

**Court No. - 65**

**Case :-** HABEAS CORPUS WRIT PETITION No. - 165 of 2022

**Petitioner :-** Km. Sanaya Sharma (Minor) And Another

**Respondent :-** State Of U.P. And 4 Others

**Counsel for Petitioner :-** Amit Kumar Verma, Gambhir Singh

**Counsel for Respondent :-** G.A, Gajendra Singh

**Hon'ble Rahul Chaturvedi, J.**

Heard Shri Gambhir Singh, learned counsel for the petitioners and Shri Gajendra Singh, learned counsel for respondent nos.4 and 5 as well as learned A.G.A. Perused the record.

Shri Gajendra Singh, learned counsel for the respondent nos.4 and 5 has filed a counter affidavit in the Court itself, is taken on record.

Pursuant to my earlier order dated 14.3.2022 Smt. Deepa Sharma and Smt. Rama Chauhan are present in the Court along with Km. Sanaya Sharma (minor daughter of 5 years) and Master Tanisk Sharma (minor son of 2½ years). Learned counsel for the parties have identified the corpus as well as their respective guardians.

This is a claim made by a mother Ms. Seema Sharma, who is a named accused of Case Crime No.499 of 2020.

Submission made by learned counsel for the petitioner is that the marriage of Ms. Seema Sharma was solemnized with the son of Ms. Deepa Sharma, namely, Kapil Sharma (now late) on 12.3.2016 and the couple were blessed with a daughter Sanaya and a son Tanisk. Unfortunately, Kapil Sharma committed suicide on 16.11.2020 and in this regard a F.I.R. was got registered by Akash Sharma against his wife Ms. Seema Sharma and 5 others. The investigation is still going on and no charge sheet has been submitted so far. Since after the said and unfortunate demise of Kapil Sharma, his wife Seema Sharma started living with her sister at Moradabad independently,

whereas, her small kids namely Sanaya and Tanisk remained in the company of her grand-mother Ms. Deepa Sharma and since then they are residing with her grand-mother. Ms. Seema Sharma, being mother and natural guardian of minor children is claiming their custody by means of instant habeas corpus petition.

Before reaching to any conclusion it would be apt and profitable to have a fleeting glance over the Section-6 of the Hindu Minority and Guardianship Act, 1956 :

"6. Natural guardians of a Hindu minor.—The natural guardian of a Hindu minor, in respect of the minor's person as well as in respect of the minor's property (excluding his or her undivided interest in joint family property), are—

***(a) in the case of a boy or an unmarried girl—the father, and after him, the mother: provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother;***

(b) in case of an illegitimate boy or an illegitimate unmarried girl—the mother, and after her, the father;

(c) in the case of a married girl—the husband: Provided that no person shall be entitled to act as the natural guardian of a minor under the provisions of this section—

(a) if he has ceased to be a Hindu, or

(b) if he has completely and finally renounced the world by becoming a hermit (vanaprastha) or an ascetic (yati or sanyasi).  
Explanation.—In this section, the expression "father" and "mother" do not include a step-father and a step-mother"

Section 6(a) of the said Act, therefore, preserves the right of the father to be the guardian of the property of the minor child but not the guardian of his person, whilst the child is less than five years old. It carves out the exception of interim custody, in distinction of guardianship, and then specifies that custody should be given to the mother so long as the child is below five years in age. The Act immediately provides that the custody of a minor who has not completed the age of 5 years shall ordinarily be with the mother. In the instant case where there is

unfortunate tussle between the mother, being natural guardian of the kids on one hand and the grandmother and paternal aunt (Bua) on the other hand, then this Court is of the considered opinion that the mother, being natural guardian of those kids is stand on much higher footing than that of grandmother or their parental aunt (Bua).

Children are not play things of their parents. Their welfare is of paramount importance and they will be well protected when the mother is with them. A child should never feel as if they need to earn a mother's love. This will leave a void in their heart all of their life. A mother's love must be given unconditionally to establish trust and a firm foundation of emotional intimacy in a child's life. If love is withheld, a child will look for it in a million other ways. Sometimes they will search throughout their lifetime, unless they come to some sort of peace with their past. The emotional foundation we give our children at home is foundational to their life. We cannot underestimate the value of the home and the power of a mother's love.

In the case at hand, the age of Sanaya is barely of five years, whereas Tanisk is aged about two and half years. Both of them are minor and not of an impressionable age, who requires and deserves unqualified love, affection and protection of their mother, who is their natural guardian. After weighing the rights of a mother and grand-mother towards the children, this Court finds more weight in the right of mother being a natural guardian than that of the grand-mother, therefore, custody of both children Km. Sanaya Sharma and Tanisk Sharma is handed over to their mother Ms. Seema Sharma in the Court itself, with a rider that, Ms Deepa Sharma (grand-mother), if she desires, would have a visitation right over his grand-children once in a week i.e. on every Saturday between 12.00 noon to 05.00 P.M. and the mother Ms Seema Sharma is bound to provide a

congenial atmosphere for the proposed meetings and would not create any hindrance or obstacle in the same.

With this observation the habeas corpus petition is disposed off.

It is made clear that in the event of anything serious untoward happens to these children, it is always open for the concerned parties to move a recall application, in the larger interest of the kids.

**Order Date :- 7.4.2022**

M. Kumar