

ITEM NO.27

COURT NO.2

SECTION X

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Writ Petition(s)(Criminal) No(s).129/2023

VIKTORIIA BASU

Petitioner(s)

VERSUS

THE STATE OF WEST BENGAL & ORS.

Respondent(s)

IA No. 105079/2023 - APPLICATION FOR PERMISSION
IA No. 90088/2024 - APPROPRIATE ORDERS/DIRECTIONS
IA No. 63317/2023 - EXEMPTION FROM FILING O.T.
IA No. 74291/2023 - INTERVENTION APPLICATION

Date : 22-05-2025 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE NONGMEIKAPAM KOTISWAR SINGH

For Petitioner(s) Mr. Anjani Kumar Mishra, AOR
Mr. Himanshu Luthra, Adv.
Mr. R.P. Luthra, Adv.
Mrs. Hardeep Kaur Mishra, Adv.
Mr. Praveen Mishra, Adv.
Mr. Sanat Pandey, Adv.
Mr. Rajesh Kumar Singh, Adv.

For Respondent(s) Mrs. Aishwarya Bhati, A.S.G.
Ms. Swarupma Chaturvedi, Sr. Adv.
Mr. Raj Bahadur Yadav, AOR
Mr. Shashank Bajpai, Adv.
Mr. Raman Yadav, Adv.
Mr. Abhishek Kumar Pandey, Adv.
Mr. Chitvan Singhal, Adv.
Mr. Kartikay Aggarwal, Adv.
Ms. Chitrangda Rastravara, Adv.
Mr. Mayank Pandey, Adv.
Mr. Mukesh Kumar Singh, Adv.
Ms. Ameyvikrama Thanvi, Adv.

Mr. Kunal Mimani, AOR
Ms. Sharaddha Chirania, Adv.

Mr. Subhasish Bhowmick, AOR

Signature Not Verified
Digitally Signed by
SATISH KUMAR YADAV
Date: 2025.05.26
14:49:57 IST
Reason:

UPON hearing the counsel the Court made the following
O R D E R

1. The instant Writ Petition has been filed under Article 32 of the Constitution of India seeking a Writ of Habeas Corpus for the production and entrusting the custody of the child - Stavyo Basu born from the parties' wedlock on 29.10.2020. The petitioner - mother is a Russian citizen, who is residing in India since 2019. She initially came to India on an X-1 Visa, which appears to have expired. However, during the pendency of these proceedings, this Court has directed the extension of the subject-visa from to time, due to the sensitive nature of these proceedings. As a consequence thereto, she continues to stay in India till date.

2. Unfortunately, the petitioner and her husband (respondent No.2 herein) have not been able to reconcile or cohabitate successfully. Instead, they have tendered lengthy allegations and counter allegations before for the purposes of asserting their respective rights to have exclusive custody of their child.

3. Notably, since the petitioner had previously complained that she was deprived of the custody of her breast-feeding child, and that the relationship between the parties was so strained that they could not have stayed together, this Court, *vide* order dated 18.04.2023, made some *interim* arrangement for their stay in the Bengal Bhawan (Banga Bhawan), 3 Hailey Road, New Delhi - 110 001. Of course, our hope had been that the parties may peacefully share their child's custody, and they were also referred to the Supreme Court Mediation Centre for that limited purpose.

4. However, on account of a violent incident, which took place between the parties on 13.07.2023 at Banga Bhawan, *vide*

order dated 13.07.2023, this Court directed them to shift to an alternative private accommodation, and to live separately in the nearby vicinities to facilitate the sharing of joint custody. It is a matter of record that various directions in this regard were issued on 10.07.2023 and again on 13.07.2023.

5. Thereafter, having regard to the *Interim* Report dated 08.07.2023, submitted by a Senior Mediator, some more directions were issued on 25.09.2023, which included the parties to consider the services of a trained Marriage Counsellor/Psychologist, to pave the way forward for reconciliations.

6. Through a series of subsequent orders, this Court alternated between fostering hopes for an amicable settlement and mediating increasingly acrimonious disputes between the parties. Regardless, efforts for conciliation between the parties nevertheless continued and the matter was entrusted to another Senior Mediator who, gave an *Interim* Mediation Report dated 27.01.2025, and based upon that Report, this Court passed the following order on 28.01.2025:

“1. We have received the Interim Mediation Report dated 27.01.2025 from the learned Mediator. With her great efforts, it seems that the parties are on the verge of settlement, as according to the Mediation Report (i) they have agreed for admission of the child to Don Bosco School and jointly take part in the PTMs, school functions and other co-curricular activities; (ii) they will jointly participate in doctor visits and medical emergencies, if any such contingency arises; (iii) subject to the mutual understanding on these issues, the petitioner-wife has agreed to surrender the Russian Passport of the minor child; and (iv) the petitioner has also agreed for a divorce by mutual consent without pressing for maintenance and alimony subject to her getting overnight stay and a fair share of time with the minor child.

2. We are confident that the efforts of the learned Mediator will bring the desired results.

3. We hope and trust that the parties will extend full cooperation to the learned Mediator.

4. If the learned Mediator finds that the counsel for the parties are causing impediment in the settlement, she will be at liberty to disassociate them and only interact with the parties or their family members.

5. Post the matter after three weeks or on the receipt of Mediation Report, whichever is earlier."

7. It is evident from the order reproduced above that this Court remained hopeful of an amicable resolution of the dispute under the guidance of the learned Mediator. However, to our disappointment, an application was filed on behalf of the petitioner-wife seeking urgent listing of the matter. The application stated, *inter alia*, that the mediation process had failed and that she required a direction for extension of her visa. She further alleged that respondent No. 2 – the father of the child – was not cooperating, and that her request for modification of the visitation arrangement warranted consideration.

8. On the other hand, respondent No. 2 has filed an Additional Affidavit asserting that, according to reports of various authorities, the child is presently better cared for under his guardianship. He contends that the petitioner had deserted the child when he was merely one year and five months old, and further alleges that she had previously subjected the child to physical harm, resulting in the child's reluctance to spend time with her. Respondent No. 2 also claims to have made genuine efforts to foster a bond between the mother and child. However, he alleges

that the petitioner has repeatedly attempted to circumvent the directions issued by this Court and has filed multiple false police complaints. It is further alleged that she has unilaterally and forcibly obtained a Russian passport for the child, in blatant disregard of Indian legal procedures.

9. As per usual, the parties have appeared before us having engaged a fresh set of counsel and wielding a fresh set of accusations. We have heard the counsel for the parties, apart from the parties-in-person as well.

10. The afore-noted scenarios doubtless make it difficult for this Court to adjudicate upon such disputed factual matters within the limited scope of summary proceedings. We, therefore, consider it appropriate to return to the core issue underlying the present Writ Petition—filed by a mother in respect of her minor child, who was less than two years old at the time of institution of proceedings—and to determine whether she is entitled to a more substantive custodial role, including joint guardianship, or whether the existing arrangement ought to continue.

11. In this context, it is relevant to note that the petitioner-wife has continued to reside in India even after the expiry of her visa. She is presently unemployed, and it appears that she is financially supported by her parents and extended family. It is undisputed that she was previously employed as a Research Scientist in Russia. Her decision to remain in India, despite the absence of employment or assured income, reflects a compelling degree of personal sacrifice and indicates, at the very least, her unwavering commitment and deep emotional bond with the

child.

12. In any case, we are pleased to learn that the child is now school-going and has been admitted in Don Bosco School in New Delhi. Moreover, respondent No.2 points out that the child has also been admitted to a Football Academy, owing to his exceptional skills at the sport.

13. At this juncture, the petitioner's principal grievance is that, in blatant disregard of the earlier arrangement, she has not been permitted to retain exclusive custody of the child even for a duration of four hours. In response, respondent No. 2 contends that the petitioner is, in fact, allowed to retain custody for longer periods than originally prescribed. He further submits that on occasions where, due to unforeseen circumstances, her exclusive custody time is curtailed, he compensates her the following day by extending the duration accordingly.

14. The determination of the mode and manner in which custody of the child should be shared, or whether the child ought to remain under a joint guardianship arrangement as previously ordered by this Court, is an inherently difficult, complex, and emotionally charged task. Irrespective of the allegations made—some of which are sought to be substantiated through photographs—we find no reason to doubt the petitioner's genuine dedication as a mother. Her conduct demonstrates a sincere intention to care for the child and to contribute meaningfully to his academic and extracurricular development, including his schooling and sports-related activities.

15. The commitment of respondent No. 2—the child's father—is

also unquestionable. He has evidently made considerable adjustments in his professional life by working from home over the past several years, which may have adversely impacted his career trajectory within the private sector. His actions reflect a commendable level of personal sacrifice in the interest of the child's well-being.

16. Having carefully considered the totality of circumstances, and being mindful that this Court retains the discretion to modify or recall the present arrangement should any untoward incident or undesirable conduct arise, we proceed to issue the following revised *interim* directions. We are further guided by the fact that all efforts at mediation have been unsuccessful—having failed on more than three occasions—and there remains little realistic prospect of an amicable settlement between the parties:

- i. The minor child, Master Stavyo Basu, shall remain in the exclusive custody of the petitioner-mother for three days each week—namely, Monday, Tuesday, and Wednesday. During this period, it shall be the responsibility of the petitioner to ensure that the child is adequately fed, escorted to and from school, and accompanied to the Football Academy or any other location related to his extracurricular activities. Prior to the child's transfer to the petitioner and upon his return to the custody of respondent No.2 (the father), the child shall be subjected to a routine medical examination to ensure his well-being;

- ii. On Thursday morning, the petitioner shall drop the child at school. Respondent No.2 shall then be entitled to take custody of the child after school hours on Thursday, and retain exclusive custody until Monday morning. On Monday, respondent No.2 shall drop the child at school, from where the petitioner-mother shall collect him after school hours to resume her period of exclusive custody, in accordance with the above arrangement;
- iii. The petitioner is directed not to invite any guests—particularly individuals who are strangers or foreign nationals—into her residential premises on the days the child is in her exclusive custody. It is made clear violation of this condition will be viewed seriously by the Court. The petitioner shall also ensure that the child is provided with meals consistent with his dietary preferences. For this purpose, respondent No.2 or the domestic help (including a cook) arranged by him may extend assistance, if required;
- iv. The Deputy Commissioners of Police (South East and South) and the Station House Officers (SHOs) of Lajpat Nagar and Defence Colony Police Stations are directed to maintain a discreet but effective vigil over the residential premises of both parties. Women police officers shall be deployed for this purpose and shall be permitted to enter the petitioner's residence in case of any emergent situation, after associating members of the local neighborhood, to ensure transparency and fairness. The efficacy of this arrangement

shall be reviewed on the next date of hearing;

- v. It has been brought to the Court's attention that the regular school is currently closed due to the summer break and the child is attending a summer school. The custody arrangement detailed above shall apply equally during the summer school period and shall continue, *mutatis mutandis*, upon the reopening of the regular school;
- vi. It is further directed that the child's training at the Football Academy shall continue without disruption. The petitioner shall coordinate with respondent No.2 to ensure that the child's participation in the sports programme remains uninterrupted and that both parents are appropriately involved in facilitating his attendance and performance;
- vii. Lastly, considering the peculiar facts and circumstances of the present case and the welfare of the child, the Ministry of External Affairs (respondent No.3) is directed to extend the visa of the petitioner-wife until further orders of this Court.

17. List on 31.07.2025.

(SATISH KUMAR YADAV)
ADDITIONAL REGISTRAR

(PREETHI T.C.)
ASSISTANT REGISTRAR