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

+ W.P.(CRL) 676/2018

JASPREET SINGH RAGHU

..... Petitioner

Through: Mr. Jai Bansal with Mr. Sudhir
Kumar, Advocates

versus

STATE OF DELHI & ANR

..... Respondent

Through: Mr. Pankaj Mehta with Ms. Shweta
Soni, Mr. R.K. Mehta and Mr.
Parmod Kaliran, Advocates for R-2 &
R-3.
Mr. Chaitanya Gosain for Mr. Rahul
Mehra, Standing counsel GNCTD
with Insp. Dominica Purty , SI
Rajendra, Ps Rajouri Garden.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE I.S.MEHTA

ORDER

12.07.2018

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We have heard learned counsels for the petitioner and respondent No.2 and proceed to dispose of the matter.

The petitioner has preferred the present writ petition to seek a writ of habeas corpus directing respondent No.2 – his wife to produce the minor child-Harnoor Kaur Raghu. The petitioner seeks a direction that respondent

No.2 should produce the minor child before the Circuit Court for Montgomery County, Maryland, USA in compliance of the order dated 02.01.2018 passed by the said Court.

From the petition and the counter affidavit filed by respondent No.2, it is evident that the parties initially got married in India. Thereafter, they performed another marriage ceremony in Toronto, Canada and they lived in U.S.A as husband and wife, where the minor child was born on 30.03.2016. There are disputed questions of facts involved as to whether it was the petitioner who deserted respondent No.2 and the minor child from their home in Virginia, U.S.A, or whether it was respondent No.2 who deserted the petitioner and left for New York City.

The respondent No.2 after shifting to New York City filed a petition for support of the child before the Family Court of the State of New York, County of Queens to seek maintenance for minor child. Thereafter, respondent No.2 came to New Delhi along with the minor child. Respondent No.2 has remained in Delhi since then at her parental home.

The petitioner initiated custody proceedings before the Circuit Court for Montgomery County, Maryland, USA. On 02.01.2018, the said Circuit Court had passed an order directing respondent No.2 for the return of the minor child to Montgomery County, Maryland. Since the respondent No.2 has not complied with the said order, the petitioner has initiated the present proceedings.

In these proceedings, it is the welfare of the minor child which is required to be considered by this Court since this Court exercises its jurisdiction as *parens patriae*. We may refer to the judgment of the Supreme Court in ***Nithya Anand Raghavan V. State (NCT of Delhi)*** (2017) 8 SCC

454, as well as our judgment in *KG v. State of Delhi & Anr*, W.P.(CRL) 374/2017 decided on 16.11.2017, and *Dr. Navtej Singh v. State of NCT & Anr.*, W.P.(CRL) 725/2017 decided on 06.03.2018 in this regard.

The minor child is a female of about 2 years and 4 months of age. She has not yet started to attend the regular school. Counsel for respondent No.2 states that minor child is going to day care centre.

This Court, while dealing with a habeas corpus petition does not function as an executing Court in respect of the orders obtained by the petitioner from the foreign Court. There can hardly be any dispute that in respect of a female minor child who is only about 2 years and 4 months old, the mother of the child is the primary care giver. The second best option for a child that small, is that she remains in the custody of her mother since the first option of the minor child being in the custody of both the parents together is, unfortunately, not available in the present circumstances. The petitioner has not brought out any specific or particular aspect, which would convince us that the continued custody of the minor child with respondent No.2 would be detrimental to her welfare.

In these circumstances, we are not inclined to pass any orders as prayed for in the present petition. However, it is left open to the petitioner to avail of such remedy as may be available to him under the law. Observation made by us for the purpose of deciding this petition shall not prejudice either of the parties, in any such proceedings.

Counsel for the petitioner has submitted that the respondent is not permitting the petitioner to have any access to the child. He submits that his endeavour to interact with the child over Facebook has been blocked, since his account has been blocked. He submits that in case the petitioner visits

India, he should be permitted to meet the child.

Respondent No.2, who is present in Court, has submitted that she shall permit the petitioner to meet the child, provided the petitioner participates in the proceedings in the Indian Court as initiated by her.

We cannot accept this submission of respondent No.2. Respondent No.2 should realise that it is in the best interest of the minor child that she receives the love, affection and care of the petitioner as well. Unfortunately, our experience has shown that in such like situations, the child is used as a pawn by whichever parent has the custody of the child, without any consideration of the aspect as to what is in the best interest of the child. This cannot be permitted.

We therefore direct that till orders in this regard are passed by the competent Court having jurisdiction, respondent No.2 shall permit the minor child to interact with the petitioner via facebook/ skype and permit the petitioner to meet the minor child whenever he is in Delhi. The meetings shall take place in a public place after intimation to the SHO concerned. The place may be mutually decided by the parties. The petitioner shall deposit his passport before such meetings in the concerned police station, which he shall be entitled to receive back before the time for his leaving the country arrives. We hope and expect that the counsels shall be able to work out the modalities, amongst themselves, in this regard. The recent photographs of the minor child shall be sent by respondent No.2 within one day.

Interim order dated 21.03.2018 stands vacated.

The petition stands disposed of in the aforesaid terms.

VIPIN SANGHI, J

I.S.MEHTA, J

JULY 12, 2018

N. Khanna