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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of Decision: 1st August, 2024***

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W.P.(CRL) 2014/2024**SHRI NISHANT KAPOOR**

.....Petitioner

Through: Mr Sounya Kundu, Advocates.

versus

STATE OF NCT DELHI & ORS.

.....Respondents

Through: Mr. Sanjay Lao, Standing Counsel
with Ms. Priyam Agarwal and Mr.
Abhinav Kumar Arya, Advocates.**CORAM:****JUSTICE PRATHIBA M. SINGH****JUSTICE AMIT SHARMA****Prathiba M. Singh, J. (Oral)**

1. This hearing has been done through hybrid mode.
2. The present petition has been filed by the Petitioner- Mr. Nishant Kapoor under Article 226 of the Constitution of India read with Section 482 Cr.P.C. The Petitioner *vide* the present petition is seeking issuance of a writ of nature of *habeas corpus*, thereby directing the Respondent Authorities to produce his wife and son, Master 'P', before this Court.
3. It is stated in the petition that the Petitioner got married to Ms. Harpreet Kaur on 4th February, 2016. Further, from the wedlock they had a child, Master 'P', on 11th February, 2020. However, there were differences which arose between the parties and subsequently, a petition under Section 25 of the Guardians and Wards Act, 1890 was filed by the Petitioner herein against his



wife. The same was disposed of as settled on 31st January, 2024.

4. In the order dated 19th January, 2023 in **GP 23/23** titled **Nishant v. Harpreet**, various terms have been recorded by the Court including the possible treatment for the child- Master 'P' who is suffering from cerebral palsy. The order would be relevant and set out hereinbelow:-

“The present case is assigned by the Hon'ble Court of Ms. Nivedita Anil Sharma, Ld. Principal Judge, Family Court, North District, Rohini Court, New Delhi. Process of counselling has been explained in detail to the parties with greater emphasis of confidentiality. Heard the parties jointly as well as separately. They have agreed to settle their matter voluntarily and amicably without any force/coercion on the following terms and conditions:-

- 1. The child born from this wedlock is need more medical care and attention due to his physical & mental inability.*
- 2. That it is agreed between the parties that the Medical expenses and other misc. expenses of the child [REDACTED] will be borne by the father/ petitioner and respondent will take all care of the child till 15/03/24 we join together with each other company.*
- 3. That it is agreed between the parties that the petitioner have a visitation right to meet child [REDACTED] on every Sunday between 2-4 p.m. at any public place or restaurant as per convenience of the child.*
- 4. That it is agreed between the parties that child [REDACTED] used to go for therapy sessions 6 days in a week and petitioner can meet his child during this therapy session also and he used to meet the child several times during therapy sessions.*
- 5. That it is further decided between the parties that parents of the child will also consult or treatment through out the world for example US or Canada and they are ready to go to the decided place for medical consultation regarding paramount welfare of the child for 15 to 20 days trip.*
- 6. That it is agreed between the parties that petitioner have to arrange around 8.50 Lakhs Rupees in his account for visa purposes only before 30 November 2023. Petitioner said that*



he will arrange such amount by taking loan from bank or relatives. For applying visa we need to show such amount in our account for atleast more than 1 months in this situation petitioner will give his updated statement to the respondent prior to 30 November 2023 if Nishant miss that date He would have buffer time for 15 days to provide statement for further procedure of applying Visa. Once visas are done ,after booking flights tickets all cases will be withdrawn by both the parties filed against each other.

7. That it is agreed between the parties that petitioner will hand over all required and necessary documents regarding visa formalities to the respondent on or before 1" November 2023.

8. That it is agreed between the parties that the travelling expenses of petitioner, respondent and child will be borne by both the parties and after reaching US or Canada all expenses will be borne by. the respondent only.

9. That it is agreed between the parties that in case if their second application for Visa got rejected for any reason then respondent will withdraw all her cases against the petitioner and also she will join back the society of the petitioner at rental accommodation on 15th March 2024. 10. That it is agreed between the parties that all the belongings like gold article cost around twenty five lakhs only approximatly purchase by the both parties of the respondent will be remain with the respondent even after joining the society of the petitioner.

11. Both the parties have been read out the contents of the present settlement in vernacular language and the same have been made understood to both the parties and both the parties undertakes to be bound by the terms of this settlement."

5. An affidavit was sworn by Ms. Harpreet Kaur, confirming the settlement. However, despite agreeing that she would join the Petitioner and start living together from 15th March 2024, the facts reveal that she flew to the United States of America on 13th March, 2024.

6. According to the Petitioner, till 12th March 2024, they were together



looking for a house and he was not informed that his wife had decided to travel to New York along with their son. This was completely deceptive and unlawful conduct on the part of the wife.

7. On the last date of hearing, the wife of the Petitioner- Ms. Harpreet Kaur, had joined the proceedings virtually and submitted that the Petitioner had agreed to travel with her and their son for medical treatment but had later backed out. This is disputed by the Petitioner. During the proceedings, on the last date of hearing, it was also confirmed that Ms. Harpreet is living with her parents and siblings in the U.S. She was accordingly, impleaded as Respondent No.6. After hearing the parties, the following directions were issued:-

11. *Considering the fact that the child, Master [REDACTED] has been taken away from the jurisdiction of the Court, contrary to the order dated 31st January, 2024 passed by the Family Court, North District, Rohini Court, Delhi, let the Respondent No. 6 file a reply as to why action ought not to be initiated against her for contempt in accordance with law.*

12. *It is further directed that the Respondent No. 6 shall facilitate a video call for at least ten minutes every day with the child, Master [REDACTED] with his father.*

8. As per the above order, reply was to be filed by Respondent No.6 as to why Contempt action should not be initiated against her.

9. Today, Mr. Sajal Manchanda, Id. Counsel appearing for Ms. Harpreet submits that he needs more time to file the reply.

10. The prayer for adjournment has been opposed by the Petitioner. The Petitioner himself is present in Court and he submits that insofar as the video call was concerned, in the first week, no calls were made, however, thereafter from the second week, he is being made to speak to his son every day in terms



of the order.

11. It is also submitted by the Petitioner that the original passport of the child, Master 'P', is with him. Ms. Harpreet Kaur, in fact, gave a false complaint that the passport was misplaced and a fresh passport was obtained by her on the basis of such false complaint without his consent.

12. He also submits that Ms. Harpreet Kaur herself does not have a valid U.S. visa and has illegally entered the U.S. It is further his allegation that the family of his wife including her father, Mr. Gurvinder Pal Singh, enables Indian citizens to illegally immigrate to the US.

13. These contentions are disputed by Mr. Harpreet Kaur. She submits that she is legally living in the U.S. and her son is being treated for cerebral palsy and he cannot walk. On a specific query by the Court to Ms. Harpreet as to whether she has a U.S. visa, she confirms that she does not have a U.S. visa. However, her stand is that her stay in the U.S. is legally valid based on her homeland security documents.

14. Clearly, the child has been taken out from the jurisdiction of this Court and outside India, which is contrary to the settlement which was entered into by the Petitioner and the Respondent No. 6- Ms. Harpreet Kaur.

15. The conduct of Ms. Harpreet has also been deceptive as the allegation is that they were together looking for a house till 12th March, 2024, but suddenly she flew to the U.S on the next day itself. This kind of conduct is violative of terms and settlement which was arrived before the Id. Family Court and the same cannot be condoned by this Court. The conduct of the wife Mrs. Harpreet Kaur clearly constitutes contempt.

16. At this stage, the Id. Counsel for Respondent No. 6/Ms. Harpreet Kaur seeks time to take instructions from his client.



17. The matter was passed over and again was taken up after sometime.
18. Both Ms. Harpreet Kaur and her Counsel submit that she tenders her unconditional apology for having violated the settlement terms and for having taken the child out of the jurisdiction of this Court.
19. In the opinion of this Court, the conduct of Ms. Harpreet Kaur has been deceptive to say the least. Under such circumstances she is now giving an undertaking to the Court that she would return back to India by 10th September, 2024 along with the child.
20. The Court accordingly directs that Ms. Harpreet Kaur shall return to India with the child by 10th September, 2024. If there is failure to return to India by the said date, the Petitioner is free to use the present order and communicate the same to the U.S. Embassy in India as also for notify the Immigration Authority in the U.S regarding the conduct of Ms. Harpreet Kaur.
21. The original passport of the child has been produced before the Court and has been seen by the Court.
22. The Petitioner is given liberty to approach this Court if the wife and the son do not return to India before the aforesaid date.
23. The petition is disposed of in the aforesaid terms.
24. Pending applications, if any, also stand disposed of accordingly.

PRATHIBA M. SINGH
JUDGE

AMIT SHARMA
JUDGE

AUGUST 01, 2024/ss/bh/NS