

03.07.2024
Sl. No.6(DL)
srm

W.P.A. No. 12471 of 2024
Asmita Poddar @ Payel Poddar
Versus
The State of West Bengal & Ors.

Mr. Mayukh Mukherjee,
Mr. Sayantan Sinha,
Ms. Madhumita Basak,
Ms. Sarmistha Basak

...for the Petitioner.

Mr. Amitesh Banerjee,
Mr. Debangshu Dinda

...for the State-respondents.

1. It appears that the interim order passed by a learned coordinate Bench has been complied with to the extent that DNA samples have been obtained.
2. With regard to the prayer for handing over the child, this Court is not in a position to pass such direction. The child cannot be returned to the mother at this stage in the facts and circumstances which have come to light.
3. Learned Senior Standing Counsel, Government of West Bengal submits that a new born baby was found in the drain with serious injury. The child had been cut at various places. The police found the child and took the child to the hospital. Thereafter, the child was handed over to the Child Welfare Committee at Kolkata. The police authorities, upon

making a preliminary enquiry have registered an FIR and the mother is an accused. It is denied that the father had taken the child to the hospital.

4. The complicity of the mother in the offence alleged, the mental stability of the mother and whether any other person was involved in the act of causing bodily harm and injury to the baby, are required to be ascertained first. The investigation by the police authorities will reveal the truth. The child is safe with the Child Welfare Committee and it is informed that the child is recovering. Under such circumstances, the writ court should not interfere. It is further stated that the mother's hospital discharge papers have been tampered with, and the police authorities are not sure if they are at all genuine.
5. The law provides for a mechanism as to how the parents can approach the Child Welfare Committee (CWC) for return of the child and the petitioner will be at liberty to do so strictly in accordance with law, and at the appropriate stage, after the DNA results are available.
6. It is informed that the CWC has already been approached. The CWC will decide the prayer for return of child in accordance with law, at the appropriate stage.

7. The DNA test and return of the child, upon the child's parentage being confirmed, were directed at the interim stage when these facts, which have been brought into light before this Court, were not available. Proof of maternity alone in this case, would not entitle the mother to take back the child, as the version of the police reveal otherwise. The police investigation must proceed strictly in accordance with law and should be completed expeditiously.
8. The writ petition is, thus, disposed of.
9. There shall be no order as to costs.
10. Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)