

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 468 OF 2023

Subhakanta Dash

....

Petitioner

Mr. Siddheswar Baug, Advocate

-versus-

State of Odisha and others

....

Opp. Parties

Mr. Dillip Kumar Mishra,

Additional Government Advocate

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

12.01.2023

Order No.

01. 1. This matter is taken up through hybrid mode.
2. The Petitioner in this writ petition prays for the following relief:

“Under the aforesaid facts and circumstances, this Hon’ble Court may graciously be pleased to admit the Writ Application and issue Rule NISI to the opp. Parties directing them to show cause as to why a direction /Writ/Writs shall not be issued against them for not taking away the minor ailing daughter of the petitioner from his custody without due process of law and at present till the recovery of the child from mental disorders as per the medical advice of the doctors at AIIMS, Bhubaneswar and if the opp. Parties fail to show cause or if show insufficient cause then the said Rule be made absolute.

And pass such other order/Writ/Writs/directions which deems just and proper in the circumstance of the case;

And for this act of kindness, the petitioner shall as in duty bound ever pray.”

3. It is submitted by Mr. Baug, learned counsel for the Petitioner that due to the conduct and behavior of the Opposite Party No.3-Wife, the minor child of the Petitioner has lost mental

balance and is being treated at AIIMS, Bhubaneswar. As per Sections 6 and 8 of the Hindu Minority and Guardianship Act, 1956, the Petitioner being the father, is the natural guardian of the child. But the Opposite Party No.3 is making attempt to take away the custody of the child from him by adopting different means. She has also lodged an F.I.R. before the Sahadevkhunta Police Station, which has been registered as Sahadevkhunta P.S. Case No.417 dated 24th December, 2022. She has also lodged F.I.R. under Sections 498(A) I.P.C. and other allied offences against the present Petitioner. In that circumstance, unless the Court protects the child from being forcibly taken away from the custody of the Petitioner, both the Petitioner as well as the minor child will suffer irreparable loss.

4. In course of hearing, learned counsel for the Petitioner also admits that C.P. No.321 of 2020 is pending before learned Judge, Family Court, Balasore for dissolution of marriage by a decree of divorce.

5. Since the child is allegedly in the custody of the Petitioner and a proceeding is pending before learned Judge, Family Court, Balasore, this Court is not inclined to entertain a misconceived prayer made herein.

6. Accordingly, the writ petition stands dismissed.

Urgent certified copy of this order be granted on proper application.

(K.R. Mohapatra)
Judge

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