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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE**

CRIMINAL WRIT PETITION NO.376 OF 2021

XYZ

... Petitioner

Vs.

The Chairman
Child Welfare Committee & another

... Respondents

Mr.Pankaj D. Purway for the Petitioner

Mr.J.P. Yagnik, APP, for Respondent – State

**CORAM: S.S. SHINDE &
MANISH PITALE, JJ.**

DATED: FEBRUARY 4, 2021

ORAL JUDGMENT (PER S.S. SHINDE, J.):

1. Rule. Rule made returnable forthwith with the consent of the parties and heard finally.

2. At the outset, it is required to be noted that since the allegations against the accused are in respect of the alleged sexual assault, the identity of the petitioner, who is the first informant, and the victim girl needs to be concealed and accordingly, the victim girl is referred to as 'victim girl' and the

petitioner i.e., first informant, is referred to as “XYZ”. The Registry is directed to maintain the record accordingly.

3. This petition is filed with the following substantive prayer:

“(a) This Hon’ble court may kindly be pleased to pass the writ of Mandamus, any other writ in nature of Mandamus or any other writ, thereby directing the CWC i.e., Child Welfare Committee to hand over the custody of the Victim Girl to the petitioner with immediate effect in the interest of justice;”

4. The victim girl was produced before us (Coram:S.S. Shinde & Manish Pitale, JJ.) in Chambers on 11th January, 2021 by Mrs.Madhuri Ramekar, Probation Officer of Child Welfare Committee, when the following order was passed:

“1. Heard the learned counsel for the parties. The child is produced before us. We have interacted with child. However, assigning reasons would not be in the interest of child. We feel it appropriate to direct the Child Welfare Committee to consider the prayer of the Petitioners afresh, ignoring the reasons assigned its earlier orders dated 27/08/2020 and 28/09/2020. It is informed by the Probation Officer who is present that the Child Welfare Committee will have meeting today at 3.00 pm. We direct the Child Welfare Committee to re-consider its earlier decision. Let the Child Welfare Committee submit its report to this Court through Probation Officer on or before 13/01/2021. Needless to observe that the Child Welfare Committee shall interact with the child. Stand over to 13/01/2021 at 2.15 pm, in chamber.
2. ...”

5. Thereafter, again on 13th January, 2021, the matter was heard in Chambers, when this Court (Coram:S.S. Shinde & Manish Pitale, JJ.) had passed the following order:

“1. Pursuant to the order dated 11/01/2021 passed by this Court, the Child Welfare Committee has submitted a report through Probation Officer in a sealed envelope. The said envelope is opened and the report of the Child Welfare Committee is taken on record. The Registry to furnish the copy of the said report to the learned counsel appearing for the Petitioner and the learned APP appearing for the Respondent/State on or before 14/01/2021. List the Petition on 18/01/2021.

6. The report filed by the Child Welfare Committee was taken on record, copy of which was given by the Registry to the petitioner and the learned APP appearing for the State. The gist of the said report is as under:

“As per the directions of the Hon. High Court, Mumbai in Criminal Writ Petition Stamp no.7483 of 2020, this Child Welfare Committee interacted with the girl child Vedika G. Jogadia today at 5:30 pm in our counselling room.

The Girl child hereafter referred to as G/C stated us that She is 7 years old and she studies in std II in Golden Jubilee high School for girls, at Mazgaon. She also stated of having on younger brother aged 2 years namely, XXXXXX

The G/C stated that her father did bad touch to her when she was at her home and her mother was hospitalised due to severe fight with her husband and the whole house was shatter in mess with all broken things.

During interaction, the G/C also stated that her paternal aunt instructed the G/C not to reveal father's name in this sexual abuse and added that she is missing her mother and wants to join her.

This CWC vide Order dated 27.08.2020, rejected the custody application of the mother of the G/c and directed NGO Majlis to submit SIR report.

Based on SIR report, this CWC on 28.09.2020 declared mother as an unfit parent as per grounds stated therein and thereafter the G/C came to be placed in Bal Kalyan Nagari. Annexing herewith the copy of order dtd. 27.08.2020 and 28.09.2020 which is marked as Exhibit A and Exhibit B respectively.

Upon request of the mother of the G/C wherein she stated before us that now after this incident, she has started staying separately with her younger son which is her in-laws house but exclusively using by her only. She also stated that whenever she goes for job, her mother or her sister support her by staying there and taking care of her child currently."

7. The learned Counsel for the petitioner has tendered across the bar a certificate issued by Dr.Rohann Bokdawala dated 19th January, 2021; the same is taken on record. The contents of the said report reads thus:

"TO WHOMSOEVER IT MAY CONCERN

This is to certify that XYZ, 34 years/female r/o. Mumbai, has been under my treatment from 17th June 2020 till date. She is a case of BIPOLAR DISORDER type I.

She is currently well maintained on therapy and medication. At present she is Asymptomatic and in Remission."

8. It appears that now the petitioner is in a position to look after the victim girl. Apart from it, the Child Welfare Committee has also recorded the fact that the petitioner is now separately residing from her husband. The learned Counsel appearing for the petitioner invites the attention of this Court that the petitioner's sister and mother are staying with the petitioner to look after the victim girl. In that view of the matter, in our opinion, direction can be given to respondent No.1 to pass appropriate order on or before 8th February, 2021 to hand over the victim girl child to the petitioner. Accordingly, we direct Respondent No.1 to issue necessary direction of handing over the victim girl child to the petitioner on or before 8th February, 2021.

9. With the above observation, the Writ Petition stands disposed of. Rule made absolute accordingly.

10. List the matter under the caption - **'for compliance'** on **12th February, 2021.**

11. All concerned to act on an authenticated copy of this order.

(MANISH PITALE, J.)

(S.S. SHINDE, J.)