

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.2364 OF 2024

Sahil Raju Gilani

.. Petitioner

Versus

State of Maharashtra & Anr.

.. Respondents

...

Mr.Chetan Kapadia, Senior Advocate with Vidisha Rohira,
D.V.Deokar and D.Parikh i/b Parimal K. Shroff & Co. for the
Petitioner.

Ms.S.S.Kaushik, A.P.P. for the State/Respondent.

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CORAM: BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.
DATED : 18th JUNE, 2024

P.C:-

1. The Writ Petition filed by the Petitioner seek the following reliefs :-

(a) That this Hon'ble Court may be pleased to issue Writ of Habeas Corpus or any other appropriate writ, order or direction under Article 226 of the Constitution of India directing the Respondents to produce bodily/physically the minor child Sophia before this Hon'ble Court;

(b) that pending the hearing and final disposal of the Criminal Writ Petition the Respondent No.2 and/or her servants and agents or any other person/s through her be restrained by an Order and direction of this Hon'ble Court from in any manner taking any steps to take away minor child Sophia outside the Territory of India;

(c) that pending the hearing and final disposal of the Criminal Writ Petition the Respondent No.2 be directed to allow regular and unfettered access of the minor child Sophia to the Petitioner, his sister and his parents on the dates and times and on such terms

and conditions as to this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.”

2. The learned senior counsel Mr.Chetan Kapadia has specifically circulated the Petition for ex-parte relief, without issuance of notice to Respondent No.2, the wife of the Petitioner, in the wake of the apprehensions expressed in the Petition and also the additional affidavit, filed on record, having being affirmed on 18/06/2024.

3. On hearing the learned senior counsel and on perusal of the Writ Petition alongwith the Annexures appended thereto, prima facie, it is seen that the Petitioner and Respondent No.2 are married as per Muslim Rites and Rituals under the Muslim Law and the Nikahnama and Marriage Certificate form part of the Petition.

Out of the wedlock, on 06/04/2022, a daughter is born, who, at present, is of two years and two months.

There is reference of some quibble between the couple and it is specifically pleaded case of the Petitioner that on 30/01/2024, on the pretext of visiting her father for temporary period, Respondent No.2 removed the child from Mumbai, where they were last residing together. However, he was assured of her return in the wake of return ticket of 11/02/2024, being purchased for their daughter.

In fact, the Petitioner had continued access to his daughter, through video call facility and on 06/04/2024, he even attended her birthday and the proof thereof in form of photograph is part of the Petition. However, since thereafter

Respondent No.2 completely detached the ties and did not even permit any interaction with the child, the Petitioner is apprehensive that she may remove the child out of the country and this apprehension expressed in the Petition is based upon certain events, which are specifically set out before us.

The foremost being a Petition filed before Delhi High Court by Respondent No.2, being aggrieved by the action of the Respondent i.e. Union of India for taking steps to cancel her PIO, where she pleaded that she is born in Pakistan and though her mother was a Pakistani citizen at the material time, her father was an Indian Citizen. She further pleaded before the Delhi High Court, that she herself and her mother surrendered their Pakistani citizenship in 1995 and the Petitioner became an Indian citizen on 28/08/1995 and accordingly they were issued Indian passports. However, about 12 years later, she became a US citizen and was granted US passport in the year 2007. She was also issued PIO card on 25/03/2008, which is valid upto 24/03/2023.

In the wake of the attempt of the Government of India vide notification dated 09/01/2015, in exercise of the power under Section 7A(2) of the Citizenship Act, 1955, declaring that all the PIO cardholders would be deemed to be Overseas Citizens of India, she applied for an OCI card and when her application was not granted to her, she approached the Delhi High Court by filing the Petition and the same is pending.

In favour of the minor daughter, there were two visas, which include the visa for US, which is valid till 2032 and this has given rise to an apprehension in the mind of the Petitioner that with the steps which Respondent No.2 has treaded, she

might, on the basis of these documents, take his daughter and fly abroad.

4. In an additional affidavit, the Petitioner has specifically set out the policy underlying, "Statement of Exigent/Special Family Circumstances", which is a part of the official website of U.S.Embassy & Consulates, which is accompanied with the Statement of Exigent for issuance of a US passport to child under age 16, and according to this policy, the children under the age of 16 years cannot apply for passport by themselves and, therefore, both the parents are required to authorize the issuance of child's passport. In the event, both the parents cannot appear in person for issuance of passport from U.S. Embassy & Consulate in India, it is permissible for one parent to submit the application with Court's order granting sole legal custody of the child and/or order permitting sole parent to apply for child's passport.

This provision, according to the learned senior counsel, is susceptible of misuse by Respondent No.2 and this apprehension has the basis, as in the past, Respondent No.2 approached the Saket Court by filing the Civil Suit, where she sought decree of permanent injunction in her favour and against Defendant No.1 therein (the present Petitioner) restraining him from entering into the property set out therein i.e. her parental home situated at New Delhi and further seeking a mandatory injunction, directing Defendant No.1 to hand over the passport of his minor daughter to her, which has culminated into an order in her favour.

It is the apprehension expressed by the Petitioner that despite the fact that this order is subjected to a challenge before the Delhi High Court in FAO No.194 of 2024, which has resulted into stay of the operation of the impugned order passed by the Saket Court, by concealing this order, the order of the Saket Court may be used before the US Consulate for taking the minor daughter alongwith her and with the incorrect facts being placed before the Authorities competent to permit such travel, the minor may be removed from India.

5. On the basis of the sequence of events narrated before us, we are not in a position to dispel the apprehension and rather in the wake of the steps initiated by Respondent No.2, by filing a Petition before the Delhi High Court, challenging the cancellation of PIO card and the relief she has specifically sought before the Saket Court, which was even granted in her favour, though subsequently stayed by Delhi High Court, and though we deem it appropriate to issue notice to Respondent No.2, at this stage and in the interregnum to protect the interest of the Petitioner and to prevent Respondent No.2 from removing the child from India, while she is summoned before the Court and answer the notice issued, seeking a writ in the nature of habeas corpus, we deem it appropriate to grant ad-interim relief in terms of prayer clause (b).

6. Issue notice to Respondent No.2, by making the same returnable on 02/07/2024. Hamdast granted.

The notice shall be served upon the address indicated in the title-cause, where Respondent No.2 is stated to be presently residing. The notice is also permitted to be served through private mode of service, including the electronic mail service.

On the returnable date, Respondent No.2 shall present in the Court alongwith the child at 10.30 a.m.

Learned A.P.P. Mrs.Kaushik, waives service of notice for Respondent No.1.

7. Re-notify to 02/07/2024 at 10.30 a.m.

(MANJUSHA DESHPANDE,J.)

(BHARATI DANGRE, J.)