

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Habeas Corpus Writ Petition No.06 of 2021

Sahiba Petitioner.

Versus

State of Uttarakhand & othersRespondents.

Mr. Tapan Singh, learned counsel for the petitioner.

Mr. Amit Bhatt, learned Dy.A.G. along with Mr. Pankaj Joshi, learned B.H. for the State.

Mr. Matloob Rawat, learned counsel for the respondent nos.4&5.

Hon'ble R.C. Khulbe, J.

This Habeas Corpus petition has been filed under Article 226 of the Constitution of India for issuing a writ, order or direction in the nature of Habeas Corpus to direct the respondents to produce the corpus (son of the petitioner Mohd. Umar) before this Court and thereafter, to provide the custody of Mohd. Umar (son of the petitioner) to the petitioner.

2. As per the writ petition, the marriage of the writ-petitioner was solemnized with respondent no.4 on 25.09.2015 as per Muslim Rituals and Rites; after marriage a male child was born on 21.09.2017; thereafter, on 25.11.2018, the writ-petitioner gave birth to another male child-Mohd. Umar; but unfortunately, the respondent no.4 has given divorce to the writ-petitioner on 07.07.2019; accordingly, a compromise was made between the parties on 10.07.2019; as per the compromise the respondent no.4 will pay Rs.3 lakhs for the maintenance of children.

3. It is also stated in the writ-petition that her son-Mohd. Umar, who is aged about two and half years, has been illegally detained by the respondent nos.4 and 5.

4. Notices were issued to respondent nos.4 and 5, although their counsel was present on 06.05.2021 but when the matter was again listed on 25.05.2021, none was present on their behalf; even today, though, the learned counsel on behalf of respondent nos.4 and 5 is present, however, no counter affidavit is filed on behalf of those respondents despite availing sufficient opportunity.

5. Heard the learned counsel for the parties.

6. Admittedly, the child- Mohd. Umar, who is less than three years old, cannot be heard in the matter. But it is an admitted fact that the writ-petitioner-Ms. Sahiba is the biological mother of the child. As per the report of Police Ranipur (Haridwar), it is also evident that the child is living with respondent no.5-Zeenat, meaning thereby, the child-Mohd. Umar is not staying with his father. The respondent no.4-Sanaullah has already divorced the writ-petitioner, and it shows that he has no concern with the well-being of minor child-Mohd. Umar. On account of this reason, respondent no.4 has left the minor child in the custody of respondent no.5. Since the child is below three years of age, therefore, he certainly requires his mother more than his father. In these circumstances, it can safely be inferred that the minor child is illegally detained by respondent no.5.

7. Accordingly in the interest of child-Mohd. Umar, his custody should be given to the petitioner who, being his mother, is the natural guardian.

8. In these circumstances, the instant writ-petition is disposed of finally by issuing the following directions:-

- A. The respondent no.5-Zeenat is directed to hand over the custody of minor child- Mohd. Umar to the writ-petitioner forthwith.

- B. The respondent no.2-Senior Superintendent of Police, Haridwar is directed to do the needful in the matter.
 - C. The State Counsel, who is present in the Court, has jotted down the contents of this order to communicate the same to the respondent no.2 for forthwith compliance.
9. Pending application, if any, stands disposed of.

(R.C. Khulbe, J.)
11.06.2021