

Habeas Corpus Writ Petition No.10 of 2021

Ltd. Col. S. Bajaj

..... Petitioner.

Versus

State of Uttarakhand & Col. Jaipreet Singh

....Respondents.

Ms. Neela Gokhale and Mr. Abhijay Negi, learned counsel for the petitioner.

Mr. Amit Bhatt, learned Dy. A.G. along with Mr. Pankaj Joshi, learned Brief Holder for the State.

Mr. Shubham Aggarwal, learned counsel for respondent no.3.

Hon'ble R.C. Khulbe, J.

This Habeas Corpus petition has been filed under Article 226 of the Constitution of India for the following relief:-

- a. Issue a writ of Habeas Corpus or a writ in the nature of Habeas corpus or any other appropriate writ or direction or any other order in the like nature under Article 226 of the Constitution of India, directing respondent no.1 to secure the custody of son Arjun by safely removing him from the illegal detention of respondent no.3 and present him before this Hon'ble Court.
2. As per the writ petition, the writ-petitioner is the maternal uncle of the minor Arjun, who is aged about 17 years. Rashmi Bajaj was the biological mother but she passed away on 08.05.2021. There were estranged relations between respondent – Jaipreet Singh (father of the minor) and Rashmi Bajaj (mother of master Arjun). After birth of Arjun, respondent no.3 had treated the deceased with utmost amount of mental and physical cruelty. Respondent no.3 put minimal amount of money in the joint account. The deceased was compelled to pick

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up a part-time job. The deceased had received a notice dated 06.01.2021 sent by respondent no.3 through his counsel-Shubham Aggarwal seeking divorce on mutual consent. Rashmi had succumbed to Covid-19 on 08.05.2021. Respondent no.3 (who is said to be in Indian Army) is presently posted in Sikkim. He has detained the corpus Arjun and is not allowing him even to interact with the maternal relatives of the deceased.

3. Heard the learned counsel for the writ-petitioner and learned counsel for respondent no.3.

4. When the matter came up for hearing before this Court on 18.05.2021, a direction was issued to the State to produce Master Arjun before the Principal Judge/ Judge, Family Court, Dehradun on 21.05.2021 for recording his statement.

5. As per the direction of this Court, the Principal Judge, Family Court, Dehradun has recorded the statement of Master Arjun on 21.05.2021.

6. I have also gone through the statement of Master Arjun recorded by the Principal Judge, Family Court, Dehradun and found that master Arjun has crossed 17 years 6 months and he is studying in 12th Standard in Army Public School, Dehradun.

7. It is an admitted fact that Master Arjun is going to attain the majority on 10.09.2021, which shows that he will attain the age of majority after three months from today. After attaining the age of majority, the Court cannot compel him to go with any person against his will. As regards to custody of the interregnum period is concerned, from the statement of Master Arjun, it is clear that he is studying in 12th Class and he will appear in board exam also. He is ready to live in Dehradun with his maternal uncle, Lt. Col. S. Bajaj.

8. It is true that respondent no.3, Col. Jaipreet Singh, is the biological father of master Arjun but writ-

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petitioner Lt. Col. Shakti Bajaj is also the maternal uncle of Master Arjun and the brother of deceased Rashmi (mother of Arjun). From a perusal of the statement of Master Arjun given before the Judge, Family Court, Dehradun, it is clear that he has crossed the tender age and going to attain the age of majority very soon i.e. on 10.09.2021. The Court cannot grant custody of a person against his/her volition. As per the statement, he is very much interested to reside with his maternal uncle Lt. Col. Shakti Bajaj.

9. Since, the mother of Arjun has passed away on 08.05.2021 and the petitioner, being the maternal uncle, has sufficient means to look after Arjun, and accordingly, in the interest of Master Arjun, it would be appropriate to give the custody of Arjun to the petitioner till 10.09.2021 (till the date of attaining majority by him).

10. In these circumstances, the instant writ-petition is allowed with the following directions:-

- A. The minor-Arjun, who has been produced before the Judge, Family Court in compliance of this Court order, is ordered to be given in the custody of the writ-petitioner till he attains the age of majority i.e. 10.09.2021.
- B. Respondent no.3 shall have visitation rights to meet the child on the 1st Monday of every calendar month between 10:00 a.m. to 12:00 noon at the Chamber of Principal Judge, Family Court, Dehradun. During these visitation hours, the minor shall be provided free access to meet/communicate with respondent no.3.

11. Let this order be communicated to the learned Principal Judge, Family Court and S.S.P. Dehradun for onwards compliance.

(R.C. Khulbe, J.)
09.06.2021