

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 3532 OF 2024

Saniya Mohammed Rehman Shaikh .. Petitioner
Versus
The State of Maharashtra and anr .. Respondents
...

Mr.Mayur Faira a/w Harshal Savla for the petitioner.
Mr.Saniya Mohammed Rehman Shaikh, petitioner in person present.
Ms.Ruby Shaikh for respondent no.2.
Dr.Ashvini Takalkar, APP for the State.

CORAM: BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.
DATED : 28th AUGUST, 2024

P.C:-

1 The present petition praying for issuance of Writ in the nature of Habeas Corpus is filed by the petitioner wife aged 26 years, alleging that her husband respondent no.2, has removed the two sons from her custody.

2 Our attention is drawn to a Khulanama executed on 30/07/2024, between the petitioner and the respondent no.2, where the wife i.e. the petitioner has accepted the Talaq-e-baine given to her by her husband without any dispute stating that it is with sound mental position and in presence of the witnesses, she has accepted so. It is agreed that by signing of the deed, both the parties shall be freed from marital bondage of each other and shall not represent themselves as husband and wife of each other in the Society.

The Khulanama has the signature of the husband and wife on it, along with signature of the two witnesses and is also accompanied by Talaq against the Khulanama at the instance of the husband in favour of the wife.

3 The Khulanama also include an arrangement, between the parties in respect of the four children born out of the wedlock and it categorically record that Mohammed Ridan Shaikh aged 7 years and Mohammed Kaavish Shaikh aged 5, shall continue to remain with the father, whereas Hinza Shaikh aged 3 years and Haider Ali Shaikh aged 4 months, shall remain in the custody of the wife i.e. the mother.

Clause 3 of the Khulanama also record that the father shall also have right of visitation and /or stay with the two children and it is his responsibility to give a well rounded comprehensive, quality education to the two children for their better future and prospects.

4 Admittedly, as per this understanding, the two elder children continued to remain with the father and the two younger one continued to stay with the mother.

The mother has come up with the grievance, immediately after five days of signing the Khulanama that, she has been forced to sign the same, but in any case since we are not pronouncing upon the validity or otherwise of the same, and the petitioner is at liberty to assail the same in appropriate proceedings, limiting ourselves for the relief sought, we do not find any reason to disturb the arrangement, that is reached between the parties through

the Khulanama, till the time it is declared that it is void.

As per this arrangement, the two elder children are with the respondent no.2, the father and taking into consideration, the concern expressed by the mother towards these two children, and particularly, when both of them are residing in the same building on two different floors, we direct that the two children, who are in custody of the respondent no.2, shall be permitted to visit their mother, Saniya Mohammed Shaikh, at least for one hour every day.

The counsel for the respondent no.2 agree to the same.

Similarly, even the father shall be entitled to have access to the children, who are in custody of the petitioner.

With this understanding recorded, since the petition has served its purpose, it is disposed off.

(MANJUSHA DESHPANDE,J)

(BHARATI DANGRE, J.)