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

+ W.P.(CRL) 3239/2019

SURENDER SAH

..... Petitioner

Through: Ms.Malika Parmar, Adv

versus

STATE & ANR

..... Respondents

Through: Mr.Rahul Mehra, SC (Crl.) with
Mr.Chaitanya Gosain and
Mr.Divyank Tyagi, Advs for State
Mr.Jagjit Singh, Sr.SC for Railway
with Mr.Preet Singh and Mr.Vipin
Choudhary, Advs
Mr.Rajesh Deo, DCP/Legal Cell,
Mr.Dinesh Tyagi, ACP/Court Cell,
Mr.Ajay Gosain, Insp./Court Cell, SI
Vinod Kumar, AHTU/Shahdara and
W/SI Nidhi Yadav, PS Anand Vihar

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

ORDER

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03.03.2020

Present writ of habeas corpus had been preferred by the petitioner – father seeking production of his daughter Ms.Naina Kumari @ Moushmi Kumari allegedly aged about 15 years who had been missing 14th October, 2019.

On the last date of hearing (i.e., 19th February, 2020), the State had produced the missing girl Ms. Naina Kumari @ Moushmi Kumari after her

statement had been recorded by the ACMM, Karkardooma Court under Section 164 Cr.P.C.

On the last date of hearing, Ms. Naina Kumari @ Moushmi Kumari had also emphasised that she had gone with Neeraj out of her own free will. She had further stated that she was around 18 years old and would not like to reside with her parents.

However, the mother of Ms. Naina Kumari @ Moushmi Kumari had asserted that Ms. Naina Kumari @ Moushmi Kumari was 16 years old i.e. a minor.

Since during our interaction, Ms. Naina Kumari @ Moushmi Kumari looked very mature and had a mind of her own, this Court had a doubt with regard to her mother's contention that she was 16 years old.

Consequently, this court had directed Medical Superintendent, LNJP Hospital to conduct an ossification test.

The Medical Superintendent, LNJP Hospital vide its report dated 26th February, 2020 has opined that based on physical, dental and radiological findings, the age of the girl is between 16 and 17 years.

Keeping in view the Supreme Court judgment in ***Darga Ram @ Gunga vs State Of Rajasthan, 2015 (2) SCC 775***, this Court is of the view that the aforesaid age determination would be subject to variation of 'plus' 'minus' of 2 years, meaning thereby that the above ossification test would put Ms. Naina Kumari @ Moushmi Kumari between the range of 18 to 19 years old.

At this stage, Ms. Naina Kumari @ Moushmi Kumari reiterates that she would like to stay with Neeraj S/o Ram Pakar aged about 20 years with whom she had left her home voluntarily.

Ms. Naina Kumari @ Moushmi Kumari also alleges that today in Court, her mother has sprayed some powder on her face and she is having a burning sensation. Though the said fact is denied by the mother, yet the police officials accompanying Ms. Naina Kumari / Moushmi Kumari have confirmed the said allegation.

Keeping in view the aforesaid, this Court is of the view that no point would be served in returning Ms. Naina Kumari @ Moushmi Kumari to her parents.

Giving the benefit of doubt with regard to the age, Ms. Naina Kumari @ Moushmi Kumari is held to be a major. As she wishes to reside with Mr Neeraj, she is permitted to do so.

With the aforesaid directions, the present writ petition stands disposed of.

Let a copy of this order be served on the Sanskar Ashram, Dilshad Garden, Delhi forthwith.

At this stage, Mr. Rahul Mehra, Senior Standing Counsel for Delhi Police and Mr. Jagjit Singh, Senior Standing Counsel for Railways pray for and are permitted to file detailed compliance reports in accordance with the directions contained in the order dated 19th February, 2020 within six weeks.

List on 24th April, 2020 at 3.00 pm. Matter be treated as part heard.

Order *dasti* under the signature of the Court Master.

MANMOHAN, J

SANGITA DHINGRA SEHGAL, J

MARCH 03, 2020/SU/