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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 17th December, 2024

+ **W.P.(CRL) 3809/2024**

SUZILIA MENYENG ANAK CHUATPetitioner

Through: Ms. Sumita Kapil, Ms Ishita Soni,
Advs. (M- 9958584817) for High
Commission of Malaysia.
Mr. Jefri Harun, the Second Secretary,
High Commission of Malaysia.

versus

GOVT OF NCT OF DELHI AND ORS & ANR.Respondents

Through: Mr. Sanjay Lao, Standing Counsel
(Crl.) for State with Ms. Priyam
Aggarwal & Mr. Abhinav Kr. Arya,
Advs.

Respondent no.4 in person
Ms. Shaswati Parhi, Adv. for R-6/State
of Bihar (M-8902491803).

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 under Article 226 of the Constitution of India read with Section 528 of the BNSS has been filed on behalf of the Petitioner - Ms. Suzilia Menyeng Anak Chuat, who is a Malaysian citizen, seeking issuance of a writ in the nature of *habeas corpus* for production of her two minor sons.
3. The Respondent No. 4 - Mr. Deepak Kumar, husband of the Petitioner, is an Indian passport holder. However, both the children are Malaysian passport holders. Respondent No. 4 and the children are stated to be living in Bihar.



4. On 5th December, 2024, after hearing the Id. Counsels for the parties, the Court had directed as under:

“13. Heard the Id. Counsels. In view of the facts and circumstances of this case, it is deemed appropriate to implead the Ministry of External Affairs through its Secretary as Respondent No. 5. Accordingly, Mr. Anurag Ahluwalia, Id. Senior Counsel/CGSC is requested to accept notice on behalf of the Ministry of External Affairs. Further, the following directions are issued in this matter: -

i) The Child Welfare Committee (CWC) located in Patna shall immediately visit the residence of Respondent No. 4 and submit a report as to the safety, security, well being, nurturing and everyday schedule of the children of the Petitioner and Respondent No. 4 by the next date of hearing;

ii) The said report by CWC shall also contain the details of Respondent No.4 as well as the family members who are residing with him and who are taking care of the children. The CWC shall interact with the children in a comfortable environment within their own residence;

iii) The CWC shall submit its report to the concerned Secretary, State Legal Services Authority, Bihar who shall, then, file the said report before this Court through Mr. Manish Kumar, Id. Standing Counsel for the State of Bihar, who is appearing today;

14. Issue notice to the Respondent No.4 through Respondent No.3 - DGP Bihar through all permissible modes including electronic mail, if any, for production of children for the next date of hearing. Considering the age of the children and the health condition of the elder son, a CWC Member or any suitable support person/Counsellor shall accompany the children.”



5. Pursuant to the notice issued on 5th December, 2024, Respondent No.4/ husband and the children were present before the Court on 12th December, 2024. The Court had an in-chamber interaction with them. The older son – Master ‘B’ is an autistic child and was unable to communicate with the Court. The younger child is just about two years of age. Thus, the Court was unable to interact or ascertain any facts from both the children.

6. On 12th December, 2024, various allegations and counter-allegations were made by the Respondent No. 4/husband and by the Petitioner/wife through their respective Id. Counsels.

7. Further, the Court was informed that the Respondent No. 4/husband and children are living in Jehanabad, Bihar, which is the family home of the husband of Petitioner. The Respondent No.4/husband also confirmed that he has in his possession, his own passport as also the Malaysian passports of both the minor children.

8. Considering the order dated 19th November, 2024 of the High Court in Sabah and Sarawak at Sibu, Malaysia and the CWC report dated 10th December, 2024, which was received on the last date, the Court was of the opinion that the Petitioner ought to have an opportunity to meet the children and her husband.

9. In view of the above as also after hearing the Id. Counsel for the Petitioner, the following directions were issued: -

“8. Accordingly, the following directions are issued bearing in mind the order passed by the High Court in Sabah and Sarawak at Sibu, Malaysia:

i) The husband i.e., Respondent No. 4 and children shall be lodged in a premises which has to be arranged by the High Commission of Malaysia in a comfortable unit consisting of at least one bed room,



an attached bathroom and a kitchenette. The father of the children i.e., Respondent No.4 shall take care of the children while being housed by the High Commission of Malaysia;

ii) The Petitioner's Indian visa is stated to be renewed. Accordingly, she shall travel to India and meet the husband and the children and attempt to resolve the differences;

iii) If there is no resolution of differences, then the matter shall be heard by this Court on the next date of hearing.

9. The statement of Ms. Kapil, Id. Counsel appearing under instructions of Power of Attorney – Mr. Jefri Harun, who is the Second Secretary, High Commission of Malaysia, is taken on record to the extent that the husband and/or the children shall not be deported to Malaysia and they shall abide by any further orders that may be passed by this Court.

10. Id. Counsel for Respondent No. 4 shall be given the address where the High Commission of Malaysia has arranged for an accommodation of the Respondent and his children. Id. Counsel is permitted to meet the Respondent whenever he wishes to meet.

11. The concerned IO shall escort the husband and the children to the accommodation which is to be provided by the High Commission of Malaysia.”

As per the above order, the husband and the children were to be lodged in an accommodation provided by the Malaysian High Commission. The Petitioner could travel from Malaysia and then meet the children. The purpose was to also see if there could be some amicable resolution between the couple as well.

10. Thereafter, matter was listed for today. In the meantime, the Petitioner had also arrived in India on 15th December, 2024, along with her sister and brother-in-law. The Petitioner has met the Respondent No. 4/ husband and her



children at the accommodation arranged by the Malaysian High Commission in terms of the order dated 12th December, 2024.

11. At the beginning of the hearing today, Mr. Jefri Harun, the Second Secretary, High Commission of Malaysia in India, has made his submission that during the period when the children were with the Respondent No. 4/husband, the conduct of the Respondent No. 4/husband was observed. The interaction between the Petitioner and the Respondent no.4 is reported to have been quite unpleasant.

12. The Petitioner has also appeared before this Court and an interaction has been held in the Chamber.

13. The facts that have been ascertained are that the Petitioner is working in a health clinic namely, *Klinik Kesihatan, Mid Layar Betong, Sarawak, Malaysia*, since 29th April, 2014. The Petitioner has stated that she met the Respondent No. 4/husband at Sibu, Malaysia, when he had arrived on a Seaman visa.

14. The Petitioner further stated that her Respondent No. 4/husband had not informed her that he was taking away their children to India permanently but, in fact, he had stated that he is travelling to India only for the Diwali break. She informed this Court that she has also visited her in-laws, firstly, at the time of her marriage, and secondly, when her second child was born.

15. The Petitioner has no grievance against the parents of the Respondent No. 4/husband and, in fact, states that she gets along with her mother-in-law quite well. The brother of the Respondent No. 4/husband is stated to be having some medical issues.

16. The Petitioner also submits that her elder child, Master 'B', is an autistic child and he is attending two schools in Malaysia with an arrangement



that for two weeks in a month he attends the school for children with special needs and for the other two weeks he attends usual school. At home, while the Petitioner is at work, her mother takes care of her children.

17. The Court has also interacted with Respondent No. 4/husband in the Chamber and clearly, there is no arrangement that Respondent No. 4 and the Petitioner have worked out consensually between themselves.

18. The Children are Malaysian citizens. The High Court in Sabah and Sarawak at Sibul, Malaysia, has passed a detailed order on 19th November, 2024, directing custody of the children to be handed over to the Petitioner. Detailed directions have also been passed by the said Court to the following effect:-

“(a) DEEPAK KUMAR ("the Respondent"), holding Indian Passport No. 24262401, immediately return the two (2) minor Malaysian Citizens as follows:

(i) [REDACTED] DEEPAK KUMAR (NRIC No. 180603-13- 0893), aged 6 years, holding Malaysian Passport No. K70472840

(ii) [REDACTED] DEEPAK KUMAR (NRIC No. 220824-13- 0831), aged 2 years, holding Malaysian Passport No. K70472841

(collectively "the Children") to the interim care and custody of the High Commissioner of Malaysia to the Republic of India in New Delhi, India;

(b) The Respondent shall safely deliver the Children to the High Commissioner of Malaysia at the High Commissioner of Malaysia, 50-M, Satya Marg, Chanakyapuri, New Delhi 110021, India, within 24 hours of service of this Order;

(c) Upon delivery of the Children, the Respondent must also hand over their Malaysian passports (Passport No. K70472840 and Passport No. K70472841) to the High Commissioner of Malaysia;

(d) The Respondent is prohibited from removing or



attempting to remove the Children from India to any other country pending further orders from this Court.

(e) The Royal Malaysian Police, in coordination with relevant authorities including Interpol, take all necessary steps to search, locate, secure, and facilitate the return of the Children to Malaysia, and to safely convey them to the care and custody of the Applicant, at her residence in Malaysia;

(f) The relevant diplomatic channels, including the Malaysian Ministry of Foreign Affairs and the High Commission of Malaysia at New Delhi, are to be utilised to assist in the enforcement of this Order;

(g) The High Commissioner of Malaysia in New Delhi is hereby authorised and directed to take all necessary actions to facilitate the safe return of the Children to Malaysia, including but not limited to:

- (i) Arranging suitable travel for the Children from New Delhi to Malaysia;*
- (ii) Coordinating with relevant Malaysian and Indian authorities to ensure the Children's safety during the return journey;*
- (iii) Retaining custody of the Children until they are safely returned to the Applicant in Malaysia.*

(h) Leave is hereby granted to the Applicant to serve this Order on the Respondent outside the jurisdiction of Malaysia, in accordance with the applicable rules of court governing service out of jurisdiction.

(i) The Applicant be granted liberty to apply for any further or supplementary orders deemed necessary to give full effect to this Emergency Recovery Order. 0) Notice of this Order together with a copy of this Order be given to:

- (i) High Commission of India, Kuala Lumpur;*
- (ii) High Commission of Malaysia, New Delhi;*
- (iii) Immigration Department Malaysia; and*
- (iv) Royal Malaysian Police.*

AND IT IS FURTHER ORDERED THAT the Respondent, the father of the Children in question be at liberty to apply to set aside or vary the order as granted."



19. Ld. Counsel for the State of Bihar is also present and submits that this Court in the present writ petition, which seeks issuance of a writ of *habeas corpus*, ought not to execute the order of the Malaysian High Court and the same should be permitted to be executed in accordance with law under the Code of Civil Procedure. She further submits that this Court does not have the jurisdiction to entertain the present petition.

20. None has appeared for the Respondent No. 4/husband, though on the last date of hearing *i.e.*, 12th December, 2024, one Mr. Varun, Advocate (Mobile No. 9873797337) had appeared and he was also permitted to visit his client at the accommodation provided by the High Commission of Malaysia. However, none has appeared today. On being contacted by Ms. Priyam Aggarwal, Id. Counsel from the office of the Id. Standing Counsel for the State, Mr. Varun has informed this Court that he has not been engaged by Respondent No. 4 for today.

21. The Court has considered the matter as also submissions made by the parties. Apart from considering the order of the High Court of Malaysia this Court has also borne in mind the overall interest of the children. Both the children are Malaysian citizens and they hold OCI cards. The older child who is autistic is attending a school for children with special needs in Malaysia, whereas in India, the Respondent No. 4 *i.e.*, the father is living in Jehanabad, Bihar.

22. The older child needs the care and company of the Petitioner/mother. The second child is also merely about 2 years of age. The Respondent No. 4/husband and the Petitioner/wife have not come to any arrangement on their own.



23. The Petitioner/mother is a nurse in Malaysia and after interacting with her, this Court is of the opinion that she can adequately take care of the children.

24. The children being Malaysian citizens, the father/Respondent No. 4 could not have brought them outside the jurisdiction of Malaysia with an intention not to go back to Malaysia and to separate them from the Petitioner/mother permanently.

25. In the opinion of this Court, the medical needs, as also the physical and emotional needs, of both the children can be adequately met and taken care of by the Petitioner/mother though there would be separation from the Respondent No. 4/father. The Petitioner/mother has no objection if the father visits Malaysia and meets the children whenever he wishes to.

26. The law on the habeas corpus petition is also well settled that under these circumstances such petitions would be maintainable. Recently, the Supreme Court in ***Rajeswari Chandrasekar Ganesh v. State of T.N., (2023) 12 SCC 472***, after considering the judicial precedents on the subject, has observed and held as under: -

“99. Thus, it is well established that in issuing the writ of habeas corpus in the case of minors, the jurisdiction which the Court exercises is an inherent jurisdiction as distinct from a statutory jurisdiction conferred by any particular provision in any special statute. In other words, the employment of the writ of habeas corpus in child custody cases is not pursuant to, but independent of any statute. The jurisdiction exercised by the court rests in such cases on its inherent equitable powers and exerts the force of the State, as parens patriae, for the protection of its minor ward, and the very nature and scope of the inquiry and the result sought to be accomplished call for the exercise of the jurisdiction of a court of equity. The primary object of a habeas corpus petition, as applied to minor children, is to determine in



whose custody the best interests of the child will probably be advanced. In a habeas corpus proceeding brought by one parent against the other for the custody of their child, the Court has before it the question of the rights of the parties as between themselves, and also has before it, if presented by the pleadings and the evidence, the question of the interest which the State, as parens patriae, has in promoting the best interests of the child.

115. *The essence of the judgment in Nithya Anand Raghavan [Nithya Anand Raghavan v. State (NCT of Delhi), (2017) 8 SCC 454 : (2017) 4 SCC (Civ) 104] is that the doctrines of comity of courts, intimate connect, orders passed by foreign courts having jurisdiction in the matter regarding the custody of the minor child, the citizenship of the parents and the child, etc. cannot override the consideration of the best interest and the welfare of the child, and that the direction to return the child to the foreign jurisdiction must not result in any physical, mental, psychological, or other harm to the child."*

27. Further, in the above case, while deciding the question, whether it was in the paramount interest and welfare of the children therein, to return back to USA with their mother, the Petitioner therein, the Supreme Court had considered the following factors: -

"118.1. *Both the minor children are residents of USA.*

118.2. *The son is a natural citizen and the daughter is a permanent resident of USA.*

118.3. *Both the children have been brought up in the social and cultural milieu of USA. They are accustomed to the lifestyle, language, customs, rules and regulations, etc. of that country.*

118.4. *The children are residents of USA. One of whom is a natural citizen and will have better future prospects if goes back to USA."*



28. Based on the aforesaid factors, the Supreme Court directed the Respondent No. 2/Father therein, to take back both the minor children to USA and hand them over to the custody of the Petitioner/mother therein and avail of his remedies in accordance with the law of the said country.

29. In the light of the factual and legal position discussed above, including the interaction which this Court had with all the parties concerned, this Court is of the opinion that this is a fit case where the children ought to be permitted to accompany the Petitioner/mother to Malaysia. Such an order would also be in the spirit of comity of courts, as the High Court in Malaysia is already seized of the matter. Ordered accordingly.

30. The High Commission of Malaysia in India shall facilitate the movement of children with their mother/Petitioner to Malaysia.

31. The passport of the children as also the Overseas Citizen of India (OCI) cards of the children have been given by the Respondent No. 4/father to Mr. Jefri Harun and the same would enable the children to travel back to Malaysia.

32. If the Respondent No. 4/father wishes to seek custody or any visitation rights in respect of the children, he is free to avail of his remedies before the High Court of Malaysia.

33. The petition is disposed of in above terms. Pending applications, if any, are also disposed of.

**PRATHIBA M. SINGH
JUDGE**

**AMIT SHARMA
JUDGE**

DECEMBER 17, 2024/nk/ms