



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

D.B. Habeas Corpus Petition No. 254/2024

Kusum Lata Daughter Ofshri Sitaram Jonwal Widow Of Shri Lalaram Bairwa, Aged About 33 Years, Village Nangal Abhaypura, Tehsil Laalsot, District Dausa, Current Residence Of 197, Maruti Nagar, Near Sanganer Airport, Sanganer District, Jaipur.

----Petitioner

Versus

1. The State Of Rajasthan, Through The Home Secretary, Department Of Home Affairs, Rajasthan, Jaipur.
2. The Superintendent Of Police, Dausa.
3. The Station House Officer, Police Station Laalsot District Dausa.
4. Babulal Bairwa Son Of Ramful, Village Nangal Abhaypura, Tehsil Laalsot, District Dausa
5. Lachma Devi Wife Of Babulal Bairwa, Village Nangal Abhaypura, Tehsil Laalsot, District Dausa
6. Seema Daughter Of Babulal Bairwa, Village Nangal Abhaypura, Tehsil Laalsot, District Dausa
7. Jeetram Son Of Babulal Bairwa, Village Nangal Abhaypura, Tehsil Laalsot, District Dausa
8. Rajulal Son Of Babulal Bairwa, Village Nangal Abhaypura, Tehsil Laalsot, District Dausa
9. Beena Wife Of Rajulal Bairwa, Village Nangal Abhaypura, Tehsil Laalsot, District Dausa

----Respondents

For Petitioner(s) : Mr. Vijay Choudhary
 For Respondent(s) : Mr. Rajesh Choudhary, GA-cum-AAG
 with Mr. Gaurav Gupta, Assistant
 Govt. Advocate
 Mr. Anshuman Saxena
 Mr. Ashok Kumar, ASI, P.S. Laalsot,
 District Dausa

**HON'BLE MR. JUSTICE INDERJEET SINGH
HON'BLE MR. JUSTICE BHUWAN GOYAL**

Reportable

Order

21/08/2024

1. This habeas corpus petition under Article 226 of the Constitution of India has been filed by the petitioner with regard



to illegal detention of her minor son aged about one and a half years and seeking custody of her minor son, who is admittedly in illegal custody of his grand-parents.

2. Brief facts of the case are that the petitioner solemnized marriage with deceased Lalaram Bairwa on 15.03.2021. Out of their wedlock, one male child was born on 18.10.2022. The petitioner was appointed as a School Lecturer Grade-I on 01.02.2024. Unfortunately, the husband of the petitioner died in a road accident on 18.02.2024. Thereafter, the petitioner left her matrimonial home to join her duties, where she was posted in District Tonk. During this, custody of the minor child remained with the respondents, who thereafter did not hand over custody of her minor son and illegally detained him, therefore, she has filed this habeas corpus petition with regard to illegal detention of her minor son and seeking custody of her minor son.

3. Heard learned counsel for the parties.

4. Learned counsel for the petitioner has submitted that the petitioner is mother of the minor child and she being natural guardian is entitled for the custody of the minor son in view of the provisions of Section 6 of the Hindu Minority and Guardianship Act, 1956. Counsel has further submitted that the petitioner is a Government servant and getting a handsome monthly salary. She can very well look after her son and for his bright future. Counsel has further submitted that for the interest and welfare of the minor son, his custody should be handed over to his natural guardian i.e. the petitioner-mother.

5. Counsel has relied upon the judgment of the Hon'ble Supreme Court in the case of **Tejaswini Gaud & Ors. Vs.**



Shekhar Jagdish Prasad Tewari & Ors. reported in (2019) 7 SCC 42.

6. Learned counsel appearing on behalf of the respondent Nos.4 to 9 has submitted copy of the reply to the writ petition today in the Court itself. While opposing the writ petition, he has submitted that the husband of the petitioner - Lalaram was son of respondent No.4. Counsel has submitted that husband of the petitioner died in abnormal circumstances and he also left a suicide note, according to which, the petitioner was responsible for committing suicide by him. Counsel has further submitted that respondents have also lodged a police complaint, however, when no action was taken by the police, they have filed a criminal complaint in the Court of competent jurisdiction, which is still pending. A copy of the said complaint is also annexed with the reply submitted by the respondents. Counsel has further submitted that in the facts and circumstances of the present case, minor child will not be safe in the custody of his mother and for the welfare of the child, the respondents are entitled for having custody of the minor child. Counsel has, thus, submitted that in the facts and circumstances of the present case, this habeas corpus petition is not maintainable.

7. Learned counsel for the respondents has relied upon the judgments of the Hon'ble Supreme Court in the cases of **Dharmendra Choudhary Vs. State of Rajasthan** reported in 2024 0 Supreme(Raj.) 163 as well as **Tejaswini Gaud** (Supra).

8. Learned Government Advocate-cum-Additional Advocate General has submitted that as per status report dated 21.08.2024,



nothing adverse has been found against the petitioner. The said report is taken on record as 'C1'.

9. Hon'ble Supreme Court in the matter of **Gautam Kumar Das Vs. NCT of Delhi & Ors.** arising out of SLP No.5171/2024 decided on 20.08.2024 in Para Nos.15, 16 has held as under:-

"15. Recently, this Court, in the case of **Nirmala** (supra) in paragraph 16 has also observed that no hard and fast rule can be laid down insofar as the maintainability of the habeas corpus petition in the matters of custody of minor child is concerned. It has been held that as to whether the writ court should exercise its jurisdiction under Article 226 of the Constitution of India or not will depend on the facts and circumstances of each case.

16. However, it is to be noted that a common thread in all the judgments concerning the custody of minor children is the *paramount welfare of the child*. As discussed hereinabove, we find that, apart from the appellant being the natural guardian, even in order to ensure the welfare of the minor child, she should live with her natural family. The minor child is of tender age, and she will get adapted to her natural family very well in a short period. We are therefore inclined to allow the appeal."

10. Having heard learned counsel for the parties, perusing the material available on record as well as judgments cited by learned counsel for the parties, we find that this habeas corpus petition filed on behalf of the petitioner deserves to be allowed for the following reasons:-

- (i) the corpus is a minor child aged about one and a half years. According to Section 6 of the Hindu Minority and Guardianship Act, 1956, the petitioner is natural guardian of the minor child.



(ii) the respondent No.4 who is grand-father of the minor child and aged about 61 years, is Class 8th passed and living in rural area having no source of regular income, whereas the petitioner who is well educated lady and working as a school lecturer, is getting a handsome monthly salary. Therefore, she can very well take care of welfare of the child and his bright future.

(iii) nothing adverse has been reported against the petitioner in the status report.

11. In this view of the matter, this habeas corpus petition is accordingly allowed.

12. We direct the respondents to hand over custody of the minor child to the petitioner-mother in the Court itself.

13. The concerned SHO is directed to ensure that no harm is caused to the petitioner and her minor son by anyone while going to their residential house.

(BHUWAN GOYAL),J

(INDERJEET SINGH),J

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