

01.03.2023
Item No.08
Court No.32
Avijit Mitra

WPA (H) 13 of 2023

**- Versus -
The State of West Bengal & ors.**

Mr. Ayan Poddar,
Mr. Ayan Dutta,
Mr. Soham Dutta,
Ms. Poulumi Bhowmick
...for the petitioner
Mr. Sabir Ahmed,
Mr. Simanta Kabir
....for the State

Affidavit of service filed by the petitioner be kept on record.

No one appears on behalf of the private respondent.

The present writ petition has been preferred primarily praying for the following relief :

“(a)That this Hon’ble Court be pleased to issue a Writ of Habeas Corpus AND/OR any other Writ Order or Direction directing the Respondent No.2 and Respondent No.3, their men, agents, employees and subordinates to take immediate steps to produce the CORPUS-1, i.e. Saptarshi Ghosh (son of the petitioner) and CORPUS-2 i.e. Aarshi Ghosh (daughter of the petitioner) before this Hon’ble Court AND/OR give directions to Respondent No.4 to produce the CORPUS-1 i.e Saptarshi Ghosh (son of the petitioner) and CORPUS-2 i.e. Aarshi Ghosh (daughter of the petitioner) before this Hon’ble Court”.

Mr. Poddar, learned advocate appearing for the petitioner submits that the petitioner married one
on 14th July, 2013. They were
blessed with a son namely, (in short,

Saptarshi) on 8th October, 2016 and a girl namely, _____ on 15th July, 2018. The petitioner along with his wife and children were residing at Hyderabad. The children were admitted at Bhartiya Vidya Bhavan's Public School, Bhel Township, R.C. Puram, Hyderabad. Saptarshi is presently studying in Class-I and _____ is studying in L.K.G. On 12th November, 2022 along with her minor children left her matrimonial house and accompanied her parents-in-law to attend a marriage ceremony on 19th November, 2022. While travelling by train, she along with her minor children de-boarded the train at Santragachi Station with an assurance to her parents-in-law that she would attend the marriage ceremony along with her children. Surprisingly thereafter, no intimation was given by _____ and since then the petitioner's wife and children went missing. Such fact was brought to the notice of the police authorities by submitting representations but the same were not acted upon. Aggrieved by such inaction, the petitioner was constrained to approach the Child Welfare Committee but in vain. The petitioner also issued a legal notice but the same was not responded to. As such the petitioner had no other option but to approach this Court by filing the present writ petition.

Mr. Poddar submits that the children were studying at Hyderabad and their examinations are due to commence on and from 1st March, 2023. Unless appropriate direction is issued by this Court to hand over the custody of the

children to the petitioner, his children would be missing an academic year.

Mr. Poddar submits that the petitioner is the natural guardian of his children and in the facts and circumstances of the case should be directed to hand over the custody of the children. In support of such contention he has placed reliance upon the judgment delivered in the case of *Yashita Sahu Vs. State of Rajasthan & ors.* reported in (2020) 3 SCC 67.

He argues that for determination of the issue of custody of children, it is not the right of the parties but welfare of the children which is of determinative significance.

Mr. Kabir, learned advocate appearing for the State respondents submits that there is a matrimonial dispute between the petitioner and his wife. lodged a complaint before the Officer-in-Charge, Pandua Police Station alleging that she had been tortured by her husband and her in-laws and as such she was constrained to leave her matrimonial house. The said complaint was registered as Pandua Police Station Case no.19 of 2023 dated 7th January, 2023 under Sections 498A/406 of the Indian Penal Code and under Sections 3/4 of the Dowry Prohibition Act. In the said proceedings, notices under Section 41A of the Code of Criminal Procedure (in short, Code) were issued and the same were complied with. Thereafter all the persons named in the FIR surrendered

before the learned Chief Judicial Magistrate, Sadar, Hooghly at Chinsurah and they were granted bail on 14th February, 2023. Investigation in the said case is still continuing.

Mr. Kabir further informs this Court that Saptarshi has presently been admitted at Mamon National School, (English Medium) Pandua, Hooghly. A certificate to that effect has also been issued by the Vice-Principal of the said school. The children are presently residing with her mother at her parental house. Let the report, as filed by Mr. Kabir, be kept on record.

In reply, Mr. Poddar submits that lodged a complaint as a counterblast to the petitioner's earlier representation to the police authorities and the Child Welfare Committee. No documents have been placed to indicate as to whether has been admitted in any school.

Heard the learned advocates appearing for the respective parties and considered the materials on record.

Indisputably there is a matrimonial dispute between the petitioner and his wife. Allegations and counter-allegations have been levelled by the parties against each other. along with her children are presently residing at her parental house. The judgment upon which reliance has been placed by the petitioner is distinguishable on facts. We do not find any material to infer that the petitioner's wife and her children had been illegally detained.

In child custody matters, the ordinary remedy lies only in the Guardians and Wards Act. There are significant differences between the enquiry under 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 minor children is at peril. The allegations and counter-allegations levelled by the parties need to be examined with reference to evidence.

In view thereof, no interference is called for in the present *habeas corpus* petition and the same is, accordingly, disposed of.

However, nothing in this order will prevent the petitioner from taking steps before the appropriate forum, if so advised and in accordance with law.

There shall 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.

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)