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* IN THE HIGH COURT OF DELHI AT NEW DELHI
% Date of decision: 1st April, 2024

+ W.P.(CRL) 982/2024

VIJAY LAKSHMI SAHU

..... Petitioner

Through: Mr. Rohit Shukla with Mr. Vivek
Kumar Saurav and Mr. Abhay
Solanki, Advocates with petitioner in
person.

versus

THE STATE OF NCT OF DELHI & ANR. Respondents

Through: Mr. Sanjay Lao, Standing Counsel
(Crl.) with Ms. Priyam Agarwal and
Mr. Shivesh Kaushik, Advocates with
SI Ravi Kumar, PS Sagar Pur.
Ms. Bina Gupta with Ms. Sheena
Taquir and Ms. Akansha Saini,
Advocates for respondent No.2 with
respondent No.2 in person

CORAM:**HON'BLE MR. JUSTICE SURESH KUMAR KAIT****HON'BLE MR. JUSTICE MANOJ JAIN****J U D G M E N T (oral)****Crl.M.A.9385/2024 (exemption)**

Exemption allowed subject to all just exceptions.

W.P.(CRL) 982/2024

1. Present petition has been filed by the petitioner seeking following
prayer:-

*“Issue a Writ of Habeas Corpus, directing the Respondent to
locate the whereabouts of the minor child/ Master “A” and
produce the minor child/ Master “A”, S/o Sh. Deepak Sahu
and Ms. Vijay Lakshmi (Petitioner) and consequently
custody be given to the Petitioner.”*



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2. Issue notice. Learned Addl. P.P. for the State accepts notice on behalf of the State.
3. Husband of the petitioner (respondent No.2) is present in Court with their such younger child. It is admitted by the respondent No.2 that for the last ten days, their said younger child is with him. He also submits that he has already filed a divorce petition seeking divorce and has also sought custody of both the children in Chhindwara District, Madhya Pradesh. It is stated that respondent No.2 was earlier in service and, therefore, was in no position to take care of his children. He has now left such job and thereafter has taken custody of one such child. Such usurpation of custody is, apparently, without any authorization or order of the Court.
4. The younger child of the petitioner recognizes his mother very well who showered him with love and affection to the same extent as his father. The child is also looking very comfortable in the company of his elder brother.
5. Since the younger child was earlier, admittedly, in custody of his mother (petitioner herein) and there is matrimonial acrimony between the parties and a petition has already been filed by the respondent seeking custody of both the children which is pending before the Family Court, therefore, the custody of the younger child should continue to be with his mother (petitioner herein) till the time any order to the contrary is passed by a competent Court.
6. Though, any father of minor is natural guardian but fact remains that he can't take custody without the authority of law. According to



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petitioner, she had filed a Transfer Petition in Hon'ble Supreme Court and even in his counter affidavit, her husband had admitted that the custody of children was with their mother only and thus the manner in which he has taken away custody of the child is illegal and without any legal sanction.

7. In view of the above, since the custody, for the time being, has been restored to the petitioner, no further orders are required to be passed in the present petition. Parties are at liberty to take steps as per law before the appropriate Court seeking custody/visitation of their children. Such Court shall not get prejudiced by the observations made herein above and shall decide such issue in accordance with law.

8. Petition is, accordingly, disposed of.

(SURESH KUMAR KAIT)
JUDGE

(MANOJ JAIN)
JUDGE

APRIL 1, 2024
st



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Signature Not Verified

Digitally Signed
By:SONIA TAPLIYAL
Signing Date:02.04.2024
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