

WPA (H) 63 of 2025

[Sutapa Dutta @ Sutapa Dey @ Sutapa Dutta (Dey)
Vs. The State of West Bengal & Ors.]

Mr. Soumak Bera

..... For the petitioner

Mr. Sudipta Panda

..... For the State respondents

Mr. Sougata Mitra

Mr. Nikhil Kr. Gupta

Ms. Soma Chakraborty

Mr. Subhadeep Maitra

..... For the respondent no. 6

The present writ petition has been preferred by the petitioner primarily seeking a writ of *habeas corpus* to produce her son, who is alleged to be in the illegal custody of the respondent no. 6.

Mr. Bera, learned advocate appearing for the petitioner submits that the petitioner married the respondent no. 6 on 2nd February, 2017. They were blessed with a male child on 28th June, 2024. She was all along staying in her matrimonial house along with her child. In the month of May, 2025, she was tortured by her husband and as such, she was compelled to leave her matrimonial house. Such fact was informed to the police authorities, but no steps were taken.

He further submits that there is none to look after the petitioner's child, who is presently aged about 15 months and being a mother she is the natural guardian and has a preferential right to claim custody of her

child. She is fit to provide adequate care to her child since she is residing at her parental house along with her parents. In support of arguments advanced reliance has been placed upon a judgment delivered by the Hon'ble Supreme Court in the case of *Dr. (Mrs.) Veena Kapoor Vs. Shri Varinder Kumar Kapoor* reported in (1981) 3 SCC 92.

He further submits that there are clinching materials to show that the welfare of the child is at peril. The trauma that the child is facing needs to be appreciated by this Court and the welfare of the child can be assured only if his custody is given to the petitioner.

Mr. Mitra, learned advocate appearing for the respondent no. 6, however, denies and disputes the contention of Mr. Bera and submits that the petitioner at her own will left her matrimonial house leaving the child in the custody of the respondent no. 6. In spite of the sincere endeavour on the part of the respondent no. 6, the petitioner has refused to come back to her matrimonial house. On the basis of a complaint lodged by the petitioner, both the parties were called for reconciliation and at that juncture, the petitioner submitted a representation dated 8th May, 2025 stating, *inter alia* that her matrimonial dispute has been resolved. She also affirmed an affidavit before the learned Judicial Magistrate (1st Class) at Raghunathpur,

District – Purulia on 13th March, 2025 stating, *inter alia*, that ‘I do have every regard, respect for my husband and he has every look to watch me and affection for the minor, needless to say my husband’s sole in maintaining the Minor and minor’s welfare. My husband’s endeavour, regarding look after the child is unquestionable and he has been taking every effort for caring the child. It is admitted that due to my various disabilities and physical ailment of my person my husband has been taking every effort for upbringing the child and I am having every trust in the credence of my husband’.

Mr. Panda, learned advocate appearing for the State respondents submits that there is no material on record to infer that the child has been illegally detained inasmuch as the petitioner herself submitted representations to the police authorities stating that the matrimonial dispute has been amicably resolved and that she would be residing along with her husband and the child at her matrimonial house at Mazak Cheliyama, Post Office and Police Station Raghunathpur, District Purulia, PIN 723 158. Let the documents, as placed, be kept on record.

We have heard the learned advocates appearing for the respective parties and considered the materials on record wherefrom it appears that the petitioner left her matrimonial house to meet with her parents, who are

residing at 14A, Hemchandra Street, P.S. – Watgunge, Kolkata – 700 023. She submitted representations to the police authorities and also affirmed an affidavit stating that her matrimonial dispute has been resolved and that she has no grievance. There is no material on record to infer that the petitioner is not being allowed to meet with the child or is being illegally detained by her husband.

It is well settled that for determination of the issue of custody of the child, it is not the right of the parties but the welfare of the children which is of determinative significance. In child custody matters, ordinary remedy lies only under the Guardians and Wards Act. There are significant differences between the enquiry under the Act VIII and the exercise of powers by a writ Court which is summary in nature. From the pleadings and documents placed before us, we do not find any clinching material to infer that the welfare of the ordinary child is at peril. The allegations and counter-allegations levelled by the parties, in our opinion, need to be examined with reference to evidence.

In view thereof, we are unable to accede to the petitioner's prayer for issuance of necessary direction upon the respondent no. 6 to hand over the custody of the child. However, the petitioner cannot be denied of her right to visit her minor child and as such, we direct that the petitioner along with any one of her relatives

would be at liberty to visit her child on Friday, Saturday and Sunday of every week in the month during the period from 8.00 a.m. to 8.00 p.m. at the residence of the respondent no. 6 and during such visit, the respondent no. 6 shall ensure the comfort of the petitioner.

In the event such visitation right is denied to the petitioner, the State respondents shall provide necessary assistance to her.

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

With the above observations and directions, the writ petition being WPA (H) 63 of 2025 is disposed of.

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

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

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