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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(CRL) 2047/2018

ALAMGIR KHAN

..... Petitioner

Through: Ms Fizani Hussain, Advocate along
with Petitioner-in-person

versus

STATE & ORS

..... Respondent

Through: Mr Rahul Mehra, Standing Counsel
(Crl.) for the State with Mr Chaitanya
Gosain, Advocates with SI Pragati
and SI Ajay Kumar DIU/North
Ms Simpy Welfare Officer, Kilkari
Home

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE VINOD GOEL

ORDER

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24.07.2018

1. On 12th July, 2018, this Court has passed the following order:

“1. The minor girl, i.e. the daughter of the Petitioner, who is stated to be thirteen years old, and on whose statement FIR No. 274/2018 was registered at Police Station (‘PS’) Burari under Sections 376 IRC & Section 4 POCSO Act, has been produced before the Court from the Kilkari Home where she is presently under the orders of the Child Welfare Committee (CWC) - III.

2. Both of us interacted with her in the chamber in the presence of Mr. Rahul Mehra, learned Standing counsel for the State.

3. The girl has conveyed to us that she wishes to stay in Kilkari home

and pursue her studies. She is clear that she does not want to return to her father, who is present in the Court. However, she conveyed to us that she wishes to talk to her father in private at Kilkari home.

4. Counsel for the Petitioner has also submitted that the father wishes to meet his daughter in private. It is accordingly directed that the father will go to the Kilkari Home on 13th July, 2018 at 11 am alone, not accompanied by anyone else, and meet his daughter.

5. This order is being passed in presence of Dr. K.C.Virmani, Chairperson, CWC-III and two officials from Kilkari home. Therefore, there should be no difficulty in arranging a meeting between the Petitioner and his daughter at the Kilkari home for a sufficient period of time in a peaceful atmosphere.

6. Mr. Rahul Mehra informs the Court that two statements of the girl have been recorded under Section 164 Cr.PC. The first statement was recorded on 12th June, 2018 and the second on 10th July, 2018. He states that the police are still investigating the case from all angles and a clearer picture might emerge after the report of the DNA is obtained from the FSL.

7. The Court directs that the Director, FSL Rohini will on a priority basis send the DNA report to the IO at the earliest and in any event not later than one week from today.

8. List on 24th July, 2018 at 2.15 pm. The girl will again be produced from the Kilkari Home on the next date.

9. The Petitioner will also remain present in Court on the next date. The proceedings before the CWC fixed for 17th July, 2018 be deferred till beyond the next hearing of the present case.

10. A copy of this order be given dasti under the signatures of the Court Master. A copy also be delivered forthwith by a Special Messenger to the Director, FSL, Rohini and the Secretary, DSLSA.”

2. Subsequently on 20th July, 2018, on an application filed by the Petitioner,

he was permitted to meet his minor daughter at the Kilkari Children Home on 21st July, 2018 exclusively without the presence of the staff who could be within sight but out of hearing range.

3. Mr Rahul Mehra, learned Standing Counsel for the State informs the Court that some more time is required to obtain the report of the FSL. He further informs the Court that after the Petitioner met his daughter at the Kilkari Children Home, the minor girl is again changing her version and reverting to her first version. This clearly shows that she is under a tremendous pressure from both the Petitioner and his second wife and her family members. Mr Mehra underscores the need to protect the minor girl till such time some headway is made in the investigation, which is at a very critical stage. While Mr Mehra does not dispute that the girl has expressed her desire to return to her father, he is apprehensive that the criminal case may be frustrated if she goes back now, given the above developments.

4. Ms. Fizani Hussain, learned counsel appearing for the Petitioner, insists that the minor girl should be permitted to return to his father. She assures that the father will take good care of her.

5. The Court repeatedly enquired of Ms Hussain whether the Petitioner was fair to this Court by suppressing the material facts in his petition that the minor girl was born to him from his first wife; that he had remarried and the minor girl was, at the relevant time, living with the relatives of his second wife. He also suppressed the material fact that ‘mausis’ that he speaks about in his petition are in fact the step-aunts of the minor girl. This fact was brought to the notice of Ms Hussain even on the previous date, despite

which the Court finds that there is no attempt by the Petitioner to explain this conduct or express remorse for suppressing material facts.

6. Ms Hussain further states that according to the Petitioner what was stated in the FIR was the correct version of the facts as they transpired. He maintains that his daughter was subjected to violent sexual assault. This is notwithstanding that in the second statement made by the minor girl under Section 164 Cr PC she has contradicted what is stated in the FIR. After the Court permitted the Petitioner to visit his daughter at the Kilkari Children Home, she has once again sought to change her version. This flip flop points to the difficult situation in which the minor girl has been placed.

7. The Court is concerned that the criminal justice process should not be frustrated. The allegations in the FIR being serious, it is essential that the minor girl is not subjected to further trauma and be pressurised to change her version every now and then. The investigation has reached a critical stage. Till the police are able to have a clear picture of what transpired, it would not be advisable to remove the minor girl from the Kilkari Children Home and restore her to her father. It is a difficult decision to keep a minor child away from her father, but at the same time, it is a matter of concern that her father fails to acknowledge the grave danger in which he has placed his own child and subjected her to unnecessary trauma. The Court is not obliged to continue indulging the Petitioner who is unmindful of the best interests of his child and of his responsibility to the criminal justice process.

8. The Court is of the view that the custody of the minor girl at the Kilkari

Children Home, at the present stage, cannot be said to be illegal for which any writ of *habeas corpus* requires to be issued.

9. The Court is stopping short of imposing exemplary costs given the economic status of the Petitioner and the possibility of his not having access to legal advice that could help him avoid the present situation in which he now finds himself.

10. The petition is accordingly dismissed. The police will proceed in accordance with law and carry the criminal case to its logical end.

11. *Dasti* to the parties under the signatures of the Court Master.

S.MURALIDHAR, J.

VINOD GOEL, J.

JULY 24, 2018

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