



\$~22

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

Date of decision: 20th December, 2024

+ **W.P.(CRL) 4002/2024 & CRL.M.A. 38615/2024**

SADAF NAAZ

.....Petitioner

Through: Mr. Nimish Chandra & Ms. Pallavi
Anand, Advs. (M-8860123354)

versus

SHASHI KUMAR MISHRA AND ORS.Respondents

Through: Mr. Sanjay Lao, Standing Counsel
(Criminal) with Ms. Priyam Agarwal
& Mr. Abinav Kumar Arya, Advs. for
State. with SI Vineet, PS Neb Sarai.
Mr. _____, Adv. for R-1 (Appearance
not given) along with R-1 present in
person.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE AMIT SHARMA

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

CRL.M.A. 38615/2024 (for exemption)

2. Allowed, subject to all just exceptions. Application is disposed of.

W.P.(CRL) 4002/2024

3. The present petition has been filed on behalf of the Petitioner – Ms. Sadaf Naaz under Articles 226 and 227 of the Constitution of India read with Section 528 of BNSS, 2023 seeking issuance of a writ in the nature of habeas corpus for the production of her minor daughter, who was allegedly taken by her husband i.e. Respondent No. 1 on 23rd October, 2024.



4. A brief background of the case as stated in the petition is that the Petitioner was married to the Respondent No. 1-Mr. Shashi Kumar Mishra on 19th August, 2008 at Arya Samaj Vedic Marriage Mandal, Delhi. Thereafter, they were married in terms of the Special Marriage Act on 17th December, 2012. From the wedlock, a child was born on 3rd August, 2017. The said child is stated to have been studying at K.R. Mangalam Global School, GK-1, New Delhi.

5. It is further stated that due to matrimonial discord, the Petitioner on 19th October, 2024, filed a complaint against the Respondent No. 1 herein at PS Neb Sarai alleging domestic violence.

6. It is the case of the Petitioner that on 23rd October, 2024 when she was planning to move out from the matrimonial home, the Respondent No. 1 took the child out of the house and went away without informing her as to where he has taken the child. The present petition has therefore been filed seeking a writ of *habeas corpus* for production of child.

7. The Petitioner and the Respondent No.1 have appeared before the Court today. The Court has had an in-chamber interaction with the parties present.

8. During the chamber interaction, it is stated by Respondent No.1 that he had taken the child out of the custody of the Petitioner and is now living with the child at his parental home in Jharkhand, along with his mother. According to him, the child is comfortable and safe over there as the paternal grandmother (*Dadi*) of the child is there to take care of the child. The Respondent No.1 further informs the Court that he has kept in touch with the wife and has informed her that the child is with him and is safe, however, the child does not wish to meet the mother. His further allegation is that there is continuous interference from the wife's family in their matrimonial home.



9. All the above allegations are refuted by the Petitioner-wife. She has informed the Court that she is a teacher at K.R. Mangalam Global School and her daughter was also studying in the said school. According to her, the Respondent No. 1 forcefully took the custody of her child, without informing her.

10. From the record, it is seen that the Petitioner-wife has already filed a petition seeking guardianship being **G.P. No. 64/2024** before the Family Court, District South, Saket Courts, Delhi. In the said petition, notice has already been issued and the matter has been fixed for hearing on 1st March, 2025.

11. Considering the fact that this matter arises out of a matrimonial dispute between the parties and the guardianship petition has already been filed, the Court is of the opinion that the said petition ought to be heard and this is not a fit case for grant of *Habeas Corpus*. Accordingly, this Court directs as under:

- i) The child shall be produced by the Respondent No.1/Husband before the Guardianship Court on 3rd January, 2025;
- ii) The Guardianship Court shall hear the parties and put in place appropriate interim arrangement in accordance with law, after considering all the facts.

12. The Petitioner-wife undertakes not to precipitate the domestic violence complaint or take any coercive measures against the Respondent No.1/Husband till then.

13. It is directed that the Respondent No.1/Husband shall not level any threats to the Petitioner/wife or her family members.

14. Copy of the order be communicated to the concerned Family Court for



2024:DHC:9870-DB



necessary information and compliance.

15. The petition is disposed of in these terms.

16. Order *dasti*.

**PRATHIBA M. SINGH
JUDGE**

**AMIT SHARMA
JUDGE**

DECEMBER 20, 2024

Rahul/rks/pr