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IN THE HIGH COURT OF DELHI AT NEW DELHI*Date of decision:-8th August, 2024.*

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W.P.(CRL) 2183/2024**HARISH JAMWAL**

.....Petitioner

Through: Ms. Himanshi & Ms. Meenu, Adv.
(M:7011049301)

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Mr. Anurag Ahluwalia CGSC, Ms.
Hridyanshi Sharma Adv for R-2 &3.
(M: 9811199806)
Mr. Sushil Raaja SPC for UIDAI.**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 writ petition has been filed by the Petitioner- Harish Jamwal under Article 226/227 of the Constitution of India seeking issuance of a writ of habeas corpus directing Respondent Nos. 2 to 4 to produce his son before this Court.
3. The petition presents certain unique sets of facts, wherein the Petitioner who is an Indian citizen, married Respondent No.5- Hena Akter @ Sinha Mondal, as per Hindu rites.
4. As per the Petitioner, the marriage took place in Mahalakshmi Temple, Bangalore Mumbai Highway, Nelamangala Taluk, Nelamangala (near Bangalore), in 2014 and a child was born out of the said wedlock on 20th



November, 2018. The Petitioner thereafter learnt that Respondent No.5 is a Bangladeshi National and certain FIRs were also pending against her.

5. Sometime in October, 2022, it is averred that Respondent No.5 along with the child went away to Bangladesh and since then the Petitioner has been unable to meet the child.

6. The Court was also informed that the Petitioner had approached the Hon'ble Supreme Court of Bangladesh by way of a writ petition being **W.P. No. 15346/2022** titled '**Harish Jamwal v. Government of Bangladesh represented by its Secretary of Ministry of Home Affairs and Ors.**' for visitation rights/custody of the Petitioner. The order passed by the said Court on 12th January, 2023 has been placed before this Court. *Vide* the said order the Supreme Court of Bangladesh, had, after hearing the parties including the Petitioner and the counsel for Petitioner's wife passed the following order:

"Facts relevant for disposal of the Rule are that the petitioner is a citizen of the Republic of India. The petitioner is married to a woman namely Sinha Mondal, daughter of Vikash Mondal, Kolkata, West Bengal, India, Adhar Card No.225025517281, at Mahalaksmi Temple, Bangalore Mumbai Highway, Nelamangala Taluk, Nelamangala, Bangalore, India as per provision of 'Hindu Personal Laws'. After few months of their wedlock, the petitioner came to know that his wife 'Sinha Mandol' is a Bangladeshi Citizen. She fraudulently obtained Adhar Card and other Indian legal documents. Her actual name is Hena Akter, daughter of Abdul Jabbar and Khodeza Begum and she is Muslim by religion. Her Bangladeshi Passport number is A00820031. During their wedlock, the respondent No.6 Sinha Mandol alias Hena Akter became pregnant and she gave birth to their son is "Happy Jamwal" on 20.11.2018. At that time, the petitioner requested the respondent No.6 Sinha Mandol alias Hena Akter to



surrender before the authority. Due to this reason she became furious and threatened to harm their child Happy Jamwal. Thereafter, in October, 2022 respondent No.06 suddenly left the house of the petitioner with their child. The petitioner came to know that the respondent No.6 illegally returned to Bangladesh with their came to Bangladesh on 27.11.2022 and on the next day i.e. 28.11.2022, the petitioner went to the house of respondent No.6 at village-Shanbari, Post Office-Delduar, Police station-Delduar, District-Tangail to meet with the respondent No.6 and their child. But the respondent No.6 refused to meet with the petitioner. The petitioner is biological father of his son Happy Jamwal and he wants to bring back his son to India. It is also stated that the life of his son namely Happy Jamwal is in danger and he does not know about the fate of his child. Thereafter, the petitioner went to the police station and lodged General Diary No. 1399 dated 29.11.2022 before Delduar Police Station but he did not get any support from the police.

Being aggrieved by and dissatisfied with the illegal detention of his son, and also having no other adequate and alternative efficacious remedy, the petitioner filed this writ petition and obtained the instant Rule.

We have heard the learned Advocate for the petitioner and also the petitioner (in-person), respondent No.6 (in-person), the learned Deputy Attorney General and perused the writ petition along with the relevant annexure appended thereto.

It appears that the child namely Happy Jamwal, son of Harish Jamwal, is staying with his mother namely, Hena Akter @ Sinha Mondal the respondent No.6 in her safe custody. The respondent No.6 categorically stated that she is Muslim by birth and she did not convert or change her religion to any other religion. She also stated that on several occasion, the petitioner abused her. These are disputed question of



fact; we cannot resolve these disputes under this jurisdiction.

Admittedly, the petitioner is the biological father of Happy Jamwal. We also noticed that the child Happy Jamwal is living under safe custody of his mother Hena Akter. Neither, the child is being held by her mother illegally nor the life of petitioner's son is in danger. However, the petitioner categorically stated that he wants to meet with his son, as biological father of the child and as such, we are of the view that he is entitled to meet/see his child.

Considering the facts and circumstances of this matter, we are of the view that justice would be best served if we direct the respondent No.6 namely Hena Akter, daughter of Abdul Jabbar and Khodeza Begum, under village-Shanbari, Post Office-Delduar, District-Tangail to give opportunity to the petitioner to see/meet with his child on regular basis in every month during office hour, in presence of Social Welfare Officer at the cost of the petitioner, if he submits intimation to the District Social Welfare Officer, Tangail. The petitioner is also directed to provide maintenance cost of his child, in accordance with law.

The District Social Welfare Officer, Tangail and respondent No.6, Hena Akter are also directed to take necessary step and co-operate with the petitioner to meet with his child.”

7. A perusal of the above stated order would show that the Hon'ble Supreme Court of Bangladesh had directed the Petitioner's wife/Hena Akter which is Respondent No. 5 in the present case to make the child meet the Petitioner on a regular basis every month during office hours. After the passing of this order the Petitioner's case is that he met the child, however, the child was in the company of some third person which according to him was contrary to the order passed by the Hon'ble Supreme Court and hence the



present petition was filed.

8. Notice was issued on the last date of hearing i.e., 24th July 2024 to the Bureau of Immigration/Foreign Regional Registration Officer (FRRO) and Mr. Ahluwalia, Id. Counsel was also directed to obtain instructions in the matter.

9. Today, certain travel details as obtained from the Foreigner's Regional Registration Officer (hereinafter 'FRRO') have been placed before the Court which would show that the wife of the Petitioner along with the child have travelled to and fro in 2019 and 2022 to Bangladesh. The details of the travel have been set out in the form of a chart which would show that the last departure by the wife and the child was on 10th December, 2023 from Mumbai Airport.

10. In addition, the MEA has also written on 5th August, 2024 to the High Commission of the People's Republic Bangladesh seeking details relating to the child and for suggesting measures for resolution of the issue. The above stated documents are taken on record.

11. Considering the recent developments in Bangladesh, Mr. Ahluwalia, Id. Counsel submits that response is yet to be received.

12. The prayer in this writ petition is for directions to the Government of India to get the child released from the custody of his wife who is located in Bangladesh. The wife and the child are beyond the jurisdiction of this Court. The Petitioner has already availed of the remedy of approaching the Hon'ble Supreme Court of Bangladesh and the order has been passed in favour of the Petitioner permitting the Petitioner to meet the child every month during office hours in the presence of the social welfare officer.

13. The MEA has already written to the High Commission of Bangladesh



seeking further details. Beyond the steps already taken, no further directions can be issued by this Court considering the location of the child is beyond the jurisdiction of this Court. However, the Petitioner is free to avail of the visitation which has been permitted by the Hon'ble Supreme Court of Bangladesh and the authorities shall facilitate the same.

14. In addition, the Court directs that as and when the MEA obtains any information from the Bangladeshi authorities, the same would be intimated to the Petitioner as also to his counsel at the following email addresses and telephone numbers:

Ms. Himanshi, Adv.

M. Nos. 7011049301 & 8951101235

Email: himanshibhardwaj1012@gmail.com

15. No further orders are called for in this writ petition. Petition is accordingly disposed of in these terms. All pending applications are also disposed of.

16. The Petitioner is free to avail of his remedies in accordance with law for implementation of the order passed by the Hon'ble Supreme Court of Bangladesh.

**PRATHIBA M. SINGH
JUDGE**

**AMIT SHARMA
JUDGE**

AUGUST 08, 2024

dj/ks/pr