

A.F.R.

Neutral Citation No. - 2024:AHC:16444

**Court No. - 78**

**Case :-** HABEAS CORPUS WRIT PETITION No. - 983 of 2023

**Petitioner :-** Hasaan Raza @ Taiyab And Another

**Respondent :-** State Of U.P. And 2 Others

**Counsel for Petitioner :-** Brijesh Kumar Pandey

**Counsel for Respondent :-** G.A.

**Hon'ble Dr. Yogendra Kumar Srivastava,J.**

1. Heard Sri Brijesh Kumar Pandey, learned counsel for the petitioners and Ms. Divya Ojha, learned A.G.A.-I appearing for the State respondents.

2. Sri Rajesh Kumar Mishra, learned counsel, who has filed his *Vakalatnama* on behalf of the respondent No. 3, has also been heard.

3. Pursuant to the *rule nisi* issued earlier, the petitioner No. 1- corpus, has been produced in Court by the respondent No. 3. They have been accompanied by Jitendra Kumar, S.I., P.N.O. No. 152533151, Police Station Kajuriya, District Rampur.

4. The petitioner No. 1 (corpus) and the respondent No. 3, have been identified by their counsel, Sri Rajesh Kumar Mishra.

5. The police officer has been identified by Ms. Divya Ojha, learned A.G.A.-I.

6. The petitioner No. 2, Shahnaj is also present in Court and has been identified by her counsel, Sri Brijesh Kumar Pandey.

7. Learned A.G.A.-I, on the basis of inquiry made from the petitioner No. 2, in Court, has submitted that she has

submitted the she is living at her maternal home in district Rampur and that the petitioner No. 1 (corpus) is presently with respondent No. 3. She has submitted that the custody of the petitioner No. 1 (corpus) was taken away from her, on 28.04.2023, and a complaint in this regard has also been lodged with the police. On a pointed query, as to whether she is willing to go to her matrimonial home, she has replied in negative.

8. Learned A.G.A.-I has also made an inquiry from the respondent Nos 3, in Court, and submits that he has stated that he is working as a labourer in district Rampur and the petitioner No. 1 (corpus) is his son and is under his care and custody. He has stated that the petitioner No. 2 (his wife) is living separately due to strained relationship. He has also stated that he is willing to take back the petitioner No. 2 (his wife), but she is unwilling.

9. Learned A.G.A.-I states that she has also interacted with the petitioner No. 1 (corpus) and submits that he has shown an attachment to his father and does not apparently seem to respond to the petitioner No. 2.

10. An F.I.R. dated 4.09.2019, is stated to have been lodged by the petitioner No. 2, registered as Crime No. 185 of 2019, under Sections 498-A, 323, 506 I.P.C., 3/4 of the D.P. Act and Section 4/3 of the Muslim Women (Protection of Rights on Marriage) Act, 2019, Police Station Khajuriya, District Rampur, in which the charge sheet has been submitted. Another F.I.R. dated 03.11.2023 is also stated to have been lodged by the respondent No. 2, registered as Case Crime No. 103 of 2023,

under Sections 420 and 34 I.P.C., Police Station Khajuriya, District Rampur, in which the respondent No. 3 has been named as an accused.

11. The pendency of the aforesaid criminal cases is indicative of the acrimony and the strained relationship between the parties.

12. In an application seeking a writ of habeas corpus for custody of minor child, as is the case herein, the principal consideration for the court would be to ascertain whether the custody of the child can be said to be unlawful and illegal and whether his welfare requires that the present custody should be changed and the child should be handed over in the care and custody of somebody else other than in whose custody he presently is.

13. The role of the High Court in examining cases of custody of a minor, in a petition for a writ of habeas corpus, would have to be on the touchstone of the principle of *parens patriae jurisdiction* and the paramount consideration would be the welfare of the child. In such cases the matter would have to be decided not solely by reference to the legal rights of the parties but on the predominant criterion of what would best serve the interest and welfare of the minor.

14. In a child custody matter, a writ of habeas corpus would be entertainable only where it is established that the detention of the minor child is illegal and without authority of law. In a writ court, where rights are determined on the basis of affidavits, in a case where the court is of a view that a detailed enquiry would be required, it may decline to exercise the extraordinary

jurisdiction and direct the parties to approach the appropriate forum.

15. Having regard to the entirety of the facts, the *rule nisi* issued earlier is discharged.

16. The habeas corpus petition is **dismissed**.

17. The petitioner No. 1 (corpus) would be at liberty to go along with the respondent No. 3 (his father) to the place from where he has been brought.

18. They shall be accompanied by the police officer, in safety, but free.

19. It is made clear that the observations made, hereinabove, are *prima facie* in nature and would not preclude the parties from agitating their claims for guardianship and custody before the appropriate forum.

**Order Date :- 31.1.2024**

Arun K. Singh

[Dr. Y.K. Srivastava, J.]