

IN THE HIGH COURT OF JHARKHAND, RANCHI
W.P. (Cr.) No. 330 of 2023



.... **Petitioner**

-- Versus --

The State of Jharkhand & Ors.

.... **Respondents**

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioner	:-	Mr. Suraj Singh, Advocate
	:-	Mr. Parambir Singh Bajaj, Advocate
For the State	:-	Mr. Achyut Keshav, Advocate

08/06.12.2024 This writ petition was filed against  who is respondent No.5 and others alleging that she has taken away the son of the petitioner namely  and for recovery of the child Mandu P.S. Case No.44 of 2023 was lodged by the father who is the petitioner. Earlier in Original Suit (Guardianship) No.99 of 2018 filed before the District Judge-cum-Family Judge, Ramgarh and by judgment dated 28.06.2022 that Court has given the custody of the minor boy to this petitioner and when that order was not complied the execution proceeding was brought before the learned Court and by order dated 01.12.2022 direction was issued to execute. Superintendent of Police, Ramgarh has send the team for execution by Annexure-2 dated 29.12.2022. It was pointed out that when the police went for execution,  who is respondent No.5 has fled away along with the child and Sonu Kumar – respondent No.6 and was residing in Patna at different places. In this background, the FIR being Mandu P.S. Case No.44 of

2023 was registered and when no action was taken the writ petition was filed praying to find out the child and in spite of decree the child was not handed over to the petitioner. In this background, the orders dated 12.09.2024, 22.10.2024 and 02.12.2024 have been passed in the present writ petition.

2. Today, at the time of rising of the Court at 1:30 PM it was pointed out by the learned counsel appearing for the State that the order of this Court have been complied and  respondent No.5 and child along with one Sonu Kumar who is respondent No.6 have been apprehended and they have brought in the Court today and in view of that this matter was notified to be taken up in Chamber at 2:15 PM and that is how it has been taken up before next date of listing and the next date of listing was fixed on 3rd January, 2025.

3. Decree is in favour of the petitioner (father) and the judgments and the executing order are on the record. It was pointed out that this petitioner (father) is working in the CMPDI and posted at Ranchi. The better financial resources of the either of the parents or their love for the child or the statutory presumptions that father is better suited may be one of the relevant considerations but cannot be the sole determining factors for the custody of the child and the Court is required to consider all this aspect judiciously. There is nothing on record to suggest that the welfare of the child is in any way in peril in the hands of the father and the decree is in

favour of the petitioner, who is the petitioner.

4. The Court has interacted with the [REDACTED]-respondent No.5 and she has informed that she has not challenged the order of the Family Court dated 28.06.2022 and in view of that unless that order is challenged or modified by any higher court the order passed by the learned Court is required to be respected. She further pointed out that the child at present is not being sent to any school for study from the last two months.

5. The Court has also interacted with the petitioner in presence of the learned counsel appearing for the petitioner as well as Mr. Achyut Keshav, learned AAG-V and he has stated that he will take all care of the child and he will provide good education, physical comforts and the moral and ethical values.

6. Divorce has already taken place by mutual consent by judgment dated 29.05.2018 in Mutual Divorce Case No.107 of 2018.

7. Considering that since the order of decree of custody is in favour of the petitioner and executing order was also passed and after much efforts, the police has been able to produce the mother-respondent No.5 ([REDACTED]) along with respondent No.6 (Sonu Kumar) and the child in the Court and that is how this matter was notified today and custody orders have not been challenged in any higher court and the law is in favour of the petitioner, as such the custody of the child is handed over to the petitioner (father) and the petitioner (father) will take all care of the child, his physical

comforts, studies and whatever needed by the child and petitioner undertakes before this Court that he will take care of his child.

8. In the interaction by the Court in the presence of learned counsel appearing for the petitioner as well as learned AAG-V, [REDACTED] [REDACTED] who is respondent No.5 is also giving undertaking that now she will not fled away and she will appear before the Court and she is willing to appoint an Advocate in the present case also.

9. In view of her such submission, although she is an accused in the FIR being Mandu P.S. Case 44 of 2023 registered under different Sections of the IPC and further considering the welfare of the child, the police who has brought the respondent No.5 ([REDACTED] [REDACTED]) before this Court is directed to release her on bail on the personal bail bond of Rs.10,000/- in connection with Mandu P.S. Case 44 of 2023.

10. So far Sonu Kumar – respondent No.6 is concerned, the police will proceed in accordance with law. It is open to the Sonu Kumar to take the remedy under the law.

11. [REDACTED] who is respondent No.5 is provided right to visit to the child and the petitioner (father) will allow [REDACTED] – respondent No.5 to meet the child whenever it is necessary.

12. [REDACTED] – respondent No.5 is further given liberty that she may visit the child on every Sunday from 10:30 AM to 1:30 PM till the disposal of this writ petition.

13. Let this matter be again placed on the date already fixed

i.e. 3rd January, 2025.

14. Learned counsel appearing for the State will ensure that the Child Welfare Officer will also interact with the petitioner along with the child for welfare of the child and counselling if required by way of good counsellor be also provided before the next date of listing and a report to this be submitted before this Court before the next date of listing in a sealed cover.

15. The appearance of Mr. Parmeshwar Prasad, DSP Ramgarh is dispensed with for the time being.

16. Let a copy of this order be handed over to the concerned police officer for the needful as well as learned counsel appearing for the parties including respondent No.5 and respondent No.6.

(Sanjay Kumar Dwivedi, J.)

Sangam/