

Court No. - 70

WWW.LIVELAW.IN

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 50137 of 2021

Applicant :- Swale Raza

Opposite Party :- State of U.P.

Counsel for Applicant :- Bharat Singh

Counsel for Opposite Party :- G.A.

Hon'ble J.J. Munir,J.

A perusal of Annexure No.14, to the affidavit is shocking. A reading of the said document shows that during the course of investigation in NCR No.13 of 2021, under Section 498 IPC, Police Station Binawar, District Budaun, the Station House Officer, Police Station Binawar, on 25.05.2021, has handed over the custody of Smt. Shivani Gupta, in accordance with her wishes after intimating the higher Officials of the police to the applicant Swale Raza son of Iqbal and Iqbal son of Mehndi Hasan, residents of Village Hathra, Police Station Wazeerganj, District Budaun, with the instructions that whenever necessary, Shivani Gupta and her daughter Ishika be produced before the Police. It is a bit unpalatable as to how the custody of an adult could be given to another adult, and that too, by a Police Officer. An adult is always free to go wherever he or she may wish to, but the act of handing over the custody of Smt. Shivani Gupta, to Swale Raza, appears to be an act curtailing an adult's liberty to stay wherever he or she wishes to, unhindered by the confines of another's care or control. Here Smt. Shivani Gupta, has virtually been put under the care and control of Swale Raza.

The Senior Superintendent of Police, Budaun, shall file his

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personal affidavit by day after tomorrow indicating under what circumstances, the custody of an adult could be handed over to another adult by the Station House Officer, Binawar, District Budaun and how he has permitted proceedings of this kind to be taken by his subordinates. The Senior Superintendent of Police, Budaun shall also clarify that by what authority of law the Station House Officer passed a custody order, which a Court alone can pass.

Put up this matter **day-after-tomorrow** at **02:00 pm**. By that time, the affidavit of the Senior Superintendent of Police, Budaun, shall be placed on record, **without fail**.

Let this order be communicated to the Senior Superintendent of Police, Budaun by the Registrar (Compliance) **today**.

Order Date :- 7.2.2022
NSC