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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 11th December, 2024

+ **W.P.(CRL) 2808/2024 & CRL.M.A. 35307/2024**

VISHAL VERMA

.....Petitioner

Through: Mr. Gauri Rajput & Mr. Shubhashish
Sharma, Advs. with Petitioner and his
parents in person. (M: 8826378291)

versus

STATE GOVT. OF NCT OF DELHI & ORS.

...Respondents

Through: Mr. Sanjay Lao, Standing Counsel
(Crl.) with Ms. Priyam Aggarwal &
Mr. Abhinav Arya, Advs.,
Mr. Tarveen Singh Nanda, GP for R-3
& 4.
Ms. Anubha Bhardwaj SPP, CBI with
Mr. Ujjwal Chaudhary & Mr. Vishal
Sharma, Advs. for R-5. (M
8802464546)
Mother and child in person.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE AMIT SHARMA

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The present petition under Article 226 of the Constitution of India read with Section 528 of the BNSS had been filed by the Petitioner-Mr. Vishal Verma, seeking a writ of *habeas corpus* for the production of his minor son-Master 'X'.

BACKGROUND

3. The background of the present petition is that the Petitioner-Father and



Respondent No. 2-Mother were married on 14th February, 2014. They were blessed with a male child master 'X', who was born on 3rd April, 2017. There was matrimonial discord between the parties, and the Respondent No. 2-Mother along with the child left the matrimonial home on 5th May, 2019.

4. Subsequently, Respondent No. 2-Mother is said to have filed the following cases against the Petitioner:

- i) Petition seeking divorce from the Petitioner before the Id. Family Court, Tis Hazari Courts, Delhi,
- ii) Complaint under Protection of Women from Domestic Violence Act, 2005 before the CAW, Cell,
- iii) Guardianship petition before the Id. Family Court, Tis Hazari Courts, Delhi numbered as **GP No. 29/2019**,
- iv) Petition seeking maintenance from the Petitioner.

5. The Id. Family Court in **GP No. 29/2019** titled as '**Sh. Vishal Verma v. Smt. Twinkle Vinayak**' vide order dated 13th January 2023 had granted visitation rights to the Petitioner. The said order was challenged by Respondent No. 2-Mother before this Court in **CM(M) 159/2023** titled as '**Twinkle Vinayak v. Vishal Verma.**'. The Id. Single Judge, who considered the matter had initially stayed the impugned order on 1st February, 2023, and thereafter vide order dated 28th March, 2023, had granted the present Petitioner-Father unsupervised visitation on the first, third and fourth Sundays. In addition, the Petitioner-Father was free to celebrate the birthday of the minor child on 2nd April, 2023. The said order was directed to be continued till July 2023 vide order dated 31st May, 2023.

6. In spite of the said orders and subsequent attempts to mediate, the implementation of unsupervised visitation was unsuccessful which led to



filing of contempt case bearing no. **CONT. CAS(C) 207/2024** titled '**Vishal Verma v. Twinkle Vinayak**' before this Court.

7. The Petitioner-Father's allegation in the said contempt petition was that the Respondent No. 2-Mother had been blatantly violating the orders passed by this Court on 28th March 2023 and 23rd May, 2024.

8. In the meantime, both the contempt petition and the CM(Main) were listed before the Court on 4th July, 2024. On the said date, the Id. Single Judge passed the following order:

"1. Petitioner- Twinkle Vinayak has brought Master XXXXX before this Court. I have interacted with him and also with the parties in chamber. Interaction has also been done with the respective counsel for the parties.

2. With the consent of both the parties, the following order is passed as an interim measure:

1. Petitioner would bring her son to Delhi High Court Mediation Centre on 13.07.2024, 20.07.2024 and 25.07.2024 at 3:00 p.m. so that respondent can meet his son.

II. Supervisory visitation shall take place in Mediation Centre in presence of the child psychologist.

III. The child psychologist would also take a call whether such visitation and interaction should take place in presence of the mother of the child or not.

IV. The report of the Child Psychologist with respect to the aforesaid visitation and meetings be sent to this Court in sealed cover by next date of hearing i.e., 01.10.2024.

3. On the next date, the petitioner is not required to bring her son.

4. The aforesaid arrangement has been made without prejudice to the rights and contentions of both the parties but with the consent of the parties."



9. As can be seen from the above order, the Court had directed that the minor child be allowed to meet the Petitioner-Father on three dates, 13th July, 2024, 20th July, 2024 and 25th July, 2024 at 03:00 PM in the Mediation Centre, Delhi High Court and the Court had also called for a report from the Mediation Centre. It was also directed that the Respondent No.2-Mother need not bring the son on the next date to Court, which clearly meant that the Respondent No. 2-Mother had to remain present in Court on the next date. But, due to inadvertence, the next date of hearing was recorded as '1st October, 2024', instead of '1st August, 2024'. On 1st of August, the Court adjourned the matter to 14th August, 2024, on the request of the Respondent No.2-Mother.

10. After the order dated 4th July, 2024, shockingly, Respondent No. 2-Mother left the country on 26/27th July, 2024, and went to USA, without seeking the permission of the Court. In the meantime, the Petitioner-Father again filed a contempt petition being **CONT.CAS(C) 1323/2024** in which notice has been issued. In the said contempt petition, the following order was passed on 23rd August, 2024:

- “1. Learned counsel for respondent/contemnor appears on advance notice and seeks time to file reply.*
- 2. Let the same be filed before the next date of hearing.*
- 3. List on 25.09.2024.*
- 4. In the meanwhile, the respondent/contemnor, who is presently in Virginia, USA, would ensure that there is video conferencing call at 7 pm US time with the petitioner in India every alternative day starting tomorrow.”*



11. Parallely, the Petitioner-Father has filed the present *habeas corpus* petition seeking production of his son who was under the control of the Id. Guardianship Court and this Court, having been moved to the USA, without permission of the Court or his consent. In this petition, the Petitioner-Father has also impleaded the RPO (Respondent No.3), as also the Ministry of External Affairs (Respondent No.4) and other authorities. It is the grievance of the Petitioner-Father that a fresh passport was issued to the minor son., *i.e.*, Master 'X' despite various emails and representations made by the Petitioner-Father. Upon hearing Respondent No.2-Mother who appeared virtually from USA, the Court on 11th September, 2024 had observed that while the child is under the supervision of the Guardianship Court as well as this Court, the Respondent No. 2-Mother could not have moved the minor child outside the jurisdiction of the Court without permission. Accordingly, the Court directed the RPO to file an affidavit explaining why such a passport was issued to the minor child despite repeated representations and emails written by the Petitioner-Father to the MEA/Respondent No.4 and the RPO/Respondent No.3.

12. On the next date of hearing, *i.e.*, on 19th September, 2024, Respondent No.4-RPO had submitted that the passport was not issued without considering the representation of the Petitioner-Father. Upon receiving the emails from the Petitioner-Father, a show cause notice was issued on 9th July, 2024 and a reply was sent by Respondent No. 2-Mother on 19th July, 2021. In view of the reply, thereafter, no action was taken. It is also his submission that the order of visitation was not disclosed to the passport authorities by the Respondent No. 2-Mother in the said reply.

13. In subsequent hearings, the Respondent No. 2-Mother had assailed the



maintainability of the *habeas corpus* petition. It was submitted on the Respondent No.2-Mother's behalf that considering the interim custody of the child was granted to her by the Id. Family Court, the act of shifting the child to the US along with her cannot be considered illegal detention and thus the *habeas corpus* petition was untenable. However, *vide* order dated 8th October, 2024, this court referred to ***ABC v. State (NCT of Delhi), (2015) 10 SCC 1*** and ***Yashitha Sahu v. State of Rajasthan, (2020) 3 SCC 67*** and clarified that the child cannot be said to be in the exclusive custody of the parents when a Guardianship Petition is pending before the Court and thus the act of shifting the child was not fully lawful. The relevant paragraph of the said order reads as under.

*“11. The legal position in respect of the Guardianship Court, when a petition for guardianship is pending is clearly elucidated in **ABC v. State (NCT OF DELHI), (2015) 10 SCC 1**, wherein the Hon'ble Supreme Court has held that the child in a guardianship petition ceases to be in the exclusive custody of the parents. The relevant portion of the said judgment is set out hereinbelow:-*

*“29. We think it necessary to also underscore the fact that the Guardian Court as well as the High Court which was in seisin of the appeal ought not to have lost sight of the fact that they had been called upon to discharge their *parens patriae* jurisdiction. **Upon a guardianship petition being laid before the Court, the child concerned ceases to be in the exclusive custody of the parents; thereafter, until the attainment of majority, the child continues in curial curatorship.** Having*



received knowledge of a situation that vitally affected the future and welfare of a child, the courts below could be seen as having been derelict in their duty in merely dismissing the petition without considering all the problems, complexities and complications concerning the child brought within its portals.”

12. Under these circumstances, the travel of Respondent No. 2-wife to USA was contrary to the orders passed by the ld. Single Judge of this Court and by the Guardianship Court, ld. Family Court. The least that the Respondent No.2-wife should have done is to intimate the concerned Family Court and take permission before leaving which she did not do. The Petitioner/father has been completely deprived of the child which has necessitated the filing of the present petition.

13. There can be no doubt that habeas corpus petitions are not to be entertained lightly, however, this is not an ordinary Petition. **In fact, this is a case where the child has been moved out of India, in violation of order passed by competent courts.** Both the child and the mother continue to have Indian Passports. In *Yashita Sahu (supra)*, the Hon’ble Supreme Court has clearly observed and held as under :-

“10. It is too late in the day to urge that a writ of habeas corpus is not maintainable if the child is in the custody of another parent. The law in this regard has developed a lot over a period of time but now it is a settled position that the court can invoke its extraordinary writ jurisdiction for the best interest of the child. This has been done in *Elizabeth*



Dinshaw v. Arvand M. Dinshaw [Elizabeth Dinshaw v. Arvand M. Dinshaw, (1987) 1 SCC 42 : 1987 SCC (Cri) 13] , Nithya Anand Raghavan v. State (NCT of Delhi) [Nithya Anand Raghavan v. State (NCT of Delhi), (2017) 8 SCC 454 : (2017) 4 SCC (Civ) 104] and Lahari Sakhamuri v. Sobhan Kodali [Lahari Sakhamuri v. Sobhan Kodali, (2019) 7 SCC 311 : (2019) 3 SCC (Civ) 590] among others. In all these cases, the writ petitions were entertained. Therefore, we reject the contention of the appellant wife that the writ petition before the High Court of Rajasthan was not maintainable.

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13. In the present case, since the wife brought the minor to India in violation of the orders of the jurisdictional court in the USA, her custody of the child cannot be said to be strictly legal. However, we agree with the learned counsel for the appellant that the High Court could not have directed the appellant wife to go to the USA. The wife is an adult and no court can force her to stay at a place where she does not want to stay. Custody of a child is a different issue, but even while deciding the issue of custody of a child, we are clearly of the view that no direction can be issued to the adult spouse to go and live with the other strained spouse in writ jurisdiction.”

14. Reading of the extracted portion of Yashika Sahu (supra) would show that during the pendency of the guardianship petition and the CM(M) 159/2023



before this Court, the custody of the child with the mother and their movement to the USA cannot be stated to be fully legal. Moreover, the order of 4th July, 2024, was clear to the effect that this Court had directed the wife not to bring the child on the next date, i.e., 1st August, 2024, which in effect clearly meant that Respondent No. 2-wife had to appear before the Id. Single Judge of this Court on the said date. She is also, prima facie, in violation of the said order, and therefore, custody of the child cannot be held to be lawful custody and the habeas corpus petition is clearly maintainable.”

14. Upon making the above said clarification, the Respondent No.2-Mother, on Court’s insistence, gave an undertaking to appear before the Court on 18th December, 2024 (i.e., next date of hearing in **CM(Main) 159/2023**). Further, the Court vide the above said order i.e., order dated 8th October, 2024, also made the following observations and directions:

“16. In view of the aforesaid undertaking, no action is being directed by this Court qua Respondent No. 2-wife or the child in respect of their passports at this stage. However, if the Respondent no.2 does not abide by the undertaking, the Court would be required to proceed in accordance with law to ensure the child’s return to India.

17. Needless to add that, the pendency of this case shall now be properly recorded by the passport authorities and Respondent No.2-wife shall also facilitate video calls and interactions with the child on a regular basis whenever the father and the grandparents wish to speak to the child, outside school hours. Any violation of this order would be liable for strict action”



15. Thereafter, Petitioner-Father had filed **CRL.M.A. 32062/2024** praying the Court to direct immediate return of the child from the USA. It was the allegation of the Petitioner-Father that Respondent No. 2-Mother is psychologically manipulating the mind of the child to an extent that in her presence, the child always remains intimidated and forced to behave completely as per her wishes and instructions. It was also alleged that she was indirectly causing obstructions during the video calling sessions in violation of the orders dated 8th October, 2024. Upon seeing the extent of reluctance that the child expresses to engage with the Petitioner-Father and his paternal grandparents, it was submitted that, if these circumstances are allowed to persist then the Petitioner-Father and grandparents will become strangers in the child's life. It was argued on his behalf that it is the fundamental right of the child to get love and affection by both the parents and grandparents. The Court *vide* order dated 23rd October, 2024 passed the following directions:

“Considering the aforesaid and the averments made in the present application, the following directions are passed:

(i) Details of school and her time table where the child is studying in the United States of America (USA) shall be provided to the ld. Counsel for the Petitioner within two days.

(ii) The calls or arrangements as directed in the order dated 8th October, 2024 shall continue till further orders.

(iii) The Respondent No. 2 - wife shall not block the husband on Whatsapp, so that video calls through WhatsApp with the child, as requested by the Petitioner, can be done.”



16. On 29th November, 2024, an application was moved on behalf of the Respondent No.2-Mother informing the Court that she had travelled back to India along with the child and that she was present in Court. Upon interacting, the Court had directed the Respondent No.2-Mother to produce the child before the Delhi High Court Mediation and Conciliation Centre at 2 PM everyday between 30th November and 3rd December, 2024 where the Petitioner-Father and Grandparents were allowed to interact with the child for an hour in the presence of a Counsellor. The Counsellor was also directed to send a report of the aforesaid interactions by the next date of hearing.

17. On 5th December, 2024 the Counsellor's report was placed on record and the operational part of it read as under:

“Concluding Remarks/Observations:

The child's reluctance to engage with the father stems from the ongoing legal conflict and fear of separation from the mother, which has negatively impacted the child's emotional well-being. Exposure to parental disputes is detrimental to the child's emotional development. Therefore, it was suggested that for the sake of the child. Parents must restore effective communication and demonstrate amicability in the child's presence to foster security and trust. The presence of both parents in the child's life is essential for healthy development. Denying this balance can negatively impact the child's growth and personality, especially when both parents are equally devoted to the child.”

18. On the basis of the report and the in-chamber interaction with the parties, the Court observed that the child having separated from the Petitioner-



Father and his family for a substantial period, needs to be reconnected with them. Accordingly, the Court made the following directions *vide* its order dated 5th December, 2024:

“6. As a first step, this Court has suggested to the entire family that they can find a venue/place in the nearby area to spend time exclusively with Master ‘K’, the child, in the coming weekend. In this period, all the parties and family members shall ensure that they behave with each other in a pleasant and cordial manner and shall not try to tutor the child against each other as the same seems to be having a negative effect on the child.

7. The family can spend time from Friday evening and return to Delhi on Sunday afternoon after spending two days at the venue mutually decided by the parties, as this Court has been informed that the child also has an exam on Monday.

8. Both the grandfathers i.e., dada and nana of the child shall coordinate as to the venue/place where they wish to visit. The family members, especially elders, shall ensure that the child is in a healthy state of mind, both physically and mentally, during the said period. If there are any other children in the family such as siblings/cousins of the child - Master K, who can accompany the child, they are permitted to do so.”

19. In terms of the above said order, the family members went on a weekend vacation to a nearby resort and amusement park. The family members are present in this Court and an in-chamber interaction has been held with them. The Court notices that there is considerable improvement in the child’s condition as compared to last week. Today, in the presence of the Petitioner-Father and the child’s paternal grandparents, *i.e., dada and dadi*, there is no negativity exhibited by the child.



20. This Court has interacted with the child. This Court has also perused the previous orders, which have been passed repeatedly. In the opinion of this Court, the child, even in the absence of the Respondent No. 2-Mother, would be comfortable with the Petitioner-Father and the paternal grandparents of the child.

DIRECTIONS

21. Accordingly, upon considering all the above-mentioned facts, mediation report and conduct of the parties the following directions are passed:

Arrangement with respect to Petitioner-Father's visitation

- I. As an interim arrangement, let the child visit the Petitioner-Father twice a month from Friday evening, after school, till Saturday evening at 05:00 pm. The Petitioner-Father is free to pick up the child from the school on Friday after school and drop him back at Respondent No.2-Mother's place of residence on Saturday by 05:00 pm. It is informed that the C.M.(Main) petition is stated to be pending and listed before the Id. Single Judge on 19th December 2024. The Id. Single Judge may consider passing an appropriate arrangement for the winter vacation as also the interim arrangement.
- II. The Respondent No. 2-Mother has also assured the Court that she would not create any obstruction and would guide the child in a manner so that he can peacefully accompany the Petitioner-Father during his visits. The mother and father shall maintain civility between each other and cooperate in ensuring that the arrangement, that has been put in place, is successful and that the child is not traumatized in any manner.



- III. There shall be no photography or videography of the child unnecessarily during his pick or drop *inter se* the parties.
- IV. Petitioner-Father and Respondent No.2-Mother shall ensure that they do not try to, in any manner, brainwash the child against the other during the period when the child is with either of them, as it has become obvious to the Court during interactions that the child tends to repeat what is told to him.
- V. The Respondent No.2-Mother and the child shall not be allowed to leave the country without permission of the Id. Single Judge. The child shall continue to study in Mount Carmel School.
- VI. The father shall continue to pay the monthly amount as submitted to the Court.
22. The Petitioner-Father has also prayed for access to the academic record, parent teacher meeting and other communication from the school of his son. The said request may be made before the Id. Single Judge and adjudicated in accordance with law.
23. Parties, in the meantime, also appear to be inclined to get a divorce by mutual consent. Let them appear before the Id. Mediator for drawing up the terms for resolving their disputes finally as well. The Id. Mediator can file a report before the Id. Single Judge on the next date of hearing.
24. List before the Delhi High Court Mediation and Conciliation Centre on 16th December, 2024 at 03:00 pm.
25. The present petition is disposed of in the above terms. Next date of hearing i.e. 18th December, 2024 stands cancelled.
26. This order shall be communicated to the FRRO and Ministry of External Affairs and Bureau of Immigration in order to ensure that the mother



and child do not leave the country without permission of this Court. The order be communicated to these authorities by the Ld. CGSC **Ms. Nidhi Raman (M:9891088658)**.

27. Copy of the order be sent to the Secretary, Delhi High Court Mediation and Conciliation Centre for necessary information and compliance.

PRATHIBA M. SINGH
JUDGE

AMIT SHARMA
JUDGE

DECEMBER 11, 2024/dk/am