



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL WRIT PETITION NO.742/2023

Shri Ashish Ramraoji Bobde

Vs.

State of Maharashtra thr. The Commissioner of Police, Nagpur City, Nagpur and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri V.M. Lute, Advocate for petitioner
Ms Mrunal Naik, APP for respondent Nos.1 and 2/State
Shri P.K. Bezalwar, Advocate for respondent No.3

**CORAM : VINAY JOSHI AND
MRS. VRUSHALI V. JOSHI, JJ..**

DATED : 07/08/2024

Heard.

2. This is an application seeking a prerogative writ of habeas corpus for custody of a minor child, aged about 6 years namely Shriyan. Precisely, the petitioner father seeks a custody of his son alleging that the minor son has been in the illegal custody of respondent No.3 mother.

3. The petitioner and respondent No.3 got married on 01/12/2016 and out of the wedlock, a son was born on 02/09/2017. It is petitioner's case that till June, 2022, they were residing together, but then, due to differences, respondent No.3 left with a child and started to reside with her parents. Respondent No.3 has filed a proceedings under the provisions of Domestic Violence Act, in which maintenance orders have been passed. It is petitioner's contention that on 16/06/2023, respondent mother has handed over the custody of a child to him stating that she is not in a position to maintain, but, on 04/09/2023, she

again forcibly took the custody of the child from the school.

4. Respondent has denied this contentions by stating that since separation, the child is in her custody. It is submitted that intermittently, she allowed the child to stay with his father for a week or for like period. However, mother claims that after separation, the child is with her.

5. Entitlement of custody depends upon the variety of factors on the paramount consideration regarding welfare of child. The said aspect as to who would be proper custodian has to be decided on the facts of the case after considering the evidence. This is a writ Court where the petitioner is seeking writ of habeas corpus, which shall normally be issued if the person is legally detained. The minor child aged about 6 years is in the custody of mother for so many days and thus we are not inclined to exercise our discretion to issue a prerogative writ by treating mother's custody of a small child illegal. In view of this, the Writ Petition is disposed.

6. The petitioner may approach to the District Court/ Family Court for custody. Needless to mention that all points raised, are kept open for adjudication.

(MRS. VRUSHALI V. JOSHI, J.) (VINAY JOSHI, J.)

R.S. Sahare