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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(CRL) 726/2017

SONI PASWAN

..... Petitioner

Through : Mr.Sajjid Malik, Adv. along with the
petitioner, her husband and the minor
daughter.

versus

STATE & ANR.

..... Respondents

Through : Mr.Tushar Sannu, Adv. for Mr.Rahul
Mehra, Standing Counsel (Crl.) for State.
Ms.Jhum Jhum Sarkar, Advocate.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE VINOD GOEL

ORDER

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16.03.2017

1. Present writ petition has been filed by the petitioner under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure seeking a writ in the nature of habeas corpus thereby directing respondent no.2, Child Welfare Committee-III, Sewa Kutir Complex, Kingsway Camp, Delhi, to grant custody of her 13 years' old daughter, who has been illegally detained at Kilkari Rainbow Home, Kashmiri Gate, Chabiganj, Delhi.
2. As per the writ petition, on 20.1.2017 daughter of the petitioner had gone for her tuition classes but she did not return home till 8.00 pm. On the same day, at around 8.30 pm, some Police officials came to the house of the petitioner and arrested the husband of the petitioner. Subsequently, the petitioner learnt that a false and frivolous FIR was registered against her husband under Section 376 of the Indian Penal Code and Section 6 of

POCSO Act at Police Station Mohinder Park, alleging that her husband had sexually assaulted her daughter. On 20.1.2017 the daughter of the petitioner was sent to Kilkari Rainbow Home, Kashmiri Gate, Chabiganj, Delhi.

3. The complaint of the petitioner is that she tried to meet her daughter at the Kilkari Rainbow Home on several occasions but she was not allowed by the officials of the Kilkari Rainbow Home to meet her daughter. It has further been averred in the petition that the daughter of the petitioner was crying at the gate of the Kilkari Rainbow Home but the petitioner being her mother was not allowed to meet her.
4. Notice in this petition was issued on 7.3.2017, when it was directed that daughter of the petitioner be produced in Court on the next date of hearing. Pursuant to the directions passed, the daughter of the petitioner was produced in Court on 9.3.2017. We had interacted with the daughter of the petitioner in the Chamber in the presence of Ms.Jhum Jhum Sarkar, Advocate, who was present in Court in another matter. Ms.Sarkar had also interacted with the minor daughter of the petitioner.
5. After interacting with the minor daughter of the petitioner and taking into consideration that the petitioner (mother) was staying along with four other children and her statement recorded under Section 164 of the Code of Criminal Procedure, we had handed over the custody of her daughter to the petitioner. We had also directed the husband of the petitioner and the petitioner to remain present in Court today.
6. Today, we have interacted with the petitioner and her husband. We may note that in the statement recorded under Section 164 of the Code of Criminal Procedure, the minor daughter had not supported the case of the prosecution.

7. The petitioner submits that she has five children (four daughters and one son); they all reside in one room. She further submits that the brother of her husband is also residing with them. She also submits that no such incident had ever taken place in the past except that on account of food not having been properly cooked, her husband had slapped their minor daughter. The husband of the petitioner, whom we had interacted separately, had stated on identical lines.
8. Learned counsel for the petitioner and the petitioner, who are present in Court, submit that as one of the conditions for grant of bail, the husband of the petitioner is not residing with the family. Counsel further submits that he will make an appropriate application before the concerned Court for variation of the said condition and quashing of FIR in view of the subsequent events and the statement recorded under Section 164 of the Code of Criminal Procedure.
9. In view of the fact that the custody of the minor daughter of the petitioner has already been handed over to the petitioner on the last date of hearing, counsel for the petitioner submits that no further orders are required to be passed in this petition and the same may be disposed of.
10. Accordingly, writ petition stands disposed of in view of above.

CRL.M.A. 3949/2017

11. Application stands disposed of in view of above.

G.S.SISTANI, J

VINOD GOEL, J

MARCH 16, 2017 msr /