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

+ **W.P.(CRL) 2656/2024 & CRL.M.A. 26116/2024**

SAPNA

.....Petitioner

Through: Mr. Himanshu Makkar, Ms. Aditi
Singh & Mr. Himanshu Joshi, Advs.
along with Petitioner in person.

versus

STATE NCT OF DELHI AND ORS

.....Respondents

Through: Mr. Sanjay Lao (Crml.), Standing
Counsel with Ms. Priyam Aggarwal
& Mr. Abhinav Kumar Arya, Advs.
Mr. Bharat Bhushan, Mr. Padmeeca,
Ms. Riya Jha, Advs. along with
Respondent No.2 present in person

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE AMIT SHARMA

ORDER

% **30.08.2024**

1. This hearing has been done through hybrid mode.
2. The present petition has been filed on behalf of the Petitioner-Sapna under Article 226 of the Constitution of India seeking issuance of a writ of *habeas corpus* for production of her minor son, namely Master 'A' who is stated to have been removed from her custody in June, 2024 by her husband *i.e.* the Respondent No. 2.
3. A brief background of the present case as stated in the petition is that the Petitioner was married to the Respondent No.2 – Mr. Ajit Jha and they have three children from the wedlock. However, because of certain matrimonial disputes, the Respondent No. 2 abandoned the Petitioner and their three children in May, 2023.



4. According to the Petitioner, the matrimonial disputes between her and her husband stem from her husband's extramarital affair and that has also been the reason for the husband, i.e., Respondent no. 2 to leave their matrimonial home.

5. It is further stated that on 20th November, 2023 the Petitioner's husband, i.e., Respondent no. 2 took custody of their minor son-Master 'A' under the pretext of taking him to school. Subsequently, a complaint was filed by the Petitioner on 21st November, 2023 at the Police Station, Sector-9, Bahadurgarh, Jhajjar.

6. The Petitioner filed a *writ of habeas corpus* before the Hon'ble Punjab and Haryana High Court, wherein *vide* an interim arrangement dated 1st December, 2023 the Punjab and Haryana High Court directed that the custody of the children will be given to the Petitioner.

7. On 8th June, 2024 however, the Respondent No. 2 is stated to have forcibly taken the minor son out of the custody of the petitioner. Hence, the present petition.

8. Today, the Petitioner, her husband-Respondent No.2 and their children *i.e.* two daughters and the son-Master 'A' are present in Court. The Court has had an in chamber interaction with all the parties present.

9. The facts ascertained from the in chamber interaction with the parties present are that the Petitioner is living with her two daughters and the in-laws (mother-in-law and father-in-law) in her matrimonial home in Bahadurgarh, Haryana as given in the memo of parties. The Petitioner's husband is currently living at A-40, Sector-69, Noida, U.P.-201307 where he resides in a one room office-cum-residence and does his accounting work. Presently, the minor son-



Master 'A' is in his custody.

10. The Petitioner had earlier approached the Punjab & Haryana High Court for release of her children through a habeas corpus petition. The said High Court, by order dated 1st December, 2023 directed an interim arrangement wherein the children of the Petitioner were handed over to the petitioner.

“CRM-W-1733-2023

This is an application for placing on record the amended memo of parties.

Application is allowed and the amended memo of parties is taken on record.

CRWP-11502-2023

In compliance of order dated 25.11.2023, respondent No.2 is present along with the children in Court today. The report of the Warrant officer has been received, wherein it was recorded that respondent No.2 has been informed and he has promised that he will be present in Court on the next date of hearing.

Without going into the merits of the case, since it has not been denied that the children are studying in Sainik Public School, Bahadurgarh, the custody of the children be handed over to the petitioner, however, this interim order shall not entail any right of the petitioner till the pendency of the petition. *Since children have to take their exams, therefore, the matter is adjourned to 16.12.2023 and the petitioner will be responsible for bringing the children in Court and the respondent No.2-Ajit Jha will also be present on the date fixed, so that they can be relegated to Mediation and Conciliation Centre so that an amicable solution can be explored. The present order is only an interim arrangement for the welfare of the children and all the defences are kept open. Since the exams of the children are scheduled till 02.12.2023, the children will take their exam and attend the school.*



However, as interim arrangement, the children after giving their exams, which are finishing on 02.12.2023 will be handed over by the petitioner to the respondent-father by 5.00 P.M. on the same date and the respondent undertakes that he will send back the children on Sunday i.e. 03.12.2023 before 7.00 P.M. in the custody of the mother, so that they can attend the School from Monday. The same arrangement will take place on the next weekend also i.e. 09.12.2023 and 10.12.2023 and in case, any of the parties do not abide by the same, strict action shall be taken against them.

It is once again made clear that this order is only for the purpose of enabling the children to take their exams and shall not be construed as an expression of any right subsisting in favour of the petitioner.

In case, either of the parties does not abide by the present order, respondent No.4-SHO Police Station Sadar Thana, Bahadurgarh is empowered to take appropriate action against the offender in accordance with law.”

11. A perusal of the above order shows that the Id. Single Judge has noted clearly that the children are studying in Sainik Public School, Bahadurgarh and the custody of the children was handed over to the mother, i.e., the Petitioner. Under such circumstances, an interim arrangement was passed allowing the father., i.e., Respondent no. 2 to retain the children on weekends. However, post the directions passed in the above order, the petition itself got disposed of on 16th December, 2023 in the following terms:

“ 1. Learned counsel for the petitioner has submitted that, in fact, in compliance of order dated 01.12.2023, the children have been handed over to the mother and as a matter of abundant precaution, the concerned SHO Police Station Sadar Thana, Bahadurgarh is directed to ensure the safety of the petitioner and her children and take appropriate



steps, in case, any untoward incident takes place

2. *In view of the above, nothing survives in this petition, at this stage.*

3. *Accordingly, the present petition stands disposed of.”*

12. Clearly, the above interim order had attained finality and is only subject to any further remedies which the father, i.e., respondent no. 2 could avail of.

13. Under such circumstances, the removal of the minor son-Master ‘A’ from the custody of the mother, i.e., petitioner would be contrary to the order passed by the Hon’ble Punjab & Haryana Court.

14. Both the sisters have also been spoken to. They are quite comfortable with the mother. The elder daughter is in fact upset by the fact that the father stays separately and does not keep in touch with her and the mother. In fact she stated that the father has blocked her mother’s number so she is unable to make calls. She uses her grand parents’ phone to make a call to her father. The Court is concerned with the well-being of the son who is separated from his family and living alone with the father. It also appears from the material on record that there is an attempt by the father to introduce the lady named Ms. Archana to his son. In fact the boy when spoken to said that his father is married to this lady.

15. Considering the facts and circumstances in the present case, the Court is of the opinion that the Respondent No. 2, father could not have taken away the minor son from the custody of the Petitioner, i.e., the mother. The same would be *prima facie* violation of the orders passed by the Hon’ble Punjab and Haryana High Court.

16. However, considering that this is a family matter and the Court having conferred with all the parties including the children, the following



arrangement is now put in place with the consent of the parties:

- i) All the three children shall remain in the Bahadurgarh residence, *i.e.*, 4501/13, Gali no. 4, near Chaupal, Arya nagar, Bahadurgarh, Jhajhar, Haryana-124507 where the grand-parents and the mother/petitioner are residing;
- ii) The minor son-Master 'A' shall be re-admitted to the Sainik Public School, Bahadurgarh, Haryana and he shall attend the school with both his sisters;
- iii) The expenses for the children's education and any other expenses pertaining to the children shall be borne by the father/Respondent no. 2;
- iv) The father/respondent no. 2 is free to visit the Bahadurgarh home whenever he wishes to meet the children and the wife would not prevent the same in any manner whatsoever;
- v) The father is also free to take the children out on weekends. However, the children shall not be retained by the father for more than one night and two days. The father/respondent no. 2 has further assured that the children would be returned to the mother/petitioner as also he shall not make the children meet one Ms. Archana with whom he is alleged to have an extra-marital affair.
- vi) If the father/Respondent no. 2 wishes to stay in the Bahadurgarh residence, he is free to stay with his parents on the ground floor as the said residence is stated to be having a ground floor and a first floor.

17. The remedies of the parties are left open in respect of guardianship. The father is free to avail of his remedies in accordance with law before the Court of competent jurisdiction. If the guardianship petition is filed, the Family



Court shall proceed in accordance with law after meeting the children.

18. The wife/petitioner has assured the Court that she shall not create any hindrances in the father meeting the children or even taking the children on the weekends. Whenever the father wishes to visit, he shall message the mother and the mother shall make sure that the children are available to meet the father.

19. The father has undertaken the Court that he would drop Master 'A' to the Bahadurgarh residence on Sunday i.e., 1st September, 2024 by 4:00 p.m.

20. If there is non-compliance of the above order, the Petitioner is free to mention the matter.

21. Petition is disposed of in these terms. All pending application(s), if any, also stand disposed of.

PRATHIBA M. SINGH, J.

AMIT SHARMA, J.

AUGUST 30, 2024

Rahul/rks/Pc