

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.705 of 2025

Arising Out of PS. Case No.-2022 Year-2024 Thana- MUZFFARPUR COMPLAINT CASE
District- Muzaffarpur

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Harendra Kumar S/o Prasadi Gupta R/o Village- Shahpur, PS- Kanti, District-
Muzaffarpur, Presently residing at behind Sanjay Cinema, Brahmpura, P.S.-
Brahmpura, Distt.- Muzaffarpur

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Home Deptt.,
Govt. of Bihar Patna
2. The Director General of Police, Bihar Patna
3. The Inspector General of Police, Tirhut Range Muzaffarpur
4. The Deputy Inspector General of Police, Muzaffarpur Bihar
5. The Senior Superintendent of Police, Muzaffarpur Distt.- Muzaffarpur
6. The Station Head Officer, Brahmpura Police Station, Distt.- Muzaffarpur
Bihar
7. Nilu Gupta D/o Lalbabu Prasad, W/o Harendra Kumar Presently Residing at
Mohalla - Krishna Toli, Brahm Asthan in the house of Sonu Kumar, P.S.-
Brahmpura, Distt.- Muzaffarpur
8. Lalbabu Prasad S/o Radhakant Prasad Presently Residing at Mohalla -
Krishna Toli, Brahm Asthan in the house of Sonu Kumar, P.S.- Brahmpura,
Distt.- Muzaffarpur
9. Mira Devi W/o Lalbabu Prasad Presently Residing at Mohalla - Krishna
Toli, Brahm Asthan in the house of Sonu Kumar, P.S.- Brahmpura, Distt.-
Muzaffarpur

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Santosh Kumar, Advocate
For the Respondent/s : Mr. Raju Patel, AC to AG

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL ORDER

2 02-02-2026 The present petition has been filed by the petitioner
seeking following relief(s):-

*"(I) For issuance of an appropriate writ in
the nature of **MANDAMUS**, commanding
and directing the Respondent 2nd set to*



release the both sons of the petitioner namely Sidharth Raj, aged about- 11 years and Rehant Raj aged about- 12 years in favour of the petitioner, who are kept by Respondent 2nd set in their illegal confinement in connection with Complaint Case No. 2022 of 2024 lodged by the petitioner for the offences under Sections 364, 365, 369, 323, 341, 504, 384, 387, 420/34 of the Indian Penal Code however cognizance was taken under Section 323, 341, 342, 504, 506/34 of the Indian Penal Code vide order dated 23.08.2024 pending in the court of Ms. Archana Kumari, the learned Judicial Magistrate 2nd Class (East) Muzaffarpur on the ground that in presence of the respectable persons of the society, the petitioner had taken the liabilities of his both sons through a bond and thereafter the petitioner kept his both sons in the hostel of Cambridge School for their study on 08.04.2024 but on the next date i.e. 09.04.2024, the Respondent 2nd set kidnapped the both sons of the petitioner with the help of the antisocial elements and since then both the sons of the petitioner are in the illegal confinement of the Respondent 2nd set.

(II) For issuance of any other appropriate writ/writs, order/orders, direction/directions



for which the writ petition would be found entitled under the facts and circumstances of the case."

2. From the record, it transpired the petitioner is the husband of respondent no. 7 and respondent nos. 8 and 9 are the parents of respondent no. 7 and they have been made respondent 2nd set in the present case. From the relief sought by the petitioner it is apparent that the petitioner is seeking issuance of writ and direction against respondent 2nd set to release the sons of the petitioner, who incidentally are also the sons of respondent no. 7.

3. Learned counsel appearing on behalf of State-respondents, at the outset, has taken a preliminary objection that the present petition is not maintainable and has relied on paragraph 21 in the case of ***Nirmala Vs. Kulwant Singh & Ors*** passed in Criminal Appeal No. 2194 of 2022 vide order dated 03.05.2024, the Hon'ble Supreme Court held that seeking custody of minor child, petition under Article 226 of Constitution India is not maintainable and consequently, the Hon'ble Supreme Court quashed the order of Punjab and Haryana High Court, dated 23rd August, 2022 passed in CRWP-1485-2021 (O&M) in similar fact. Learned counsel refers to a decision of Hon'ble Supreme Court in the case of ***Rikhab***



Chand Jain versus Union of India & Ors. 2025 LiveLaw (SC)

1129, wherein the Hon'ble Supreme Court held that the petitioner has due to his own fault disabled himself from availing a statutory remedy, he cannot use that as a ground for the High Court to exercise its discretionary power under Article 226 and the discretionary remedy under Article 226 may not be available. The Hon'ble Supreme Court further held that the appellant having had a remedy before the High Court in a separate jurisdiction which was equally efficacious, he indulged in the (mis) adventure of invoking its writ jurisdiction which was rightly not entertained. Learned counsel further submits that the petitioner is having alternative remedy under Section 9 of the Guardians and Wards Act.

4. I find merit in the submission of learned counsel for the State-respondents. I do not find that the present petition could be entertained having regard to the relief prayed for the petitioner. Therefore, finding the writ petition as not maintainable before this Court, the same is dismissed.

(Arun Kumar Jha, J)

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