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IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of decision:-16th August, 2024.***

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W.P.(CRL) 2475/2024 & CRL.M.A. 24073/2024**UTPAL TRIPATHI**

.....Petitioner

Through: Mr. Vikas Sharma, Ms. Manvi Rajvanshy & Mr. Yogesh Aggarwal Advocate alongwith petitioner in person through Vc.

versus

STATE (GOVT. OF NCT DELHI) & ANR.

.....Respondents

Through: Mr. Sanjay Lao, Standing Counsel (Crl.) for the State with Ms. Priyam Agarwal & Mr. Abhinav Kumar Arya Advocate.

Insp. Naveen, P.S. S.P. Badli

Ms. Deepti Dogra, Advocate for R-2 alongwith R-2/father and Sister of Ms. 'R' through Vc.

Ms. 'R' through whatsapp video call alongwith Ms. Ishme, Psychologist and Ms. Aanchal Minglani, treating Doctor.

CORAM:**JUSTICE PRATHIBA M. SINGH****JUSTICE SACHIN DATTA****Prathiba M. Singh, J. (ORAL)**

1. This hearing has been done through hybrid mode.
2. The present petition has been filed on behalf of the Petitioner-Mr. Utpal Tripathi under Article 226 of the Constitution of India seeking issuance of a writ of *habeas corpus* for production of his wife, Ms. 'R', who is stated to be missing since 30th July, 2024.



3. It is stated in the petition that the Petitioner was married to Ms. 'R' on 24th May 2014 and from the said wedlock, they have a son, who is presently 9 years of age. However, due to matrimonial discord, a settlement agreement (*hereinafter, 'settlement agreement'*) was entered into by the Petitioner and his wife on 22nd June, 2023, by which various terms were agreed to.

4. The settlement agreement broadly encapsulated that the custody of the child would be with the Petitioner/father. Further, in terms of the said settlement agreement, the Petitioner's wife was given visitation rights twice a month at a mutually convenient date, time and place. Additionally, it was agreed that the Petitioner's wife would get full access to communicate with the child via phone/video calls. The maintenance of the child was to be fully borne by the father. It is further stated in the settlement agreement that a lump sum alimony payment of Rs. 15 lakhs shall be made on behalf of the Petitioner to his wife, out of which, 50% of the said amount was to be paid during the time of recording the first motion under Section 13B of the of the Hindu Marriage Act, 1955. The remaining 50% of the total agreed upon amount was to be paid at the time of recording the second motion. The relevant portion of the settlement agreement is extracted hereunder for a ready reference:

"MUTUAL CONSENT-TERMS AND CONDITION

I. Custody of the child

1. That the minor child of the parties is currently 8 years old, and has continuously been residing with his father, Petitioner No.1 since 07.11.2022, and further, the said exparte custody was also confirmed by the Hon'ble Kanpur Family Court vide order dt. 19.12.2022. Thus As both the parties are moving towards the mutual consent with their own wish and consent, hence the petitioner no.2 has decided not to challenge the order dated 19-12-2022 and had readily agreed to give the custody to the petitioner no.1



and shall not have any future claims for the same.

a. **Physical Custody- The physical custody of the minor child, Sharvit Tripathi shall fully and entirely vest with Petitioner No.1, Shri. Utpal Tripathi (father of the minor child).** The minor child shall at all reside with Petitioner No. 1 and that in his absence/unavailability, the custody of the child shall temporarily be handed over to either Petitioner No. 1's mother, Smt. Nirmala Tiwari aged about 67 years and/or to any other trusted person who shall act in the capacity of the minor child's legal guardian, in case Petitioner no.1 is physically absent or it can even be temporarily given to the mother.

b. **Legal Custody-The legal custody of the minor child, Shravil Tripathi shall fully and entirely vest with Petitioner No. 1, Shri. Utpal Tripathi (father of the minor child).** All major decisions affecting the life of the minor child, including but not limited to his health, and education shall entirely vest upon Petitioner No. 1.

II. Visitation rights

a. **That Petitioner No. 2, Smt. Richa Tiwari (mother of the minor child), shall be allowed to meet the child twice a month, at a date, time, and place convenient for, and mutually decided by both the parties. The date for the said meeting between Petitioner No.2 and the child shall duly be communicated to Petitioner No. 1 four (4) days prior to the date of meeting. Additionally, Petitioner No. 2 shall be allowed to communicate freely with the child vide phone calls and/or video call.** The time and frequency of the phone/video calls shall mutually be decided by the parties amongst themselves, and the same shall flexible and accommodative enough of the work schedule of both the parties. The petitioner no.2 can take the minor for a holidays during the vacations of the child for 1 week in 6 months as the prior intimation and details of the same would be provided to the father that ie petitioner no.1 for the same

b. That in case the minor child shifts with the petitioner number 1 out of India where it could not be possible for the petitioner no 2 to meet the child then the provisions regarding meeting the child in the vacations would be



made by the petitioner one so that the visitation rights of the mother that is the petition no 2 should not be violated.

III. Maintenance of the Minor child

a. That Petitioner No. 1 shall continue to undertake any and all expenses related to the minor child, including but not limited to his educational expenses, medical/healthcare expenses, and all other miscellaneous expenses that might occur subsequently. That with regard to the maintenance the petitioner no.2 will not owe any responsibility.

IV. Payment of Alimony

a. That a lump sum payment of Rs. 15,00,000/- (Rupees Fifteen Lakhs only) as alimony, and litigation expenses, shall be made by Petitioner No. 1 towards Petitioner No. 2 as full and final settlement Subsequent upon having paid the said amount to Petitioner No. 2, Petitioner no. 1 shall not, in any way, be liable to make any further payments to and/or on behalf of Petitioner No. 2, whatsoever.

b. That it is agreed between the parties that Rs. 7,50,000/- shall be paid by the first party to the Second party at the time of recording of first motion statement.

c. That it is agreed between the parties that Rs. 7,50,000/- shall be paid by the first party to the second party at the time of recording of the statement of second motion filed U/s 13 (B) (2) of HMA.

d. That Petitioner No. 2 is in possession of all her belongings, and no jewellery, documents, utensils, articles, and/or any other valuable things belonging to Petitioner No. 2 are in possession of Petitioner No. 1, whatsoever. Further, Petitioner No. 2 continues to be in possession of the jewellery, and other valuable articles (Stridhan) which she had received during and after the solemnization of the said marriage with Petitioner No. 1.”

As per the settlement, there was broad agreement as to the manner in which the divorce between the Petitioner and his wife was to be given effect to.

5. The case of the Petitioner is that the first motion under Section 13B of the Hindu Marriage Act, 1955 was recorded on 14th July, 2023, however



thereafter, the wife of the Petitioner did not sign the second motion under Section 13B of the Hindu Marriage Act, 1955. On 30th July, 2024 the Petitioner is stated to have visited the parental house of his wife, Ms. 'R' to get the second motion petition under Section 13B of the Hindu Marriage Act, 1955 signed. However, according to the Petitioner, his wife was not present at the parental house and he was not informed about the whereabouts of the wife. Hence this writ petition under *habeas corpus* seeking production of his wife.

6. A status report dated 16th August, 2024 has been filed by the SHO, P.S. S.P. Badli. As per the status report, after separating from the Petitioner/husband, the Petitioner's wife has been living in Kanpur, Uttar Pradesh, i.e. since 2021. Further, the Respondent no. 2, i.e., the father of the wife informed the police that the wife is mentally disturbed and is currently undergoing medical treatment and is admitted at Aroha Jagruti Rehabilitation Centre, Sector 48, Noida, Uttar Pradesh (*hereinafter, 'rehabilitation centre'*).

7. Today, Mr. Vikas Sharma, Advocate, has appeared on behalf of the Petitioner. Ms. Deepti Dogra, advocate has appeared for Respondent no. 2.

8. It is submitted by Ms. Dogra that the husband was aware about the fact that his wife is in the rehabilitation centre. This fact is disputed by the husband.

9. The Petitioner's wife has joined the proceedings virtually with the help of the Investigating Officer through Whatsapp video call. Her psychologist- Ms. Ishme has also joined the proceedings virtually. The Court has interacted with the Petitioner's wife as also her psychologist. The Court has been informed that the Petitioner's wife is suffering from Schizophrenia and



the treating doctor is Dr. Aanchal Minglani.

10. Upon interacting with the Petitioner's wife, the Court observes that she is able to converse comfortably with the Court and she is also satisfied with the treatment currently given to her. The Court is also informed that the father of the wife visits her at the Centre sometimes.

11. Dr. Aanchal Minglani, has joined the Court proceedings virtually and submits that the condition of Ms. 'R' is much better than before and she is in fact capable of being discharged shortly.

12. The Court has interacted with the father and the sister of Ms. 'R'. After having interacted with them, it appears that the Centre would have to ascertain properly prior to discharging her, as to whether she can be comfortable in living alone or with some family member and whether any family member is willing to live with her.

13. In these facts, considering that the son has also not met his mother, Ms. 'R', it is deemed appropriate to direct the Petitioner/husband to visit his wife and make the son meet his mother at the rehabilitation centre every fortnightly Sunday around lunch hour. The rehabilitation centre shall make arrangements for the same and shall cooperate.

14. In addition, insofar as the second motion under Section 13B of the Hindu Marriage Act, 1955 is concerned, the Petitioner and the son can visit the rehabilitation centre and meet Ms. 'R' either tomorrow or day after tomorrow i.e., 17th August or 18th August, 2024 and get the petition signed by the wife.

15. Upon presentation of the petition under Section 13B of the Hindu Marriage Act, 1955, the concerned Family Court shall connect with Ms. 'R' on video call and record her statement for passing of the order on second



2024:DHC:6205-DB



motion.

16. The remaining 50% of the agreed upon alimony amount as per the settlement agreement, shall be transferred by the husband to the wife's bank account directly, prior to the recording of the statement and passing of the order on second motion. The concerned Court shall confirm the same before passing the order.

17. With these directions, the present petition is disposed of.

18. If at any point, Ms. 'R' wishes to seek relief in respect of her medical treatment or seek a second opinion, she is free to move an application in this petition.

19. Pending application(s), if any, also stands disposed of.

PRATHIBA M. SINGH
JUDGE

SACHIN DATTA
JUDGE

AUGUST 16, 2024/bsr/rks

Signature Not Verified

Digitally Signed
By: DEVANSU JOSH
Signing Date: 20.08.2024
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W.P.(CRL) 2475/2024

Page 7 of 7