

24.09.2025
Item No.12
Court No.11
KCP

WPA (H) 75 of 2025

Dipu Debnath
- Versus -
The State of West Bengal & Ors.

Ms. Debisree Adhikary.
...for the petitioner

Mr. Sudipto Panda,
Mr. Shibasish Banerjee.
...for the State respondents

Mr. Srijib Chakraborty,
Mr. Subhasis Chakraborty,
Ms. Sushmita Kumar Singh,
Mr. Amit Chowdhury,
Mr. Aditya Mondal.
...for the State respondent nos.5-8

The present writ petition has been preferred by the petitioner primarily seeking a writ of *habeas corpus* to recover and produce her son, who is alleged to be in the illegal custody of the respondent nos.5 to 8.

Ms. Adhikary, learned advocate appearing for the petitioner submits that the petitioner got married to the respondent no.5 on 14th February, 2018. They were blessed with a male child on 6th October, 2022 and subsequent thereto, she was residing along with her husband at her matrimonial house. However, in the month of July, 2025, she was tortured and forced to leave her matrimonial house leaving the child along with her husband. Aggrieved thereby, she informed such fact to the police authorities but appropriate steps were not

taken. Subsequent thereto, when she went to meet with her child at her matrimonial house, she found that the house was under lock and key and accordingly, the whereabouts of the child were unknown to her. Intimating such fact, a missing diary was lodged before the respondent no.4 but in vain.

She further submits that the petitioner is working as a nurse at Binayak Multi Speciality Hospital and she has the means to take care of her child but she has been denied custody and is also not being allowed to meet with her child by her husband and her in-laws.

Mr. Chakraborty, learned advocate appearing for the respondent no.6, however, denies and disputes such contention of the petitioner and submits that the petitioner was not in Calcutta during the period from 2021 to 2024 as she was pursuing her nursing course at Bangalore. During such period the child was residing in the custody of the respondent no.5. The complaint lodged by the petitioner was registered as lake Town PS Case No.197/2025 dated 24.07.2025. As such, the allegation that no formal complaint was lodged by the petitioner is untrue moreso when in connection with the said case the Streedhan Articles were taken over by the petitioner, as would be explicit from the seizure memo annexed at page 31 of the writ petition.

Mr. Chakraborty, further submits that a custody application has already been filed before the learned

District and Sessions Judge at Barasat in the month of August, 2025. In the said proceeding, the petitioner has already entered appearance on 15th September, 2025.

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

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 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 private respondents to hand over the custody of the child to her.

However, the petitioner cannot be deprived 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 every Thursday, Friday,

Saturday and Sunday of the week during the period from 4.00 p.m. to 7.00 p.m. During such visit, the respondent nos.5 to 8 shall ensure the comfort of the petitioner.

Mr. Chakraborty further submits that on the relevant dates and time, when the petitioner would be visiting the child in terms of the order of this Court, the respondent no.5 would be present along with his son in another flat of the respondent no.5 which is adjacent to his other flat where the child is residing along with the respondent no.5. During such visit, the respondent no. 5 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 appropriate forum by the parties.

With the above observations and directions the writ petition being WPA (H) 75 of 2025 is disposed of.

Needless to observe the competent Court shall decide the guardianship application uninfluenced by any of the observations made in this order.

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.)