

Order Sheet
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD

Cr. Misc. Application No. S- 145 of 2020

Mst. Farzana ----- Applicant

VERSUS

SSP District Hyderabad
& others ----- Respondents

Mr. Abdul Majeed Magsi, Advocate for Applicant
Mr. Irshad Ali Qazi, Advocate for Respondent No.3
Mr. Shahid Ahmed Shaikh, D.P.G.

Date of hearing : 24.08.2020

Date of decision : 28.08.2020

ORDER

ADNAN-UL-KARIM MEMON, J. - The petition is filed by the petitioner seeing issuance of writ of Habeas Corpus directing the respondents-Police officials, to produce her children namely Master Muntazir(aged 2 years), Master Muzakir (aged 5 years) and Baby Annesa (aged 7 years), who have allegedly been detained by their father, to enable her to take them to the home of her parents.

2. Learned counsel for the applicant states that the applicant filed an application under section 491 Cr.P.C. before learned 3rd Additional Sessions Judge, Hyderabad, for safe recovery of her above named children who were detained by their father without any reason; that now the children namely Master Muntazir, Master Muzakir and Baby Annesa have been produced by their father. Per learned counsel, learned trial Court disposed of the aforesaid application vide order dated 27.03.2020; thereafter she approached this Court on 21.04.2020.

3. I asked learned counsel that minors are no more in illegal custody; but in the proper custody of their natural guardian / father. He replied that the petitioner is real mother and natural guardian of above named minors therefore; she has every right to meet her children. I queried from him whether the petitioner has filed an application before the Guardian & Wards Court for custody of minors, he replied in negative. However, he has asserted that petitioner shall approach the Guardian and Wards Court having

jurisdiction for obtaining the custody of minors if an appropriate direction is given to learned trial court for swift disposal of the custody case.

4. I have noticed that since the very purpose of filling this petition is over on the premise that the aforesaid minors have been produced in court, therefore under the law a parent can claim visitation right of minor children. It is admitted fact that the minors are with their father. It is well settled now that proceedings under section 491, Cr.P.C. are not available for declaring any person as guardian or for determining all the questions relating to the custody of minor because the final decision of regular custody is to be decided in the proceedings initiated by the parties if any filed claiming custody of minor before the Guardian & Wards Court. It is well settled law that paramount consideration while deciding the question of custody of the minor is the welfare of minor which has to be seen in view the age, sex and religion. The welfare includes his moral, spiritual and material wellbeing. While considering what is the welfare of the minors the court shall have regard to the age, sex, religion of the minor, the character and capacity of the proposed guardian, his nearness of kin to the minor and the preference of the minor, if he or she is intelligent enough to make it.

5. Record reflects that minors namely Master Muntazir (aged 2 years), Master Muzakir (aged 5 years) and Baby Annesa (aged 7 years), would definitely require constant care on the premise that their mother has been living separately, though their matrimonial knot is still intact.

6. The controversy as raised by the parties needs to be looked into by learned Guardian and Wards Court, if approached and the decision thereof shall be made within a reasonable time, keeping in view the welfare of minors strictly in accordance with law.

7. In view of the above facts and circumstances of the case, this Cr. Miscellaneous Application is disposed of with direction to the applicant to approach the concerned Guardian and Wards Court for obtaining the custody of minors strictly in accordance with law within a period of one week from the date of receipt of this order.

JUDGE