

HIGH COURT OF DELHI

Bench: Justice Suresh Kumar Kait and Justice Shalinder Kaur

Date of Decision: October 20, 2023

W.P.(CRL) 2537/2022

MS GUPTA SNIZHANA GRYGORIVNA

..... Petitioner

versus

UNION OF INDIA AND ORS.

..... Respondent

Sections, Acts, Rules, and Articles:

Article 226 & 227 of the Constitution of India

Section 482 of the Criminal Procedure Code (Cr.P.C)

Subject: Family Law - Habeas Corpus - Custody of a Minor Child - Interim Custody and Visitation Rights.

Headnotes:

Habeas Corpus - Petitioner seeking the custody of her minor son - Background of the case involving abduction of the child - Court granting interim custody to the petitioner with conditions - Respondent seeking extension of visitation rights - Maintainability of the application for interim custody or visitation rights - Relief already granted, no further orders required - Apprehension of the petitioner fleeing the country - Liberty granted to respondents to approach the appropriate forum - Petitioner directed not to leave the country for three weeks. [Para 1-12]

Referred Cases: None.

Representing Advocates:

Mr. Vivek Kohli, Sr. Adv. with Ms. Nimita Kaul & Mr. Praveen Kumar Singh, Advs. for the Petitioner.

Mr. Ajay Dignpaul, CGSC with Mr. Kamal Dignpaul, Ms. Ishita Pathak & Ms. Swati Kwatra, Advs. for Respondent No. 1/UOI.

Mr. Sanjay Lao, Standing Counsel (Crl.) with Mr. Shivesh Kaushik & Mr. Abhinav Kr. Arya, Advs. for the State.

Mr. K.P. Mavi, Ms. Chitra Gera & Mr. Dinesh Pratap Singh, Advs. for Respondent No. 5, with R-5 in person.

J U D G M E N T (oral)

W.P.(Crl.) 2537/2022 Crl.M.A.29145/2023

1. The relief sought in the present petition is to direct respondent nos.1 to 4 to trace and produce three years old Master Gupta Sameer Akhileshovych and hand over his custody to the petitioner/mother.
2. When this petition came up for hearing before this Court vide order dated 02.11.2022, directions were issued to Delhi Police to locate respondent

no.5 and three years old minor son of the parties. On the next date of hearing, i.e. 14.11.2022, respondent no.5 appeared with minor son before this Court. Thereafter, present petition has been considered from time to time with regard to the interim custody of the child.

3. Vide order dated 28.07.2023, this Court had taken elaborative note of the facts of the present case. Pertinently, the child of the parties was born on 12.02.2019 in Ukraine. The District Court, Vinnystia region had granted decree of divorce to the parties on 06.05.2021. Respondent no.5/father had filed an application with regard to the involvement and contact arrangements in relation to Master Samir Akhileshovych Gupta. However, respondent no.5 on the pretext of exercising his right to un-supervised contact with Master Samir Akhileshovych Gupta, abducted the latter in gross violation to the decision of the Vinnytsia City Council dated 15.07.2021 and crossed the border on the 24.03.2022 into Romania from where he brought Master Samir Akhileshovych Gupta back to India. On 31.05.2022, the petitioner herein obtained a Judgment in Default from the Vinnytsia District Court which was informed that Master Samir Akhileshovych Gupta was living in India with respondent no.5. This led to the filing of the present habeas corpus petition by the petitioner.

4. During the course of proceedings of the present petition, this Court on several occasions vide orders dated 22.11.2020, 24.11.2022, 25.11.2022, 28.11.2022, 29.11.2022, 09.01.2023, 19.01.2023, 08.02.2023 and 24.04.2023 had given visitation rights to the petitioner in respect of her minor son. Further vide order dated 28.07.2023, interim custody in respect of minor child of the parties was given to the petitioner subject to following conditions:

- i. *Ms. Gupta Snizhana Grygorivna will reside at Flat No.-4007, D-4, Vasant Kunj, New Delhi-110070 and categorically undertake not to remove Master Samir Akhileshovych Gupta from the territorial jurisdiction of this Court without prior permission.*
- ii. *Ms. Gupta Snizhana Grygorivna will surrender her passport as well as that of Master Samir Akhileshovych Gupta to the SHO, Police Station, Vasant Kunj forthwith.*

5. Petitioner gave undertaking that she will produce the child before the Court on 22.08.2023.

6. The respondent no.5/husband has come up with an application being Crl.M.A. 291445/2023, *inter alia* stating that on 22.08.2023, the Division Bench had not assembled and since 28.07.2023 custody of the child is with the petitioner/mother.

7. Respondent no.5/applicant has further averred in the said application that on 11.09.2023, this Court had granted visitation rights to the respondent

- no.5/father to visit the child between 02.00 PM to 05.00 PM on every Monday, Wednesday and Friday w.e.f. 11.09.2023 till the next date of hearing i.e. 18.01.2023. However, on 18.01.2023, the Division bench had not assembled, since visitation rights were given till 11.09.2023, petitioner as well as her counsel restricted the respondent No.5 to meet his child. Hence, by way of the application, respondent No.5 is seeking extension of order dated 11.09.2023 till further orders as well as to meet his child on the day of Dusshera.
8. Admittedly, present petition has been filed under the provisions of Article 226 & 227 of the Constitution of India read with Section 482 Cr.P.C. under the nature of habeas corpus seeking production of son of the parties. Thus, the aforementioned application seeking interim custody or visitation rights of the child is not maintainable.
 9. The relief sought in the present petition has already been granted and no further order is required to be passed and the issue of interim custody or visitation rights in respect of the minor child, parties are at liberty to have appropriate recourse as per law.
 10. Respondent no.5/husband apprehends that since the petitioner/mother who is a Ukrainian citizen and is having the custody of the child that she may flee the country. Since the custody of the child is with the mother and issue of custody and visitation rights of the child has to be dealt with by the learned Family Court, liberty is granted to the respondents to approach the appropriate forum within three weeks from today.
 11. Till then, petitioner is directed not to leave the country at least for three weeks.
 12. The date already fixed i.e. 07.11.2023 stands cancelled.

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