

Arising Out of PS. Case No.-254 Year-2024 Thana- PATLIPUTRA District- Patna

Shashi Prabha D/O Shri Shivjee Singh R/O Moh- R.K. Villa Apartment, Flat No. 101/B-1, Mahesh Nagar, P.S- Patliputra, Distt.- Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar Through The Principal Secretary, Home Department, Bihar, Patna. Bihar
2. The Director General Of Police, Bihar, Patna. Bihar
3. The Senior Superintendent Of Police, Patna Bihar
4. The Deputy Superintendent Of Police, Sadar, Patna. Bihar
5. The S.H.O. Patliputra Police Station, Patna. Bihar
6. The Investigating Officer, Patliputra P.S Case No. 254/24 Bihar
7. Manikant Kumar S/O Late Nityanand Singh R/O Flat No. 401, 402 Shri Hari Apartment, East Patel Nagar, Adarsh Colony, P.S- Shastri Nagar. Presently Residing At Flat No. 107. First Floor, Radhika Apartment, Sector- 14, Dwarika, New Delhi- 110075

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Mukesh Kumar, Advocate Mr. Ram Nibash Prasad, Advocate
For the State	:	G.P.11
For the Respondent No.7:		Mr. Yogesh Chandra Verma, Sr. Advocate Mr. Brahamputra Singh, Advocate Mr. Adarsh Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

14 30-04-2025 Heard learned counsel Mr. Mukesh Kumar,
assisted by learned counsel Mr. Ram Nibash Prasad on behalf of
the petitioner, learned G.P-11 for the State and Mr. Yogesh
Chandra Verma, learned Senior Counsel assisted by learned
counsel Mr. Brahamputra Singh, on behalf of the respondent
no.7.

2. The present application has been filed on behalf of



the petitioner for the following reliefs:-

(i) For issuing a direction upon the respondents concerned to recover the minor son of the petitioner who has forcefully lifted her son from the parental house of the petitioner, since the respondent no.7 is a man of bad conduct and psycho tendency and further used to torture the petitioner badly, physically, mentally and economically and as such the petitioner is under threat that the life of her minor son is in danger in the hands of the respondent no.7.

(ii) For issuing a direction upon the respondents concerned to make proper investigation in accordance with law upon the Patliputra P.S. Case No.254 of 2024, dated 29.06.2024, registered against the respondent no.7 for the offences under Sections 363, 365 of the I.P.C. for the aforesaid conduct.

(iii) For any other relief to which the petitioner is found entitled to in the facts and circumstances of the case.

3. The learned counsel appearing on behalf of the petitioner briefly encapsulates the factual background relevant for the present purpose and submits that the marriage of the petitioner and the respondent no.7 was solemnized on 06.04.2010, according to Hindu rites and rituals. It was an inter-



caste love marriage and out of this wedlock a child namely, Master Aditya Vikram was born on 28.06.2016, who is aged about 8 years.

4. The learned counsel for the petitioner submits that after marriage, the petitioner and the respondent no.7 moved to New Delhi where the respondent no.7 pressurizing the petitioner to leave her college studies and the present petitioner was doing all the household chores including preparation of meals yet she was not being treated properly with respect.

5. It is next submitted by the learned counsel for the Petitioner that the Petitioner had also left her post-graduation course (MBA) because the respondent no.7 was pressurizing her constantly to leave her education and get married to him. It is submitted that the petitioner wanted to prepare for the U.P.S.C. (Civil Services) Examination but the respondent no.7 coerced the petitioner to rather pursue the job as a teacher at a coaching institute as he himself had no regular and stable job owing to his poor educational profile. He further submits that from the day she started teaching at the coaching institute, respondent no.7 started treating her as a cash-cow and the petitioner understood that the respondent no.7 is only after her hard-earned money.

6. The learned counsel for the petitioner further



submits that respondent no.7 used to mercilessly beat the petitioner and treated her like a servant. However, it is submitted further, that the petitioner would compromise and kept silent in order to safeguard and preserve her matrimonial life. During the year 2012, the petitioner got to know about a girl namely, Meenakshi, with whom the respondent no.7 was in regular conversation. Petitioner enquired about the same and learnt that both the respondent no.7 and the aforementioned girl named Meenakshi were in a relationship for a long time. Thereafter the respondent no.7 started creating hardship in the life of the petitioner.

7. He further submits that in the year 2015, respondent no.7 started harassing the petitioner even more and asked her to take out a personal loan for a wedding reception party and also demanded a car from the petitioner in order to boast and show off at the said reception party however when the petitioner refused, the respondent no.7 assaulted her badly. Subsequently, the petitioner took a loan for a TUV300 car for which she had paid regular EMIs of Rs.13,000/- per month totaling to Rs.8,00,000/-. It is submitted furthermore that the petitioner was also coerced and forced by the respondent no. 7 to take out a personal loan of Rs.11,00,000/- to fulfill his



demands for which the petitioner has been paying Rs.25,000/- per month towards its repayment.

8. In the year 2016, petitioner got pregnant and during the time of the delivery, respondent no.7 instead of supporting the petitioner, asked the petitioner to go to her mother's house. It is submitted that since the petitioner had no other option therefore, she went to the house of her mother. During the delivery of her child around Rs.70,000/- was spent and all these expenses were borne by her mother. It is submitted that it was during this time that the petitioner wanted to open up to her parents and disclose her marital situation to her parents but the respondent no. 7 had threatened to kill the petitioner and her parents if she disclosed anything to her parents and therefore it is submitted, that due to the blackmailing and threatening by the respondent no. 7, the petitioner kept silent.

9. The learned counsel next submits that after two months of the delivery of the child, the petitioner resumed her job however since caring for a newborn while also working was proving difficult therefore the petitioner engaged the services of a babysitter at her house for Rs.7000/- per month because the respondent no.7 had refused to take care of their newborn child. He enjoyed the earning of the petitioner on one hand and on the



other hand he refused to support her or their son.

10. The learned counsel also submits that the respondent no.7 manipulated the petitioner and on a pretext of doing business, the respondent no. 7 demanded money from the petitioner, however when the petitioner refused, she was assaulted by the respondent no. 7 and was compelled to take out another personal loan of Rs.7,00,000/- which was then taken over by the respondent no.7 and the petitioner till date is paying an EMI of Rs.16,000/- per month towards its repayment.

11. He further reiterates that all the bank accounts of the petitioner had the mobile number of the respondent no.7 as its registered number which enabled him to control the finances and transactions from the bank accounts.

12. The learned counsel for the petitioner has submitted that in the month of September 2020, petitioner had purchased a flat in Gautam Buddha Nagar, Uttar Pradesh on loan and is paying an EMI of Rs.27,000/- per month towards the said flat and since then she has been residing in the said flat. It is alleged that the respondent no.7 took all her jewelries since he wanted to contest elections on the ticket from the Congress Party and for that the respondent no. 7 had even tortured the petitioner to sleep with some senior minister of the political



party. It is submitted that when the petitioner vehemently refused, the respondent no.7 assaulted the petitioner for which she filed a complaint with the jurisdictional police. It is submitted that on 24.12.2020 the petitioner was beaten and she was severely injured. The petitioner had reported the whole incident to the police authorities at police station, Bisrakh, Gautam Buddha Nagar, Uttar Pradesh and also reported the same to higher police authorities. The petitioner was medically examined by the police officials.

13. The learned counsel for the petitioner further submits that after being continuously harassed by the respondent no.7, the petitioner was constrained to take shelter of legal remedy by preferring an application before the Court of Principal Judge, Family Court, Gautam Buddha Nagar, Uttar Pradesh under Section 13 of Hindu Marriage Act vide Case No.42 of 2021, for dissolution of marriage but due to pressure and influence exerted by the respondent no.7, the aforesaid case was placed before Lok Adalat and the same was disposed of vide order dated 11.09.2021, as the same has been withdrawn by the petitioner.

14. It is submitted that one day the respondent no.7 left the house of the petitioner and forcefully took away her



minor son with him. It is submitted that when the petitioner requested the respondent no.7 to come back to the house, the respondent no. 7 refused to do so and blocked her on phone and also on WhatsApp.

15. It is submitted that the Petitioner had to suffer severe mental trauma on account of the respondent no.7 since he had forcefully separated the petitioner from her minor son and the petitioner was well aware that her husband, respondent no. 7, would ill-treat the minor child. Since December, 2020 the petitioner was forced to live separately from her child and she came in contact with her child only in the month of January, 2024, after a period of three years, only when the respondent no.7 was arrested in a Criminal Case in Delhi and the child was left abandoned. The parents of the petitioners received a call in the month of January 2024, when they were informed that the minor child is being taken to Child Welfare Centre as the respondent no.7 has been arrested in a rape case in connection with an FIR bearing Dwarka Sector-23 P.S. Case No.0413 of 2023, registered for the offences under Sections 323, 376, 377, 506 of the Indian Penal Code, lodged by a lady namely, Savita, with whom the respondent no.7 was living since the year 2021. The parents of the petitioner were further informed that none of



the friends of the respondent no.7 had agreed to keep the child with them and hence no other option was left except to take the child to the Child Welfare Centre.

16. It is submitted that under such circumstances the parents of the petitioner arranged for the railway tickets and immediately rushed to New Delhi from Patna and found that the minor son of the petitioner was left in a very bad state and was without proper clothes and was shivering due to cold. The condition of the child was found very critical and it was very evident that he was not treated well by his father. The parents of the petitioner took the minor son of the petitioner with them.

17. The learned counsel also points out that at the time of receiving of the minor son of the petitioner, the parents of the petitioner had given an undertaking to one Sudhanshu Singh, from whom the child was recovered, stating therein that from now onwards the child would be in the safe custody of his grandparents, i.e., the father and mother of the petitioner and further that they were ready and willing to take all responsibilities of their grandchild in this regard.

18. After receiving the minor son of the petitioner, the child came to the house of maternal grandfather at Patna where he was given proper medical treatment so that he may recover.



Further, the child was admitted to D.A.V. Public School, Patliputra, Patna in Class-III. It is submitted that all the expenses were born by the petitioner, and not even a penny was paid by the respondent no. 7, illustrating that the respondent no. 7 had no interest to care for or to provide better education and proper care to his child.

19. It is vehemently emphasized by the learned counsel that it is not appropriate for the child to be in custody of respondent no.7 where the life and wellbeing of the child is in danger. It is submitted that the respondent no.7 has also harassed the minor child and the respondent no. 7 is only interested to get his hands on the money from the petitioner. The learned counsel to further illustrate the neglect and negative influence of respondent no. 7 on the minor child submits that the petitioner got to know from her son that the lady named, Savita, used to regularly force the child to steal things from shops and upon his refusal, she would abuse and assault him.

20. The learned counsel has submitted that the entire life of the petitioner and her minor son have been subjected to severe psychological and physical trauma at the hands of the respondent no.7. It is submitted that after his release from jail in connection with the aforementioned rape case, the respondent



no. 7 again started threatening the petitioner and therefore the petitioner filed a complaint before the local jurisdictional police. The petitioner also proceeded to seek legal remedy and preferred an application under Section 12, 18, 20, 21, 22 and 23 of the Protection of Women from Domestic Violence Act, 2005 and the same is presently pending before the learned CJ (JD) FTC-2, Gautam Buddha Nagar, Uttar Pradesh.

21. It is also pointed by the learned counsel for the petitioner that a divorce proceeding is also going on between the parties in the Court of Principal Judge, Family Court, Gautam Buddha Nagar, Uttar Pradesh. It is submitted by the learned counsel that the respondent no.7 continued to show cruelty upon the petitioner and therefore, she proceeded before the Court of Principal Judge, Family Court, Gautam Buddha Nagar, Uttar Pradesh by way of preferring an application under Section 13(1) (1-a) and 13(1) (1-b) of Hindu Marriage Act on 17.05.2024 for dissolution of marriage vide Case No.819 of 2024, where notice has been issued upon respondent no.7..

22. The learned counsel for the petitioner submits that on 28.06.2024, the respondent no.7 went to the paternal house of the petitioner and forcibly took away the child by assaulting the mother of the petitioner. It is submitted that this brazen act



of forcibly taking away the minor child creates a threat in the mind of the petitioner that some unforeseen incident would occur to the life of her son. It is further submitted that after the incident, the petitioner came to Patna and lodged an FIR against her husband before the local police station i.e. Patliputra P.S. Case No.254 of 2024, dated 29.06.2024 for the offences under Sections 363 and 365 of the Indian Penal Code. It is further submitted that on the very same day, the father of the petitioner gave information to the Investigating Officer, Dwarka Sector-23 in P.S. Case No.0413 of 2023, about the incident because they had knowledge that the parents of the petitioner had taken away her son from them on 13.01.2024.

23. Petitioner is also said to have represented before the respondent no.2 to 6 on 29.06.2024, narrating the whole incident and requested to do the needful in accordance with law.

24. The learned counsel for the petitioner lastly submits that the respondent no.7 is a womanizer and an adulterer, who plays with the emotions of young women and then sexually and economically exploits them and dumps them when his financial objectives are met. An example of the same would be the case of the petitioner herself and also the aforementioned rape case wherein he had exploited another lady



and has faced jail time for his actions. The learned counsel for the petitioner emphasized that the petitioner is the mother of the young boy and is working as an Assistant Vice President in a reputed company earning enough to maintain herself and her son. The petitioner being the mother is ready and willing to keep his child with herself and provide good care to him.

25. A counter affidavit has been filed on behalf of the respondent nos.3 to 6, who are the official respondents of the case. The counter affidavit has been sworn by the S.D.P.O., Law and Order, Patna. In the counter affidavit progress of the investigation have been mentioned.

26. A counter affidavit has also been filed on behalf of the respondent no.7 in which he has denied all the allegations levelled by the petitioner against him and he has stated that because he is the father of the child, he has every right to take him away. The child is staying with him and he is being educated in a good school in Gurugram.

27. In the criminal case, final form was submitted as there was lack of evidence. The case is still pending for consideration of the final form in which protest petition has been filed by the petitioner-informant. On 08.10.2024, the advocate for the respondent no.7 had submitted before this



Court that the child was with the respondent no.7 since 28.06.2024, he was taken away by him because of the birthday of his boy and it was also admitted by the counsel for the petitioner that before 28.06.2024, the child was residing with his mother. The learned counsel for the respondent no. 7 had submitted before the Court that if the Court directs then respondent no.7 will hand over the custody of the child to the petitioner i.e. the mother of the child.

28. By the order dated 08.10.2024 itself this Court had directed the respondent no. 7 to firstly hand over the boy to the petitioner on or before 18.10.2024. On 23.10.2024, this Court was informed by the learned counsel for the petitioner that the boy was not handed over to the petitioner and respondent no.7, who had appeared personally had given an undertaking to the Court that he will hand over the boy to the petitioner by 24.10.2024.

29. On 24.10.2024, on the request of the respondent no.7, the matter was adjourned for 26.10.2024. On 26.10.2024, an I.A. No.01 of 2024, was filed by Mr. Brahamputra Singh, Advocate. On 24.10.2024, Mr. Ramakant Singh, who was earlier appearing for the respondent no.7, submitted that respondent no.7 has changed his lawyer without



obtaining No Objection Certificate from him.

30. Mr. Verma, learned Senior Counsel for the respondent no.7, appeared on 28.10.2024 and submitted that the orders dated 08.10.2024 and 23.10.2024, passed by this Court were not complied by the respondent no.7. It was further submitted by Mr. Verma, that the boy was living with respondent no.7 as he was his legal guardian. The said I.A. No.01 of 2024, filed for the recall of the earlier orders of this Court was dismissed by this Court. Thereafter, the present case was listed on various dates but could not be taken up for hearing. It was finally taken up on 21.04.2025 and this Court had directed the respondent no.7 to appear before this Court along with the boy. On 28.04.2025, the respondent no.7 appeared but without the boy and submitted that the boy was appearing in an exam therefore, he could not be brought by the respondent no.7, who had appeared personally.

31. On 28.04.2025, this Court had directed the respondent no.7 to appear along with the boy on 30.04.2025 i.e. today. The boy appeared along with his father i.e. respondent no.7 today in the Court. This Court interacted with the boy in the Chambers. The lawyers for the petitioner, the lawyers for the respondent no.7 were not called in the Chambers. This Court



interacted with the boy in presence of his mother i.e. the petitioner. This Court has found that the boy is very intelligent and smart. The child was responsive and was able to answer lucidly to the queries of this Court. He understood all the general questions put before him by this court. It was noted that when the minor child had entered the Chambers, he was shivering out of fear. He calmed down only after he was assured by this Court that his father would not disturb him in the Chambers and his father will not enter the Chambers without the permission of the Court. Thereafter, he has informed this Court about his periodic assessments and that he has been promoted to Class-IV, in the Month of January, 2025 after the completion of his final exams.

32. The boy has specifically informed this Court that his father is staying with a woman, namely, Namrata, who has a daughter also and that the said woman Namrata is pregnant. He has also informed this Court that the aforementioned woman Namrata misbehaves with the boy and she beats him occasionally. When this Court asked about the behaviour of his father i.e. the respondent no.7, he stated that he sometimes scolds him but does not beat him. He has categorically told this Court that he does not want to stay with



the father and he wants to stay with his mother.

33. Mr. Verma, learned Senior Counsel has been informed about the wishes of the boy to which he has again reiterated his argument that the petitioner being the legal guardian of the child, is entitled to have the custody of the child.

34. I have at length heard the parties and perused the material available on record. This Court has also interacted with the minor child for ascertaining the welfare of the child.

35. The Petitioner is the wife of the respondent no.7, they had an inter caste marriage and one child i.e. the boy namely, Aditya Vikram, was born to them. After the disputes between the parties, they were staying separately and the boy was living with the grandparents. On 28.06.2024, the respondent no.7 forcibly took away the child from the paternal house of the petitioner for which an F.I.R. bearing Patliputra P.S. Case No.254 of 2024, was lodged in which final form has been submitted. The respondent no.7 was also made an accused in a rape case bearing Dwarka Sector-23 P.S. Case No.0413 of 2023, and thereafter the child was left without any care and the boy was brought to Patna by his mother and maternal grandparents and was staying at Patna.

35. The primary duty of this Court is to see the



welfare of the Child. In the present case, it is clear that the respondent no.7 is accused in a rape case filed by his live-in partner. He took away the child and thereafter, the child was left abandoned when the respondent no.7 was sent to jail in connection with the aforementioned rape case. After the child was taken away by the father on 28.06.2024, he has been staying with him but again the father has been staying with one Namrata, who is pregnant and who misbehaves with the child and also beats him. The child does not want to stay with his father. He wants to stay with the mother. The mother is well qualified and can look after the child properly.

36. This Court as well as the Supreme Court in several judgments has held that the best interest of child has to be seen before deciding the custody dispute between the parties.

37. The welfare of the minor child is the paramount consideration and such a question cannot be decided merely based upon the rights of the parties under guardianship law. The child has unequivocally stated that he does not want to stay with the father i.e. the respondent no.7 and he has good reasons for the same. It is undeniable that the best interest would be better served if the minor child is allowed to stay with the mother. The mother is financially stable and would have no difficulty is



suitably maintaining herself and the minor child. Considering the overall wishes and willingness of the minor child this Court in the present circumstances is inclined to hand over the child to the petitioner.

38. In the result, this Case is allowed with the following directions:-

(i) Henceforth the custody of the child will be with the petitioner i.e. the mother of the child.

(ii) The respondent no.7/ father of the child cannot forcefully enter the house of the petitioner or her paternal house or any of the relative's house of the petitioner or forcibly take away the child on any ground.

(iii) The respondent no.7 will not disturb the peaceful living of the child with his mother in any manner.

(iv) This Court, seeing the earlier conduct of the respondent no.7, is not giving visiting rights to the respondent no.7.

(v) The mother will get the child admitted in a good school and the respondent no.7 will not interfere in the studies, etc. of the child.

(vi) So far as the other prayers of the petitioner regarding the criminal case are concerned, the petitioner can



take appropriate legal steps in the Court below, in accordance with law, for rejecting the final form as the final form has been submitted.

(vii) The S.H.O., Patliputra will provide all protection to the mother and the child during their stay at Patna.

39. All pending Interlocutory Applications are disposed of.

(Sandeep Kumar, J)

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