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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of decision: 20.02.2024*

+ **W.P.(CRL) 519/2024 & CRL.M.A.4712/2024**

**SWETA TIWARI**

..... Petitioner

Through: Mr. Vansh Gandotra, Mr. Naman  
Sabharwal and Mr. Vidur Marwah,  
Advocates

versus

**STATE GOVT. OF NCT OF DELHI & ORS.** .... Respondents

Through: Mr. Sanjay Lao, Standing Counsel  
(Crl.) with Mr. Priyam Agarwal, Mr.  
Abhinav Krumar Arya and Mr.  
Shivesh Kaushik, Advocates and  
Insp. Brahma Dutta Vishnoi  
Respondent No.4 in person

**CORAM:**

**HON'BLE MR. JUSTICE SURESH KUMAR KAIT**

**HON'BLE MR. JUSTICE GIRISH KATHPALIA**

**J U D G M E N T (oral)**

**CRL.M.A.4712/2024 (for exemption)**

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

**W.P.(CRL) 519/2024**

3. The present petition has been filed under Article 226 of the Constitution of India read with Section 482 Cr.P.C. seeking issuance of a writ, order or direction in the nature of Habeas Corpus to the respondent Nos.2 and 3 to produce minor baby (Master 'X') of the petitioner before this



Court who is in custody of respondent No.4-father.

4. Petitioner is further seeking directions to respondent No.4 to hand over custody of Master 'X' to her.

5. The facts giving rise to the present petition are that the petitioner is married to respondent No.4 on 01.12.2021 as per Hindu rites and ceremonies, however, due to marital discord, the petitioner left the matrimonial home and came back to her mother's residence. On 30.06.2023, the parties were blessed with a son namely Atharv Dubey (Master 'X'). Thereafter, on 01.11.2023, petitioner received a legal notice from counsel of respondent No.4 to come back to matrimonial home. Subsequently, on 13.11.2023, the petitioner filed a written complaint before the respondent No.3 which was later transferred to the Deputy Commissioner of Police, Faridabad, Haryana. On 27.11.2023, petitioner and her husband appeared before the ACP, Faridabad, Haryana where the disputes between them were amicably settled and the petitioner returned to her matrimonial home. However, on 07.02.2024, petitioner claims to have been subjected to mental and physical torture by respondent No.4 and that she was thrown out of matrimonial home by respondent No.4, who refused to hand over the custody of their minor son. Thereafter, on 09.02.2024, the petitioner approached respondent No.2 but no action was taken. Hence, the present petition has been filed.

6. Notice issued.

7. Mr. Sanjay Lao, learned Standing Counsel accepts notice on behalf of respondent Nos.1 to 3 and respondent No.4 who is present in Court accepts notice.

8. Learned counsel for petitioner submits that the child is only 7 months



old and, therefore, his custody be handed over to the mother.

9. Pertinently, the Hon'ble Supreme Court in the case of *Tejaswini Gaud v. Shekhar Jagdish Prasad Tewari : (2019) 7 SCC 42* has held that Habeas corpus proceedings is not to justify or examine the legality of the custody of the child. The Supreme Court has further held that habeas corpus proceedings is a medium through which the custody of the child is addressed to the discretion of the Court and in child custody matters, the power of the High Court in granting the writ is qualified only in cases where the detention of a minor by a person who is not entitled to his legal custody.

10. Relevantly, the Court while deciding the child custody cases is not bound by the mere legal right of the parent or guardian but the welfare of the minor child is the paramount consideration. Therefore, in the considered opinion of this Court, issuance of a Writ of Habeas Corpus under Article 226 of the Constitution of India is maintainable.

11. In the present case, indisputably there is a marital dispute between the petitioner-wife and the respondent No.4-husband. The child of the parties is only seven months' old and has to be breastfed by the mother. The limited relief sought in the present petition is with regard to the production of the child and handing over his custody to the petitioner-mother.

12. Respondent No.4 is present in Court with the child who fairly submits that without prejudice to his rights and contentions, in the welfare and growth of the infant child, he is ready to hand over the child to the petitioner.

13. Accordingly, respondent No.4 has handed over custody of the child to the petitioner-mother, while leaving the question of custody of the minor child open for the parties before the appropriate forum under the relevant



2024:DHC:1349-DB



provisions of law.

14. The present petition is accordingly disposed of.

15. It is made clear that no observation has been made with regard to custody of the minor child and the observations made herein shall not influence the Courts below while adjudicating the case on merits.

**(SURESH KUMAR KAIT)**  
**JUDGE**

**(GIRISH KATHPALIA)**  
**JUDGE**

**FEBRUARY 20, 2024/rk**