



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

D.B. Habeas Corpus Petition No. 395/2024

----Petitioner

Versus

1. State of Rajasthan through Secretary, Home Department, Government of Rajasthan, Secretariat, Bhagwan Das Road, Jaipur.
2. Additional Director General of Police, Anti Human Trafficking Unit, Jaipur, Rajasthan.
3. Deputy Superintendent of Police, Division-I, Kota.
4. Station House Officer, Police Station, Dadabari, Kota.



सही-प्रतिलिपि

प्रशासनिक अधिकारी न्यायिक
राजस्थान उच्च न्यायालय पीठ,
जयपुर

----Respondents

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| For Petitioner(s) | : | Ms. Suruchi Kasliwal along with
Mr. Vipin Sharma &
Mr. Vikram Singh |
| For State | : | Mr. Rajesh Choudhary, GA-cum-AAAG,
along with Mr. Aman Kumar, AAAG,
Mr. Vivek Sharma, Addl. G.A.,
Mr. Gaurav Gupta, Asst. G.A.,
Mr. Amit Punia, Addl. G.A. &
Ms. Neha Goyal |
| For Respondent No.5 | : | Mr. Suresh Sahni along with
Mr. Sudhir Jain, |



Mr. Himanshu Sogani,
Mr. Parth Sharma,
Mr. Monu Kumar,
Mr. Saurabh Jain,
Mr. Yatharth Agarwal,
Mr. Aman Galav,
Mr. Ram Mohan Sharma &
Mr. M.S. Solanki

HON'BLE MR. JUSTICE PANKAJ BHANDARI
HON'BLE MRS. JUSTICE SHUBHA MEHTA

Order

09/01/2025

(Camera Proceedings)

1. Matter comes up on an application (1/2025) seeking modification in the order dated 19.12.2024.
2. Heard on the application, the main petition as well as the preliminary objections raised by counsel for the respondent No.5.
3. Present Habeas Corpus Petition has been filed by petitioner-father of two minor children, who are corpus in this case, aged 11 years and 12 years. The present petition was filed in the High Court on 11.11.2024. Both the children were taken away by respondent No.5 i.e. mother on 23.09.2024 from Kota to Delhi. Petitioner, thereafter, filed an application before the Family Court, Kota on 30.09.2024 under Sections 6, 8 & 13 of the Hindu Minority and Guardianship Act, 1956. After filing of the petition, notices were issued and for the first time, appearance was put by the respondent on 26.11.2024. Custody of the children was continued with the mother. However, petitioner was permitted to meet the children after intimation to respondent No.5 and was also permitted to make video calls with the children. The said order was continued vide order dated 12.12.2024. Respondent



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No.5 approached the Apex Court by filing Special Leave Petition, which was disposed by the Apex Court on 13.12.2024 by giving liberty to both the parties to raise all contentions before the High Court in the writ petition and also for exploring the possibilities of a mediated settlement. The prayer for sending the matter to Mediation was opposed by the counsel for the petitioner and consequently, application filed by respondent No.5 in this regard was dismissed on 19.12.2024. Custody of the children was continued with respondent No.5. However, interim custody of the children was given to petitioner vide order dated 19.12.2024 from 31.12.2024 at 11:00 am to 11.01.2025 till 05:00 pm and the matter was listed today.

4. Counsel for the respondent has raised preliminary objections with regard to maintainability of the habeas corpus petition. It is argued that since the petitioner has already approached the Family Court prior to the filing of the habeas corpus petition, any grounds with regard to the custody should be raised before the Family Court. Reliance in this regard is placed on "**Jose Antonio Zalba Diez Del Corral vs. State of West Bengal**" (2021) SCC Online SC 3434.



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5. Contra, it is contended by counsel for the petitioner that it is a settled position of law that habeas corpus petition with regard to custody of minor children when there is a family dispute between husband and wife, can be entertained by the Courts and is maintainable. Reliance in this regard is placed on "**Yashita Sahoo vs State of Rajasthan & Ors.**" (2020) 3 SCC 67.

6. It is also contended that Apex Court while disposing of the Special Leave Petition has given liberty to both the parties to raise



all relevant contentions before the High Court in the writ petition. Thus, it is argued that even if a petition is pending before the Family Court that does not bar the High Court from hearing the relevant contentions raised by the parties.

7. It is contended by counsel for respondent No.5 that children are in custody of respondent No.5, who happens to be the biological mother and the same cannot be said to be an illegal detention, so as to invoke the habeas corpus jurisdiction. It is also contended that disputed questions of fact have arisen in the present writ petition, which cannot be decided by the Court in summary proceedings. It is also contended that prior to filing of this habeas corpus petition, petitioner has taken recourse to the alternative remedy available to him under the Hindu Minority and Guardianship Act, which is pending before the Family Court and therefore, the Court should not entertain the habeas corpus petition. Reliance in this regard has been placed on "**Nirmala vs. Kulwant Singh & Ors.**" (2004) 10 SCC 595. Reliance has also been placed on "**Gautam Kumar Das vs. NCT of Delhi & Ors.**" (2024) 10 SCC 588.



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8. With regard to the merits of the case, it is contended by counsel appearing for the petitioner that both the children have been tutored. They have been poisoned to speak against petitioner as well as the Court. It is contended that the corpus are not getting the right atmosphere with respondent No.5. It is also contended that wife has been leading an immoral life and many documents and affidavits have been filed to establish that she has been leading an adulterous life. It is argued that since respondent No.5 is leading an immoral life, the custody of the children should

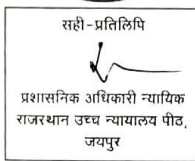


be handed over to the petitioner. It is further argued that a detailed reply has been given by respondent No.5 countering the petition as well as the affidavits filed by the petitioner, hence either the reply filed by respondent No.5 should not be considered by the Court or opportunity should be given to petitioner to file rejoinder to the same.

9. It is contended by counsel for respondent No.5 that in the writ petition, there is no specific prayer with regard to restoration of custody of two minor children to the petitioner.

10. We have considered the contentions and have interacted with the children.

11. Initially, when we interacted with the children, we were under the impression that children have been tutored, therefore, taking note of the fact that there is vacations in K.R. Mangalam Global School, Greater Kailash-I, New Delhi, custody of the children during vacations was given partly to the mother and partly to the father.



12. We are of the considered view that there is no bar on entertaining the habeas corpus petition, more particularly, when respondent No.5 herself filed Special Leave Petition and the same was disposed by directing both the parties to raise all relevant contentions before the High Court in the writ petition. At the time when SLP was disposed by the Apex Court, the fact of pendency of petition before the Family Court was within the knowledge of respondent No.5 and still a consensual order was passed by the Apex Court permitting both the parties to raise relevant contentions before the High Court. Even otherwise, as per the various judgments referred to by the parties, the welfare of the



child is of paramount consideration and thus, the Court can entertain the habeas corpus petition.

13. Coming to the wish of the children, from interaction with the children, it is revealed that both the children do not wish to stay with petitioner-their father. Children are aged 11 and 12 years and even after they have remained in custody of petitioner, their wish is to stay with their mother-respondent No.5.

14. In the present petition, 700 odd papers have been filed by the parties leveling allegations and counter allegations and petitioner now wishes to file further rejoinder.

15. As far as contention of the counsel for the petitioner that reply filed by the respondent No.5 should not be considered and before considering the preliminary objections and reply filed by respondent No.5, petitioner should be afforded opportunity of countering the same by filing a rejoinder, is concerned, we are of the considered view that facts are disputed by the parties and such disputed questions cannot be decided by the Courts in summary proceedings i.e. in the habeas corpus petition and the proper course available to the parties is to raise all relevant material before the Family Court. Since petitioner has already filed a petition before the Family Court, the proper course for the petitioner is to pursue his petition before the Family Court.



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16. As far as custody of the corpus is concerned, they are with respondent No.5-their mother and, therefore, the said custody cannot be said to be unlawful custody as held by the Apex Court in "**Nithya Anand Raghavan vs. State of NCT of Delhi**" (2017) 8 SCC 454. We do not deem it proper to go into the merits and demerits of the allegations and counter allegations levelled in this



case, as the same would be the subject matter which has to be decided by the Family Court, after adducing of the evidence. We, therefore, do not find any force in the habeas corpus petition, however, as far as the rights of petitioner-father is concerned, he will have access to meet his both the children once every 15 days and would also be permitted to make video calls with his children.

17. Vide order dated 19.12.2024, custody was given to the petitioner-father till 11.01.2025. However, since the habeas corpus petition filed by the petitioner is being disposed, custody has been handed over to respondent No.5 today in the Court. The order dated 19.12.2024 stands modified accordingly. It is also expected of respondent No.5 that she would not poison the minds of children and would try to develop harmonious relationship between father and sons.

18. Habeas Corpus Petition is accordingly, disposed.

19. It is made clear that the Family Court will not be prejudiced by the order of this Court.

20. Interim application also stands disposed.



राही-प्रतिलिपि
12/10/25
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(SHUBHA MEHTA),J

(PANKAJ BHANDARI),J