

20.08.2025
Item No.06
Court No.11
Avijit Mitra

WPA (H) 25 of 2025

Smt. Priyanka Naskar
-versus-
The State of West Bengal & ors.

Mr. Bikram Banerjee,
Ms. Sagarika Goswami,
Ms. Adrita Dey

....for the petitioner

Mr. Rana Mukherjee, Ld. A.P.P.,
Ms. Munmun Ganguly

...for the State

Mr. Arunangshu Chakraborty,
Mr. S.S. Saha

....for the respondent no. 5

The present writ petition has been preferred primarily seeking a writ of '*habeas corpus*' to produce the petitioner's two minor children, who are alleged to be in the illegal custody of the respondent no.5.

Mr. Banerjee, learned advocate appearing for the petitioner submits that the petitioner, namely, Priyanka Naskar (in short, Priyanka) married the respondent no.5, namely, Sanjib Naskar (in short, Sanjib), who happens to be a civic volunteer, on 13th May, 2013. They were blessed with two children, one daughter and one son, who are presently aged about 11 years and 4 years respectively. Subsequent thereto, the matrimonial relationship deteriorated

and Priyanka and Sanjib started residing separately. On 12th October, 2024, Sanjib took away the children forcibly from Priyanka's paternal house. A complaint to that effect was lodged. However, appropriate steps were not taken by the police authorities and aggrieved thereby, Priyanka was constrained to approach this Court.

Mr. Chakraborty, learned advocate appearing for Sanjib, however, disputes such contention and submits that Priyanka was having an extra marital relationship and she left her matrimonial house in the month of November, 2024 leaving behind the children with Sanjib and since then the children are residing along with him. Sanjib has admitted his son and daughter in school and he bears all their expenses. The children are happily residing with Sanjib and their grandparents.

Mr. Mukherjee, learned advocate appearing for the State respondents submits that there is a matrimonial dispute between the parties and the allegations levelled against the police authorities are absolutely unfounded.

We have heard the learned advocates appearing for the respective parties and considered the materials on record.

It is not disputed that a matrimonial dispute has been filed by Sanjib being, MAT Suit No.524 of

2024 and on the basis of a complaint lodged by Priyanka, Mograhat Police Station Case no.161 of 2025 dated 26th May, 2025 under Sections 85/316(2) of BNS and Section 4 of Dowry Prohibition Act has been registered.

It is well settled that for determination of the issue of custody of children, it is not the right of the parties but welfare of the children which is of determinative significance. In child custody matters, the ordinary remedy lies only under the Guardians and Wards Act. There are significant differences between the enquiry under Act VIII and the exercise of powers by a Writ Court which is summary in nature. From the pleadings and the documents placed before us we do not find any clinching material to infer that the welfare of the minor children is at peril. The allegations and counter allegations levelled by the parties need to be examined with reference to evidence. There is no exceptional circumstance warranting interference of this Court in exercise of its extraordinary jurisdiction.

In view thereof, we are unable to accede to the Priyanka's prayer for issuance of necessary directions upon Sanjib to hand over custody of the children to her.

However, Sanjib cannot deprive Priyanka of her right to meet with her minor children and we, accordingly, direct that Sanjib shall visit Priyanka's paternal house situated at Salkia, Post Office Alida, Police Station Magrahat, Diamond Harbour, District South 24 Parganas along with the children on every Sunday of every month for a period from 8.00 a.m. to 8.00 p.m.

In the event of non-compliance of such direction, the State respondents shall provide the necessary aid to Priyanka.

Keeping in view the interest of the children, both the parties shall co-operate with each other in compliance with the directions of the Court.

The above direction shall be subject to any order that may be passed in custody proceedings, if initiated before the appropriate forum by the parties.

With the above observations, the writ petition being WPA (H) 25 of 2025 is disposed of.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties.

(Reetobroto Kumar Mitra, J.) (Tapabrata Chakraborty, J.)

