

  
**HIGH COURT OF JUDICATURE FOR RAJASTHAN**  
**BENCH AT JAIPUR**

S.B. Criminal Writ Petition No. 1220/2023

Forhanta W/o Late Ram Charan, aged about 29 Years, R/o  
Village Nagar, Tehsil Malpura, District Tonk (Raj.)

-----Petitioner

Versus

1. State of Rajasthan, through the Home Secretary,  
Secretariat, Jaipur.
2. The Superintendent of Police, Tonk (Raj.)
3. Bhanwar Lal S/o Dhanna, aged about 59 Years, R/o  
Manda, P.S. Diggi, Distt. Tonk (Raj.)
4. Gajanand S/o Banna Lal, aged about 58 Years, R/o Village  
Nagar, Police Station Pachewar, Tehsil Malpura, District  
Tonk (Raj.)

-----Respondents

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|-------------------|---|--------------------------------------------------------------------------------|
| For Petitioner(s) | : | Mr. Praveen Kumar Jain                                                         |
| For Respondent(s) | : | Mr. Narendra Singh Dhakar-PP<br>Ms. Madhvi Vyas for respondent Nos.<br>3 and 4 |

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**JUSTICE ANOOP KUMAR DHAND**

**Order**

**06/05/2026**

1. By way of filing the instant criminal writ petition, a challenge has been led to impugned order dated 26.04.2023, passed by the Court of Sub Divisional Magistrate, Malpura, Tonk (for short, "the SDM") in Case No. 15/2023, by which the application submitted by the petitioner under Section 97 Cr.P.C. for issuing search warrant for her minor son-Abhishek, has been rejected.
2. Learned counsel for the petitioner submits that the petitioner is the natural guardian-mother of the minor child who has been illegally detained by the respondent Nos. 3 and 4. Hence, an

application was submitted by the petitioner under Section 97 Cr.P.C. before the SDM for producing the minor child before the Court concerned, but the aforesaid application has been rejected by the SDM vide impugned order dated 26.04.2023 without assigning any justified reasons. Hence, under these circumstances, interference of this Court is warranted.

3. Per contra, learned counsel appearing on behalf of the respondent Nos. 3 and 4 opposes the arguments raised by counsel for the petitioner and submits that the age of the minor boy-Abhishek was around six years at the time when the application was submitted by the petitioner before the SDM. The learned Presiding Officer had a conversation with the minor boy -Abhishek and during the course of this conversation, the minor boy stated that he wanted to reside with his grandparents. Looking to the wish and welfare of the child, a finding has been recorded by the learned Presiding Officer that he has not been illegally detained by his grandparents and accordingly, the application submitted by the petitioner was rejected. Counsel further submits that under these circumstances, interference of this Court is not warranted and the present petition is liable to be rejected.

4. Heard and considered the submissions made at Bar and perused the material available on record.

5. Perusal of the impugned order dated 26.04.2023 reveals that when the application under Section 97 Cr.P.C. was submitted by the petitioner, the learned SDM summoned the child and had a conversation with him wherein the minor boy-Abhishek stated that he is happy in the company of his grandparents and wants to reside with them. Considering the overall facts and circumstances

of the case, the application submitted by the petitioner under Section 97 Cr.P.C. was rejected by the learned SDM by recording a finding that the instant case is not a case of illegal detention of the minor child-Abhishek.

6. This Court finds no error in the impugned order passed by the learned SDM, which requires any interference of this Court. Hence, the present petition is liable to be rejected.

7. Accordingly, the present criminal writ petition is dismissed. Stay application and all pending application(s), if any, also stand dismissed.

8. However, the petitioner would be at liberty to submit appropriate application seeking custody of the child before the competent Court of law. In case, such application is submitted by the petitioner, it is expected from the concerned Court to decide the said application, after providing opportunity of hearing to both sides strictly in accordance with law on the basis of the evidence led by both the sides and without being influenced by any of the observations made by the learned SDM and by this Court.

**(ANOOP KUMAR DHAND),J**