

ITEM NO.65

COURT NO.3

SECTION II-C

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

Petition(s) for Special Leave to Appeal (Crl.) No(s).5171/2024

(Arising out of impugned final judgment and order dated 03-04-2024
in WPCRL No. 416/2024 passed by the High Court Of Delhi At New
Delhi)

GAUTAM KUMAR DAS

Petitioner(s)

VERSUS

NCT OF DELHI & ORS.

Respondent(s)

(IA No. 88289/2024 - EXEMPTION FROM FILING C/C OF THE IMPUGNED
JUDGMENT

IA No. 88879/2024 - PERMISSION TO FILE ADDITIONAL
DOCUMENTS/FACTS/ANNEXURES)

Date : 17-05-2024 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.R. GAVAI
HON'BLE MR. JUSTICE SANDEEP MEHTA

For Petitioner(s) Mr. Saurav Agrawal, Adv.
Mr. Ashish Kumar Tiwari, AOR
Mr. Anurag Tiwari, Adv.
Mr. Sahib Patel, Adv.

For Respondent(s) Mr. Vikramjit Banerji, A.S.G.
Mr. Mukesh Kumar Maroria, AOR
Mr. Nachiketa Joshi, Adv.
Mr. Siddharth Sinha, Adv.
Mr. Santosh Kumar, Adv.

Ms. Madhumita Bhattacharjee, AOR
Ms. Srija Choudhury, Adv.
Ms. Osheen Bhat, Adv.
Ms. Nitipriya Kar, Adv.

Mr. Sudhir Mendiratta, AOR
Mr. Hirein Sharma, Adv.
Mr. Aditya Saluja, Adv.
Mr. Karsan Chaudhary, Adv.
Ms. Disha Bhalla, Adv.

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

The petitioner being the father of the alleged detenu seeks custody of his minor daughter.

The petitioner was married to Subratata Das (Since deceased) and from their wedlock, two children were born, namely, Master D and Miss S. Das.

The petitioner's wife, unfortunately passed away just a few days after giving birth to the daughter on 30.04.2021 because of Covid 19 infection. The petitioner's father also passed away just a month later.

Faced with these compelling circumstances, the petitioner handed over both the children to his maternal sister-in-law i.e. Respondent No.5 for the purpose of looking after these children, during the period, while the petitioner was coping with the two huge losses of his wife and his father. In the year 2022, the custody of the son Master D was handed back to the petitioner.

However, Respondent No.5 convinced the petitioner that the girl child was too young and would require female attention for some time and thus, custody of the girl child continued to remain with Respondent No.5. The petitioner remarried in March, 2023 and requested the Respondent No.5 to hand back the custody of the girl child to him but to no avail. The petitioner also filed a Guardianship case seeking custody of minor girl daughter but could

not procure any favourable orders. Having been left with no alternative, the petitioner filed Habeas Corpus petition No. 416/2024 in the Delhi High Court seeking a direction for grant of custody of the minor child. The High Court referred the matter to the mediation centre to find out a workable solution.

By an interim order dated 21.03.2024 the High Court allowed the petitioner to meet the minor child on alternate days and on weekend days. However, the habeas corpus petition, stands rejected by order dated 03.04.2024, which is assailed in this petition by special leave.

Learned counsel for the petitioner urged that the respondent No.5 has further handed over the custody of the child to her other sister Respondent No.6, and the child has been taken to Belda, West Bengal. He, thus, urges that in this manner the petitioner has been intentionally deprived even of the right to meet his daughter. It is further submitted that because of the child being shifted to Belda from Delhi, she will not be able to get admission into a good playschool which the petitioner is keen to ensure.

The petitioner has further submitted that his second wife(who is present in the Court), has undertaken to look after the child as her own and thus the child will be looked after well in the petitioner's family. It is further submitted that removal of the child to Belda has also deprived the brother Master D of the companionship of his sister.

Learned counsel for the private respondents has vehemently opposed the submissions of the petitioner's counsel. It is

contended that after the death of Ms. Subratata Das, wife of the petitioner, he voluntarily handed over the custody of the child to the respondent No.5 being the child's maternal aunt and thus, he cannot be allowed to state that the child is in illegal custody. It is fervently contended that the appropriate remedy for the petitioner would be to approach the Competent Family Court in exercise of the jurisdiction under the Guardian and Wards Act so as to seek custody of the girl child.

Having given thoughtful consideration to the submissions advanced at Bar and upon going through the material available on record, we find that the petitioner has valid grounds to claim the custody of his minor child. A very relevant circumstance in the case is that the minor son of the petitioner being the brother of the girl child, would also be deprived of the opportunity to be in the companionship of his own sibling and thus, there will remain no possibility of bonding between the brother and sister. However, any immediate direction to handover the child's custody to the petitioner may prove traumatic to the child who has been under the care and protection of her maternal aunt Respondent No.5 for the last nearly three years. Thus, in order to maintain the equities and in order to give proper opportunity to the petitioner to win over the love and affection of his minor daughter, we propose to give visitation rights to the petitioner, his second wife and his son Master D. They shall be entitled to meet and interact with the minor child during the next six weeks.

Consequently, it is hereby directed that the petitioner and

his family members i.e. his wife and son will be allowed to meet and interact with the minor child at the house of the Respondent No.5 for two hours i.e. between 06:00 pm to 08:00 pm on every Wednesday and Saturday.

It shall be the responsibility of the respondent No.5 to ensure a conducive and tension free atmosphere when the petitioner and his wife and son are visiting the house of Respondent No.5 for meeting the child.

The petitioner and his family members shall be entitled to full and free access to the child.

The petitioner will also be at liberty to take the child with him to his house on each forthcoming Sunday from 10:00 am to 08:00 pm. The child shall be returned back and handed over to Respondent No.5 at her house by 08:00 pm positively.

The Respondent No.5 shall ensure that the child is not removed from Delhi during the next six weeks.

The petitioner shall transfer a sum of Rs.30,000/- in the bank account of Respondent No.5 so as to enable her to meet the expenses incidental to the visitation proceedings and for the day-to-day upkeep of the child.

The matter shall be listed for further directions on 22nd July, 2024.

(RASHMI DHYANI PANT)
COURT MASTER (SH)

(ANJU KAPOOR)
COURT MASTER (NSH)