Petitioner with Versova Police Station, Mumbai. The learned Metropolitan Magistrate, 44th Court, Andheri, Mumbai by its Order dated 1st January 2024, was pleased to grant bail under Section 437 of the Code of Criminal Procedure, to the Respondent Nos.5 and 6 i.e. wife of the Petitioner and her mother. Record further indicates that, when they are on bail in said Crime No.756 of 2023, the Respondent Nos.4, 5 and 6 tried to manipulate certain documents with a view to leave India with Emergency Travel document for travelling to Uzbekistan and therefore a separate crime bearing C. R. No.16 of 2024 under Sections 419, 420, 465, 468 and 471 read with 34 of the Indian Penal Code is registered with the

Azad Maidan Police Station, at the instance of woman Police Constable attached to Crime Investigation Department (SB-II branch) against the Respondent Nos.4, 5 and 6. The investigation of both crimes is in progress and police have not yet filed Final Reports in it.

5) Learned Advocate for the Petitioner submitted that, the Petitioner will file appropriate proceedings before the Family Court at Mumbai seeking custody and/or visitation rights of the said child and till that time, he may be provided visitation rights of the said minor child.

6) In view of above, we permit the Petitioner to meet the child 'A' and/or to visit her on every alternate day between 4.00 pm and 5.00 pm till he files appropriate proceedings before the Family Court and necessary orders are passed on it.

7) The Respondent No.6 is directed to give her prospective address where she intends to reside, to the Petitioner and/or to his Advocate within a period of one day from the date of uploading of this Order on the official website of the High Court.

8) Petitioner is directed to clear bills of the hotel till today, where the Respondent No.6 is presently staying.

8.1) The Respondent Nos.5 and 6 are at liberty to have their own accommodation as per their own wish and desire.

8.2) The Respondent No.6 is also at liberty to file appropriate proceedings before the Family Court/Civil Court, if so advised, for appropriate reliefs of accommodation and maintenance.

9) Petition is disposed off in aforesaid terms.

10) Though we have disposed off the Petition, the parties herein are at liberty to have dialogue for amicable settlement.

11) List the Petition for reporting compliance of the order dated 16th January 2024, under the caption "For directions" on 13th February 2024.

(SHYAM C. CHANDAK,J.)

(A. S. GADKARI, J.)