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

% ***Date of decision: 13.12.2023***

+ **W.P.(CRL) 3651/2023**

ANJALI JAIN

..... Petitioner

Through: Mr. Amit Chadha, Mr. Atin Chadha,
Ms. Smriti Shrivastava and Ms.
Aeshana Singh, Advocates with
petitioner in person

versus

THE STATE AND ORS

.... Respondents

Through: Mr. Sanjay Lao, Standing Counsel
with Mr. Abhimanyu Arya, Mr.
Shivesh Kaushik and Ms. Priyam
Aggarwal, Advs. alongwith SHO
Inspector Rajiv Vats, W/SI Kusum
Lata P.S. Prashant Vihar.
Mr. Sanjeev and Mr. Sanjay Sharma,
Advs. for R-4.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T (oral)

CRL.M.A.33944/2023 (for exemption)

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

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3. The Court Master of this Court has pointed out that the present



petition was earlier fixed for 11.12.2023, however, in the order-sheet the date of order was wrongly written as 08.12.2023 which now stands corrected.

4. The present petition has been filed under Article 226 of the Constitution of India read with Section 482 Cr.P.C. seeking issuance of a writ, order or direction in the nature of Habeas Corpus to the respondents to produce baby 'X' of the petitioner before this Court.

5. Petitioner is further seeking directions to the respondents Nos. 1, 2 & 3 to register an FIR against respondent No.4 and all other respondents/ persons found to be involved in kidnapping of the minor child and to take necessary legal action against them.

6. The facts giving rise to the present petition are that the petitioner married to respondent No.4 out of love and affection on 10.02.2019, however, due to marital discord, the parties are living separately. Respondent No.4/father sent a message on Whatsapp to the petitioner that he is missing his daughter and showed his willingness to meet her. Thereafter, petitioner in the afternoon of 09.12.2023 had taken her daughter to the Metro Walk Mall in Adventure Island, Rohini to meet respondent No.4-father. When petitioner went to a nearby stall to get water for the child, the respondent No.4 kidnapped the child and ran away from the spot in his black coloured Mahindra Scorpio car driven by respondent Nos.12 & 13. The petitioner went to Police Station Prashant Vihar, Delhi to lodge a complaint against respondent No.4 for alleged incident, however, the police officials turned her away by saying that it was a family matter and police cannot do anything. On the intervention of District DCP, a complaint dated 09.12.2023 was registered at Police Station Prashant Vihar vide DD No.90-



A. The petitioner is aggrieved that despite lodging the complaint whereabouts of her minor daughter are still not known. The petitioner has submitted that the child of the parties is at breast feeding as the child is 15 months old and the child has been kidnapped by the respondent No.4. The petitioner has expressed her apprehension that respondent No.4 may subject the 15 months' old infant daughter to substance abuse as the respondent No.4 is a drug addict.

7. Notice issued.

8. Mr. Sanjay Lao, learned Standing Counsel accepts notice on behalf of respondent Nos.1 to 3 and Mr. Sanjeev, Advocate accepts notice on behalf of respondent No.4.

9. Learned Standing Counsel, on instructions of WSI Kusum Lata, submits that custody of the minor child has already been given to the petitioner. Pertinently, the Hon'ble Supreme Court in the case of ***Tejaswini Gaud v. Shekhar Jagdish Prasad Tewari : (2019) 7 SCC 42*** has held that Habeas corpus proceedings is not to justify or examine the legality of the custody. The Supreme Court has further held that habeas corpus proceedings is a medium through which the custody of the child is addressed to the discretion of the Court and in child custody matters, the power of the High Court in granting the writ is qualified only in cases where the detention of a minor by a person who is not entitled to his legal custody.

10. Relevantly, the Court while deciding the child custody cases is not bound by the mere legal right of the parent or guardian but the welfare of the minor child is the paramount consideration. In the present case, indisputably there is a marital dispute between the petitioner-wife and the respondent No.4-husband. The limited relief sought in the present petition is with regard



to the production of the child and since the custody of the minor child has already been handed over to the petitioner, nothing is left for consideration by this Court. Custody of the child has already been granted to petitioner-mother without prejudice to the rights and contentions of the parties. The present petition is accordingly disposed of while giving liberty to the parties to have appropriate recourse.

11. It is made clear that no observation has been made with regard to custody of the minor child and the observations made herein shall not influence the Courts below while adjudicating the case on merits.

(SURESH KUMAR KAIT)
JUDGE

(SHALINDER KAUR)
JUDGE

DECEMBER 13, 2023/rk