



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

D.B. Habeas Corpus Petition No. 375/2023



-----Petitioner

Versus

- 1. State Of Rajasthan, Through Secretary, Home Department, Govt. Of Rajasthan, Secretariat, Jaipur.
- 2.
- 3.
- 4.
- 5. Superintendent Of Police, Jaipur (East)
- 6. Station House Officer, Police Station, Adarsh Nagar, Jaipur (East)

-----Respondents

For Petitioner(s)	:	Mr. Shadan Farasat, Sr. Advocate assisted by Mr. Tarun Agarwal, Mr. Bhaskar Agrawal, Ms. Mitali Karwa
For Respondent(s)	:	Mr. V.R. Bajwa, Sr. Advocate assisted by Mr. Snehdeep Khyaliya, Ms. Sonal Singh, Adv.
For State	:	Mr. Rajesh Choudhary, GA-cum-AAAG with Mr. Aman Kumar, AAAG

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

Reserved on :: **19/11/2024**

Pronounced on :: **05/12/2024**

Reportable

(Per Pankaj Bhandari, J)

- 1. Petitioner has filed this habeas corpus petition seeking issuance of a writ of habeas corpus for the custody of the son of the petitioner.



2. The prayer sought for in the habeas corpus petition is for directing the release of minor child- ***** Mocherla from illegal custody of Respondents No.2 to 4 and for directing his return to the country of his birth and citizenship, the United States of America. Further, to hand over all the official documents of ***** , including his original passport, visa, etc. to the petitioner.

3. It is contended by Mr. Shadan Farasat, Sr. Advocate assisted by Mr. Tarun Agarwal appearing for the petitioner that petitioner's son- ***** was born on 27.06.2018 in the United States of America. He is a U.S. citizen, having a passport issued by United States of America. On 19.09.2018, petitioner's son aged less than three months came to India with her mother with a return ticket of 23.12.2018. However, the mother instead of returning back to the U.S. with her son, filed a petition on 17.11.2018 before the Family Court under Sections 7, 10 & 11 of Hindu Minority and Guardianship Act. It is contended that when the respondent No.2 did not return to U.S., petitioner moved a petition before the Juvenile and Domestic Relations District Court of Fairfax County, Virginia, United States of America (U.S. Court) on 27.12.2018 seeking custody of his son- ***** . The application filed for custody before the U.S. Court was allowed on 30.07.2019 and a final custody order was passed in favour of the petitioner. It is contended that petitioner filed a habeas corpus petition before the Apex Court which was dismissed by the Apex Court on 06.11.2020. Thereafter, petitioner filed a habeas corpus petition before the Rajasthan High Court which was withdrawn by the petitioner on 16.03.2023 with a liberty to move the Apex Court. Thereafter, petitioner moved a Misc. Application No. 1753/2023



before the Apex Court in (W.P. Crl.) No.326/2020 and an order was passed on 14.08.2023 which reads as under:-

"Heard learned counsel for the parties and perused the prayer made in the misc. application.

Though at an earlier point this Court had dismissed the petition filed under Article 32 of the Constitution, in a normal circumstance, the proceedings before the High Court could have been maintained in the instant facts we note that the parties are already before the jurisdictional courts in a proceedings under the Guardians and Wards Act relating to guardianship. If that be the position, it would be open for the applicant to raise objections with regard to the maintainability of the said petition including the other objections and on conclusion of the said proceedings. If any further directions are to be obtained based on judgments of foreign court at that stage, the applicant would have the remedy of filing an appropriate petition including the petition seeking writ of habeas corpus, before the High Court.

Reserving such liberty to the applicant, the application seeking clarification stands disposed of.

M.A. No.1753/2023 also stands disposed of."

4. It is contended by counsel for the petitioner that in the application filed by Respondent No.2 under the Guardians and Wards Act before the Family Court, Respondent No.2 did not disclose that corpus i.e. son of petitioner is a U.S. citizen. It was also not disclosed that he is not an ordinary resident of Jaipur. It is contended that since *****, son of the petitioner is a U.S. citizen and a final custody order has been passed by the U.S. Court on 30.07.2019, Family Court has erred in allowing the application filed by the wife on 07.10.2023. It is contended that Respondent No.2 was fully aware that petitioner is residing in the U.S., still in



the petition filed before the Family Court, she gave the address of Hyderabad. It is contended that Respondent No.2 initially filed the petition on 17.11.2018, thereafter, she filed a second petition on 13.01.2021. Both petitions were clubbed by the High Court vide Order dated 19.05.2023 and finally, the Family Court has allowed the application of Respondent No.2 vide Order dated 07.10.2023. It is contended that the Apex Court had permitted the petitioner to raise the objections with regard to maintainability of the petition under the Guardians and Wards Act and has also permitted the petitioner to file appropriate petition including petition seeking writ of habeas corpus before this Court.

5. It is also contended that corpus- ***** had come to India on a U.S. passport and a visa issued by Indian Embassy. After expiry of the visa, he has become an illegal migrant and an illegal migrant can be deported by the Government of India at any time. It is also contended that an illegal migrant has many restrictions and is not entitled to avail many Constitutional remedies and is also not entitled to the rights available to a citizen under Article 19 of Constitution of India. It is also contended that Principle of Comity of Courts have to be respected and when there is an order passed by a competent Court with regard to the final custody of corpus- *****, the Family Court at Jaipur, which was not having territorial jurisdiction to entertain the petition under the Guardians and Wards Act (for short 'the Act') there being a bar under Section 9 of the Act, should have dismissed the application filed by respondent No.2. It is contended that the order passed by the competent U.S. Court was prior in time and only the Courts in



the U.S. were having jurisdiction to decide with regard to the custody of the corpus- *****.

6. It is contended that the detention of ***** is an illegal detention and since the Apex Court has given permission to the petitioner to raise the objection with regard to maintainability of the petition before the Family Court by filing of a writ petition, the petitioner is entitled to challenge the jurisdiction of the Family Court as well as to claim the custody of his son. It is contended that there is no allegation against the petitioner that he would cause harm to the child and custody can be denied only if there is any allegation with regard to the character of the petitioner or that he would cause harm to the child.

7. Counsel for the petitioner has placed reliance on Surinder Kaur Sandhu Vs. Harbax Singh Sandhu & Anr. **(1984) 3 SCC 698**, where father had brought the male child, aged eight years to India and Apex Court granted the custody to the mother as the child was a U.K. citizen. Reliance is also placed on Elizabeth Dinshaw Vs. Arvand M. Dinshaw & Anr. **(1987) 1 SCC 42**, wherein a nine years old male child was brought to India by the father and Apex Court granted custody to the mother who was a U.S. citizen and visitation rights to father in the U.S. Reliance is also placed on V. Ravi Chandran Vs. Union of India & Ors. **(2010) 1 SCC 174**, wherein there was a direction of join custody of corpus by the Family Court of State of New York. The child was brought to India by mother and Apex Court directed the mother to take the child to the U.S. and handover the custody to the father. Reliance is also placed on Surya Vadanani Vs. State of Tamil Nadu & Ors. **(2015) 5 SCC 450**, wherein two female children, aged 10



and three years were brought to India by mother and Apex Court directed the mother to comply with the substantive Order of the U.K. Court on custody issue. Reliance is also placed on Lahari Sakhamuri Vs. Sobhan Kodali **(2019) 7 SCC 311**, wherein also, mother had brought seven year old son and five year old daughter to India, Apex Court directed the mother to return the children who are U.S. citizens to the United States. The Apex Court held that U.S. Court had exclusive jurisdiction in the matter as the children happen to be U.S. citizen. The Court further observed that the U.S. Court had taken into account the best interest of child while passing the order of emergency custody in favour of the father. In Yashita Sahu Vs. State of Rajasthan **(2020) 3 SCC 67**, two year old female child was brought to India by mother and the Apex Court in the case issued directions in two parts:- 1st part- if mother was willing to go and live in USA, directed her to comply with the order of US Court regarding custody and 2nd part- if mother was unwilling to go and live in the USA, directed the mother to hand over custody of the child to the father or paternal grandmother and directed the father to arrange for the child to be taken to the USA. Apex Court held that Doctrine of Comity of Courts is a very healthy doctrine and the primary and paramount consideration is welfare of the child. Reliance is also placed on Sri Nilanjan Bhattacharya Vs. State of Karnataka & Ors. **(2021) 12 SCC 376**, wherein also a three year old male child, who is a U.S. citizen was brought to India by mother and Apex court directed the return of the child to the US with the father. Reliance is also placed on Vasudha Sethi & Ors. Vs. Kiran V. Bhaskar & Ors. **2022 SCC OnLine SC 43**, wherein five years old male child, a U.S.



citizen, was brought by mother to India for a medical surgery but was not taken back to the U.S. The Apex Court in the case directed the return of the minor child to the USA. In *Rajeshwari Chandrashekhar Ganesh Vs. State of Tamil Nadu & Ors.* **2022 SCC OnLine SC 885**, twelve years old female child and eight years old male child were brought to India by father and Apex Court directed the father to return the children to the U.S. and to abide by the shared parenting plan as ordered by the Court of Ohio, U.S.A. In *Rohit Thammana Gowda Vs. State of Karnataka* **2022 SCC OnLine SC 937**, wherein eleven years old male child was brought to India by mother and Apex Court directed to give custody to father and return of child was allowed to USA with father. Apex Court observed that the child was naturalized US citizen with a U.S. passport and thus, father was entitled to have the custody of the child. In *Abhay Vs. Neha Joshi & Anr.* **2023 SCC OnLine Bombay 1943**, wherein a 3.5 years old male child was brought to India by mother, Bombay High Court directed the return to child to the petitioner- father. Counsel has also placed reliance on *Union of India Vs. Pranav Srinivasan* **Civil Appeal No.5932/2023** decided by the Apex Court on 18.10.2024, wherein Apex Court held that the provisions of the Citizenship Act, 1955 is plain and simple and the same should be given ordinary and natural meaning. Apex Court further observed that there is no scope to bring equitable consideration while interpreting such a statute as the language of Sections 5, 8 and 9 of the Citizenship Act is plain and simple and there is no scope for its liberal interpretation. The Court further observed that citizenship of India cannot be conferred on foreign citizens by doing violence to the



plain language of the 1955 Act. The Court also observed that the power under Article 142 of the Constitution of India is an extraordinary power which should be exercised to deal with exceptional circumstances. The Court observed that the Court will have to be very circumspect when it comes to the exercise of power under Article 142 of the Constitution for the grant of citizenship of India to a foreign national.

8. Counsel for the respondents, Mr. V.R. Bajwa, Senior Advocate assisted by Mr. Snehdeep Khyaliya has vehemently opposed the habeas corpus petition. It is contended that when a final order has been passed by the competent court of law in India, giving guardianship to respondent No.2, the only remedy now available to the petitioner is to file an appeal against the order passed by the Family Court. It is contended that both petitioner and respondent No.2 were professionals working in multi national companies. Both are Indian citizens and second marriage of both the parties took place on 05.04.2014 at Hyderabad.

9. It is contended that there was no restraint order by the U.S. Court at the time when the corpus was brought to India. It is also contended that petitioner is a callous father. He did not pay heed to the cries of respondent No.2 at the time when she was suffering labour pain. Petitioner has also not supported respondent No.2 in obtaining Overseas Citizenship of India Card for the corpus. It is contended that Advocate had put in appearance on behalf of the petitioner before the Family Court on 03.01.2019 and the order that has been passed by the Family Court has been passed after permitting parties to adduce evidence, whereas the



order passed by the Court in the U.S. is an ex-parte order passed without recording of evidence. It is also contended that the petitioner has moved application under Order 7 Rule 11 CPC which was dismissed by the Family Court at Jaipur, the same has not been challenged and the orders have attained finality and the objection that Family Court does not have jurisdiction to entertain the application under the Guardianship and Wards Act cannot be taken before this Court.

10. It is argued that custody given by the Family Court cannot be said to be illegal custody, so as to exercise the habeas corpus jurisdiction. It is also contended that under Section 5(4) of the Citizenship Act, in exceptional circumstances, Central Government may pass an order in favour of corpus- *****. It is contended that the Family Court has taken into consideration the welfare of the child and the fact that he is residing with his mother for last six years.

11. It is contended that first habeas corpus petition filed by the petitioner before the Apex Court was dismissed on 06.11.2020 even after passing of the final custody order by the U.S. Court on 30.07.2019, hence, habeas corpus petition cannot be now entertained. It is contended that a minor child cannot be considered to be an illegal migrant. Reliance in this regard is placed on Rachita Francis Xavier Vs. Union of India **2024 SCC OnLine Del 3612**. Reliance is also placed on Arya Selvakumar Priya and Ors. Vs. Joint Secretary (PSP) and Chief Passport Officer Ministry of External Affairs and Ors. decided by High Court of Karnataka at Bengaluru on 21.03.2023, wherein Karnataka High Court held that child cannot be disturbed and the



Central Government has power to do justice to a child. Reliance is also placed on **Nasir Khan Vs. State of Rajasthan & Ors.** decided by Rajasthan High Court on 19.01.2023, wherein Rajasthan High Court held that the Courts cannot go into disputed question of facts in a habeas corpus petition. Reliance is also placed on **Rohan Rajesh Kothari Vs. State of Gujarat & Ors.** Special Leave to Appeal (Crl.) No.1722/2024 decided by the Apex Court on 05.08.2024, wherein it was held that custody issue is to be resolved by competent Court i.e. Family Court and Foreign Court judgment is not to be given effect and the Authorities were directed not to disturb the custody of the minor with mother.

12. It is also contended that the primary condition for deciding the custody in a habeas corpus petition is welfare of the child. Since child is staying with mother for last six years, welfare of the child is in staying with mother and the finding given by the Family Court in this regard cannot be set aside by the High Court while exercising the habeas corpus petition.

13. Counsel for the respondents has also placed reliance on **Prabat Singh Vs. Roop Kanwar** D.B. Civil Misc. Appeal No.1415/2023 decided by Rajasthan High Court on 12.09.2023, **Nithya Anand Raghavan Vs. State of NCT of Delhi** and Ors. Criminal Appeal No.972/2017 (arising out of SLP (Crl.) No.5751/2016) decided by Apex Court on 03.07.2017, **Nil Ratan Kundu and Ors. Vs. Abhijit Kundu** Civil Appeal No.4960/2008 (arising out of SLP (civil) No.1243/2008) decided by Apex Court on 08.08.2008, **Santhini Vs. Vijaya Venketesh (2018) 1 SCC 1**, **Roxann Sharma Vs. Arun Sharma** Civil Appeal No.1966/2015 decided by Apex Court on 17.02.2015, **Pushpa**



Singh Vs. Inderjit Singh Criminal Appeal No.487/1988 decided by Apex Court on 05.09.1988, **Arvind Gopal Krishna Chawda Vs. State of Telangana and Ors.** Writ Petition No.20709/2015 decided by High Court of Judicature at Hyderabad on 21.10.2016, **Smriti Madan Kansagra Vs. Perry Kansagra** Civil Appeal No.3559/2020 decided by Apex Court on 28.10.2020, **Suo-Motu Contempt Petition (Civil) No.03/2021**, Rajkumar Sasidharan through Power of Attorney Holder, Renjith Vs. Superintendent of Police and Ors. **2021 SCC OnLine Ker 6235**, Sumit Verma Vs. Jyoti Saini and Ors. **2023/PHHC/068670**, Sameer Hamsa Ramla Vs. State of Karnataka **2022 SCC OnLine Kar 789**, State of Andhra Pradesh and Ors. Vs. B.Ranga Reddy (D) by L.Rs. and Ors. **2019 (9) SCJ 136**, Prateek Gupta Vs. Shilpi Gupta and Ors. **2018 (3) SCJ 178**, Kanika Goel Vs. State of Delhi through SHO and Anr. **(2018) 9 SCC 578**, Githa Hariharan and Ors. Vs. Reserve Bank of India and Ors. **(1999) 2 SCC 228**.

14. We have considered the contentions.

15. The facts which is not in dispute is that corpus, ***** is a U.S. citizen, born on 27.06.2018 in the United States of America having a passport issued by the United States of America. It is also not in dispute that the child came to India with her mother on 19.09.2018 on a visa issued by Indian Embassy. The date of expiry of visa was 04.03.2019. Respondent No.2 booked return tickets of 23.12.2018 and was scheduled to return to the U.S. on 23.12.2018 with the corpus. Prior to the date of return, Respondent No.2 filed a petition in the Family Court under Sections 7, 10 and 11 of the Guardians and Wards Act on 17.11.2018. Thereafter, another petition was also filed on



13.01.2021. Petitioner has also filed a petition on 27.12.2018 before Juvenile and Domestic Relations District Court of the Fairfax County, Virginia, United States of America (U.S. Court) and a final custody order was passed in his favour on 30.07.2019. Application before the Family Court filed by Respondent No.2 was allowed on 07.10.2023.

16. On perusal of the application filed by Respondent No.2 before the Family Court at Jaipur, it is revealed that she has not mentioned that her son is a U.S. citizen. She has also not mentioned that her son does not ordinarily reside at Jaipur. She has not disclosed that her son has come to India on a visa which is going to expire on 04.03.2019. She has also purposely not mentioned the correct address of petitioner even when she was aware that petitioner was residing in the U.S. Thus, respondent No.2 did not come with clean hands when she filed a petition before the Family Court.

17. Section 9 of the Guardians and Wards Act, 1890 reads as under:-

"9. Court having jurisdiction to entertain application, if the application is with respect to the guardianship of the person of the minor, it shall be made to the District Court having jurisdiction in the place where the minor ordinarily resides."

18. A U.S. Citizen who has been brought to India on a visa which was to expire on 04.03.2019, cannot be said to be ordinarily resident of Jaipur. The expression 'ordinarily resides' signifies something more than a temporary residence. Even though the period of such temporary residence may be considerable, the place where the minor generally resides and would be expected to



reside but for special circumstances may be taken to be the place denoting a place where the minor ordinarily resides as held by the Allahabad High Court in Jagdish Chandra Gupta Vs. Vimla Gupta **AIR 2003 All 317**. It is held by the Apex Court in Ruchi Majoo Vs. Sanjeev Majoo **AIR 2011 SC 1952** that the solitary test for determining the jurisdiction of the court under Section 9 of the Act is the 'ordinary residence' of the minor. The legislature by the expression 'ordinarily resides' meant that it is something more than a temporary residence. A temporary resident at a particular place under compulsion, however long, cannot be termed as place of 'ordinarily resides'. The term 'ordinarily resides' does not mean casual or factual residence of the minors.

19. We are of the considered view that the words 'ordinarily resides' are not identical and do not have the same meaning as "residence at the time of application" and the legislature used the words 'ordinarily resides' probably to avoid the mischief like one where minor may be secretly removed to some other place and kept at that place under compulsion, and then an application for custody of minor is filed. Residence at the time of application is not decisive of jurisdiction. We are of the considered view that a child who is a U.S. citizen and who has come on a visa issued by the Indian Embassy for a limited period, cannot be said to be ordinarily resident of Jaipur.

20. It is true that an appeal lies against the order passed by the Family Court and this Court is not required to test the veracity of the judgment passed by the Family Court but since Apex Court has permitted the petitioner to raise the issue with regard to the maintainability of the application under the



Guardians and Wards Act before the Family Court before this Court in writ jurisdiction, we are constraint to observe that the Family Court at Jaipur had no jurisdiction to entertain the applications under Sections 7, 10 and 11 of the Hindu Minority and Guardianship Act. There being a bar under Section 9 of the Act and the child for whose guardianship, the application was moved was a U.S. citizen who had come to India on a limited period visa which has expired, thus corpus does not ordinarily resides at Jaipur and the Family Court, Jaipur was not having jurisdiction with regard to the guardianship of the child. In regards to the circumstances, we are also of the view that it will be unjust to direct the petitioner to challenge the order of the Family Court at Jaipur as it will protract the proceedings and would further delay the compliance of the order passed by the competent U.S. Court way back on 30.07.2019.

21. The other issue which is important is the final custody order by the U.S. Court on 30.07.2019. This order was prior in date to the order passed by the Family Court, Jaipur on 07.10.2023 and final custody Order passed by the U.S. Court was placed before the Family Court by the petitioner. The Doctrine of Comity of the Courts has to be respected. The corpus was a U.S. citizen and the U.S. Court was competent to pass custody order with regard to the corpus. The Family Court which had no jurisdiction to entertain the application had ignored the judgment of the U.S. Court, which was the competent Court, on the ground that the order was passed ex-parte. We are of the considered view that the order passed by the U.S. Court ought to have been honored by the Family Court.



22. Now coming to the question of best welfare of the corpus- child. ***** is a U.S. citizen who is carrying a U.S. passport. He has come to India on a visa issued by the Indian Embassy. As per Section 2(1)(B) of the Citizenship Act 1955, illegal migrant means a foreigner who has entered into India with a valid passport or other travel documents but remains therein beyond the permitted period of time. ***** who is a foreigner has entered into India with a valid passport and other travel documents and has remained in India beyond the permitted period of time and thus, is an illegal migrant.

23. The contention of counsel for the respondent that ***** may be granted Indian citizenship by Registration under Section 5 of the Citizenship Act, cannot be accepted for the reason that Section 5 permits registration as a citizen of India of persons who are not illegal migrants. Thus, there is a bar under Section 5 of granting citizenship to a person who is an illegal migrant in India. Section 5(4) of the Citizenship Act would also not come to the aid of the minor child for the very reason that there is no non-obstante clause permitting the grant of citizenship by registration to a minor who is an illegal migrant in special circumstances. The contention of counsel for the respondent that the petitioner did not help respondent No.2 in obtaining Overseas Citizenship of India Card is also not tenable as even an Overseas Citizenship of India Card Card holder is not entitled to rights conferred on a citizen of India under Article 16, 58, 66, 124, 217 of the Constitution of India, under Section 16 of the Representation of People Act, under Sections 3 and 4 of Representation of People Act, under Section 5, 5A and Section 6 of Representation of People



Act and for appointment to Public Services and posts in connection with affairs of the Union or of any State.

24. Corpus, ***** is neither an Overseas Citizen of India Card Holder nor is he having any authority to continue to stay in India and as per the definition of illegal migrant, after the expiry of the visa period, he has become an illegal migrant. As an illegal migrant child, ***** is not entitled to many of the Constitutional rights guaranteed under the Constitution of India and would always be treated as an illegal migrant and would not even be treated as second class citizen as he is not even holding an Overseas Citizenship of India Card. Thus, the welfare of the child is in returning to the place of his birth i.e. United States of America, where all the rights would be available to him.

25. The contention of counsel for the respondent that petitioner is a callous person and at the time of delivery, he did not pay heed to the alarms raised by his wife has nothing to do with the habeas corpus petition for the very reason that Respondent No.2 was attended by the nurses at the hospital and petitioner who is not having any medical knowledge, cannot be stated to be at fault in not attending to the alarms raised by the wife at the time of labour pain in the Hospital. Respondent No.2 has not levelled any allegations with regard to man-handling, misbehaviour or any conduct which would dis-entitle the petitioner to have custody of the child. Petitioner, who is a father, is living abroad since a long time and has all the means to take care of his son. An offer was made by counsel for the petitioner that petitioner is willing to take his wife to the U.S., arrange for her stay at a separate place so that she can be assured that the child



is being properly looked after. Petitioner is willing to bear all the expenses of respondent No.2, his wife in this regard.

26. In the case of **Lahari Sakhamuri (supra)**, wherein the child was holding U.S. citizenship, the Apex Court held that the U.S. Court has the exclusive jurisdiction in the matter and it has taken into account the best interest of the child. The Court directed the mother who had brought her seven year old son and five year old daughter to India, to return the children to the U.S. In the case of **Yashita Sahu (supra)**, the Apex Court held that the doctrine of Comity of Courts is a very healthy doctrine and the primary and paramount consideration is the welfare of the child. The Court further issued directions in two parts, firstly, if the mother was willing to go and live in U.S., directed her to comply with the order of U.S. Court regarding custody and secondly, if mother was unwilling to go and live in the U.S., directed the mother to hand over the custody of the child to the father of paternal grand mother and directed the father to arrange for the child to be taken to the U.S. In **Rohit Thammana Gowda (supra)**, the Apex Court observed that since the child was a naturalized U.S. citizen with an American passport, thus, the father who lives in the U.S. was entitled to have the custody of the child.

27. The judgments cited by counsel for the respondents are differing on facts. **Rohan Rajesh Kothari Vs. State (supra)**, wherein it was held that custody issue should be resolved by Family Court will not apply as the child does not ordinarily reside at Jaipur and Courts in Jaipur/ India do not have jurisdiction to entertain his custody application. In the present case, ***** is a



U.S. citizen and there is a final custody order from the competent U.S. Court much prior to the order passed by the Family Court, Jaipur. We are of the considered view that petitioner is entitled to have the custody of his child and the welfare of the child is with the petitioner. In India, corpus would be treated as an illegal migrant and could be deported any time at the wish of the Authorities. He would not be having the status of a citizen of India and there would be many riders in his staying in India.

28. Consequently, we deem it proper to allow the habeas corpus petition. Petitioner is entitled to custody of the corpus. Respondent No.2 has two alternatives.

Alternative No.1. To return to the U.S. with ***** and comply with the final custody order dated 30.07.2019 passed by the U.S. Court and if she wishes to stay at America at the cost and expenses of petitioner.

Alternative No.II. (a) In case, she is not willing to go to the U.S., to hand over the custody of the child to the petitioner or parents of the petitioner for being taken to the U.S.

(b) Petitioner will permit respondent No.2 to make call/video call to the corpus at the time which is most suitable for the corpus after receipt of intimation from respondent No.2.

(c) Whenever petitioner happens to visit India with the corpus, he will assure that respondent No.2 has access to the corpus and before planning to visit India, he will intimate respondent No.2 about his travel itinerary.

29. In case, the custody is handed over to the parents of the petitioner, parents of the petitioner would take the corpus to the U.S. within four weeks of taking custody of the corpus, *****.



30. Respondent No.2 is directed to communicate her wish to counsel for the petitioner within two weeks and hand over the documents of ***** to the petitioner or parents of petitioner to facilitate purchase of flight tickets to U.S.



(SHUBHA MEHTA),J

(PANKAJ BHANDARI),J

CHANDAN /