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IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SHRI JUSTICE AMAR NATH (KESHARWANI)

ON THE 28th OF OCTOBER, 2022

WRIT PETITION No. 2520 of 2022

BETWEEN:-

PREETI KAUSHALAY D/O SHRI SUBHASH KAUSHALYA, AGED ABOUT 32 YEARS, OCCUPATION: NOTHING, R/O 188 KOUSHALY TYRE IN FRONT OF GOVT. HOSPI TAL (MADHYA PRADESH)

.....PETITIONER

(SHRI DURGESH SHARMA, LEARNED COUNSEL FOR THE PETITIONER) .

AND

THE UNION OF INDIA THROUGH MINISTRY OF EXTERNAL
1. AFFAIRS REPRESENTED BY ITS PRINCIPAL SECRETARY SOUTH
BLOCK, NEW DELHI-110 001 (DELHI)

AMBASSADOR INDIAN EMBASSY HAGUE NETHERLANDS
2. NETHERLANDS, BUITENRUSTWEG 2, 2517 KD THE HAGUE
(NETHERLANDS)

3. SUPERINTENDENT OF POLICE KHARGONE, DISTRICT
KHARGONE (MADHYA PRADESH)

4. OFFICER IN CHARGE OF POLICE STATION MAHESHWAR DIST
KHARGONE (MADHYA PRADESH)

NEERAJ MANDLOI S/O LATE SHRI ONKAR LAL MANDLOI, AGED ABOUT 35 YEARS, OCCUPATION: SERVICED, PERMANENT ADDRESS- OM SHRI KRISHNA CHHAYA, TANGAL COLONY, IN
5. FRONT OF GANDHI KOTHI, SHARDA HOSPITAL KE PASS, SANAWAD ROAD KHARGONE CURRENT R/O OOSTINGLE 5, 2612, HB DELFT, NETHERLAD, OFFICE DELFT UNIVERSITY OF TECHNOLOGY MEKELWEG, 5,2628, CDS DELFT NETHERLAND (

.....RESPONDENTS

(SHRI HIMANSHU JOSHI, STANDING COUNSEL FOR THE UNION OF INDIA.)

This petition coming on for orders this day, the court passed the following: **ORDER**

The petitioner has filed the present Writ Petition seeking writ in the nature of *habeas corpus* for securing the custody of seven months old girl child who is at present under the custody of her father i.e. respondent No.5 who is residing in Netherland.

Facts of the case in short are as under:

[2] The marriage of the petitioner was solemnized with the respondent No.5 under Hindu rituals and customs on 08.12.2016 at Maheshwar. After the marriage, the petitioner went to the house of in-laws at Khargone. According to the petitioner, after two days of the marriage, she was subjected to cruelty for demand of dowry of Rs. 20,000,00/- (Rupees Twenty Lacs). Thereafter, she shifted at the work place of respondent No.5 at Paris (France). She came back to Khargone and thereafter the respondent No.5 shifted Abu Dhabi (Dubai) and after two and half years they were shifted to Netherland. She became pregnant at Netherland and on 06.05.2021 she gave birth a daughter (Jenika). She was subjected harassment and cruelty by the respondent No.5 for which the Netherland police has directed to respondent No.5 to remain away from the petitioner and her child. Since, the petitioner was unable to survive without financial support so she left the Netherland and came back to India. According to the petitioner under local Rules and Laws, she was not permitted to travel with child to India without the consent of the respondent No.5. Since it was impossible to her to reside in Netherland without any source of income, therefore, she had no option but to return India without her child on 11.11.2021. Since than infant child is in the custody of her father i.e. respondent No.5. The petitioner has got registered the case under

Section 498-A, 506 of IPC and Section 3 & 4 of Dowry Act against the respondent No.5 and his family members at Police Station Maheshwar on 03.01.2022. Now the petitioner has filed the present petition seeking writ of *habeas corpus* in order to secure the custody of the minor child.

[3] Notices were issued by this Court, has not been served to the respondent No.5 through Embassy.

"The core issue which requires consideration as to whether this Court can issue a writ of habeas corpus against the person who is residing outside the territory of India."

Article 226 of the Constitution of India is reproduced below:

226. Power of High Courts to issue certain writs

(1) Notwithstanding anything in Article 32 every High Court shall have powers, throughout the territories in relation to which it exercise jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibitions, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose

(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories

(3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without

(a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and

(b) giving such party an opportunity of being heard, makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before

the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the aid next day, stand vacated

(4) The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme court by clause (2) of Article 32

It is clear from the aforesaid, the High Court shall have the power throughout the territories in relation to which it exercises jurisdiction to issue to any person or authority including any government within whose territories directions, order or writs for the enforcement of any of the rights conferred by Part III and for any other purpose. Therefore, the high Court can issue a writ under Article 226 of the Constitution of India to any person within its territory, thus, this writ petition is not maintainable and liable to be dismissed on this ground alone. Even otherwise admittedly, the respondent No.5 is biological father of corpus, therefore, the custody cannot be said to be illegal for issuance of writ in the nature of *habeas corpus*.

[4] Shri Joshi standing counsel for the Union of India has placed reliance on the judgment passed by the Division Bench of Kerala High Court at Ernakulam in case of **Adarsh Kumar Vs. State of Kerala 2017 SCC Online Ker 8505** in which the similar facts and circumstance the Division Bench of Kerala High has declined to issue writ of *habeas corpus*. The relevant paras are reproduced below:

"2. Respondents 5 and 6 are residing outside the jurisdiction of this Court. Even otherwise, the first petitioner submits that he has separated with his wife and the detenue was with the mother and the mother is residing with respondents 5 and 6. That apart, a Guardian Original Petition had been filed by the petitioners before the Family Court, which has been transferred to Manikkery Court in Kodag District as per directions issued by the Supreme Court.

3. In such circumstances, we do not think that the presence of the detinue with the mother amounts to any illegal detention. Even otherwise, all of them are outside the territorial jurisdiction of this Court and therefore a writ of habeas corpus cannot be issued in the matter.

4. The writ petition is therefore dismissed."

[5] At this stage, counsel for the petitioner submits that he may be permitted to file appropriate application for impleading the parents of the respondent No.5 who are residing at Khargone. They are not necessary party in this petition as corpus is not their custody. Merely they are parents of the respondent No.5, they cannot be dragged into litigation. The petitioner may avail the remedy provided under Law.

In view of the above, writ petition is hereby dismissed.

(VIVEK RUSIA)
JUDGE

(AMAR NATH (KESHARWANI))
JUDGE

praveen