

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.3175 OF 2024

Annapurna w/o Harikrishna .. Petitioner
Mohanty

Versus

The State of Maharashtra & Anr. .. Respondents

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Ms.Devki Sahu with Ms.Jyoti Sahu, Ms.Gauri Joglekar,
Mr.Praful Patil, Ms.Shama Sheikh, Mr.Vipan Kumar and
Mr.Rohit Patil for the Petitioner.

Ms.M.M.Deshmukh, A.P.P. for the State/Respondent.

Ms.Manisha Zhende, Member, Child Welfare Committee,
Thane, present.

Petitioner, Annapurna H. Mohanty, present in person.

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CORAM: BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.
DATED : 07th AUGUST, 2024

ORAL JUDGMENT (Per Bharati Dangre, J.):-

1. Rule. Rule made returnable forthwith. By consent of the parties, heard finally.

2. Smt.Annapurna Harikrishna Mohanty, the grandmother of the minor girl 'S', a POCSO victim, has approached this

Court, seeking issuance of writ of habeas corpus for producing her before the Court and pursuant thereto, for handing over her custody to the Petitioner, taking into consideration her well being, safety and continuation of her studies.

3. The aforesaid Writ Petition is filed in the background that the minor girl is in custody of Child Welfare Committee, Thane (for short, **“CWC Thane”**) i.e. Respondent No.2 since 14/06/2024. She was taken in custody by Respondent No.2, in the peculiar facts, which are narrated in the Petition.

The Petition reveal that the minor girl ‘S’ was residing with the Petitioner at Orissa since her birth until she turned seven and, thereafter, she moved to her parents house at Bangalore, where she answered her 10th standard examination. The Petitioner was attached to child ‘S’, since she had nurtured her upto seven years of age, as her parents were unable to care for her on account of the unemployment of the father and, therefore, she used to meet and accompany ‘S’ during all her vacations, holidays etc. While she was in 10th standard, the girl ‘S’ requested the Petitioner to be with her while she was preparing for her Board Examination and that is how somewhere in the month of September 2023, the Petitioner visited her in Bangalore.

On a particular day, when the Petitioner got up and went to wake up her for undertaking the studies, she found her father inappropriately engaged with her under the same blanket and when she noticed this inappropriate conduct, she confronted ‘S’ with this approach of her father and she started weeping. On gaining her confidence, she disclosed to her

grandmother that her father was sexually abusing her since last two years, by fondling her inappropriately.

When the Petitioner confronted her own daughter, she attempted to protect her husband, as she was apprehensive that if she oppose him, she would be thrown out of the house.

Thereafter, the Petitioner discussed this issue with her two other daughters and immediately after her examination was over, even the father was confronted in this regard, who flatly denied, the accusations of his daughter.

4. The aforesaid event and reluctance of the child to stay with her own parents, constrained the Petitioner to move the child to Mumbai with the help of her youngest son-in-law, who was staying in Mumbai and, thereafter, she continued to stay in Mumbai.

5. Upon arrest of the second daughter of the Petitioner from Orissa-Bhadrak District on 06/06/2024 in connection of a complaint filed by her own daughter i.e. mother of 'S', Bangalore police asked to get the girl from Mumbai to Bangalore.

The minor girl was, however, not ready to go to Bangalore, fearing further sexual abuse by her father and, therefore, the Petitioner accompanied the minor to Manpada Police Station for filing the complaint against Respondent Nos.6 and 7 under the POCSO Act. At this time, when she reported to Manpada Police Station, it was revealed to the Petitioner that a complaint was filed by her elder daughter

against her other sisters and herself under Section 363 of IPC and that is how, she came to be apprehended.

6. This resulted in registration of C.R.No.771 of 2024, being filed by 'S' against her father resident of Arkavathi, Bangalore, Karnataka, which invoked Section 354 of IPC and Sections 8, 10 and 12 of POCSO Act and the period of occurrence of the events was given from 01/06/2020 to 13/04/2024.

Upon registration of the FIR, the custody of the girl was handed over to CWC, Thane and the girl continued to be in its custody as 'a child in need of care and protection'.

When the Petitioner gained knowledge that the custody of the child is being transferred to CWC, Bangalore, she approached this Court and filed the present Writ Petition, seeking her production and also transferring her custody in her favour, considering her welfare and future prospects.

7. Responding to the Writ Petition, we have received two affidavits, first from the District Child Protection Officer, who has categorically deposed that as per order dated 15/06/2024 passed by the CWC Thane, Social Investigation Report of the residence of the victim girl in Bangalore and the house of the aunt of the girl in Dombivali has been prepared through the District Child Protection Unit and submitted to Child Welfare Committee, Thane on 27/06/2024 as per Juvenile Justice Rules, 2018.

Another affidavit is filed by the Member of CWC Thane, who has disclosed that the mother of the child has shared the

letter dated 25/07/2024 to CWC, Thane narrating the disputes and harassment by child's grandmother and the maternal aunt and pleading that it is not safe to send the child to her maternal aunt.

In the affidavit, the Member has categorically narrated that in furtherance of the order passed on 21/06/2024 to transfer the child as per the provisions of Sections 81 and 95 of the Juvenile Justice (Care and Protection of Children Model) Rules, 2016 and also the order to the effect that the Karnataka police, who visited CWC Thane, will escort the child to Karnataka, 'S' expressed that her father has sexually abused her and inspite of informing the said fact to her own mother, grandmother and maternal aunt, no action was taken against her father, and she refused to accompany Karnataka police and visit her parents home.

The Member has further deposed that since the child was not psychologically ready to go back to Karnataka with Avalahalli police, the transfer order was cancelled by CWC and the child continued to stay at Government Girls Home at Ulhasnagar.

8. We are also informed that Avalahalli Police Station, Bangalore vide their e-mail communication, have informed that C.R.No.259 of 2024, which was registered at Manpada Police Station, is now transferred to Karnataka and a request was made to CWC Thane to produce the girl before the Investigating Officer of Avalahalli Police Station for investigation.

9. On the earlier date, we had directed the CWC to produce child 'S' before us in chamber and we have interacted with her as well as the Petitioner. We had also interacted with the Counsellor, who is offering counselling session to the victim girl.

The girl, in no uncertain words, expressed her apprehension as to why she is not desirous of going back to her parents, as despite having complained to her mother about the sexual abuse, which she underwent, her mother did not pay heed and only after witnessing the incident by the grandmother, who was in close proximity to her, her father was confronted and the girl was brought by the grandmother, who continued to stay with her maternal aunt in Dombivali, Mumbai. However, 'S' expressed that she would feel herself safe in the company of grandmother i.e. Petitioner and when we interviewed the grandmother, she expressed to us that she will be taking her to Orissa and continue her education, by admitting her in Junior College.

The child is cared and nurtured by the grandmother till she attained the age of seven years and we instantly found a bond of love and affection between the two.

The interest of the child 'S', therefore, lies in handing over custody to the Petitioner, who is her own maternal grandmother and the child feel physically and psychologically safe with her and is confident that her grandmother will take care of her.

We have also attempted to find out, whether the Petitioner has financial resources to take care of the child and

we are satisfied that she can cater her needs, as she is in receipt of pension, as well as she has house in Orissa, the portion of which is rented out and which yields income to her.

Instead of continuing the custody of the girl in Mumbai with her maternal aunt, since the Petitioner has expressed to take 'S' to Orissa and which she has undertaken to do before the end of this month i.e. August 2024, so that the girl can be admitted in the school at Orissa and her education can be completed, we deem it appropriate to hand over the custody of the girl 'S' to the Petitioner.

10. However, at the same time, we intend that the child shall be under the supervision of the Child Welfare Committee and, therefore, we request CWC Thane i.e. Respondent No.2 to establish contact with CWC Orissa or any other agency, which is entrusted with the task of caring for children in need of care and protection in the State and in co-ordination with such an agency, the child shall be supervised for a period of one year from the date of passing of the order.

We would expect the reports from the relevant committee in Orissa to be forwarded to CWC Thane to be put before this Court on quarterly basis.

We have directed supervision by the CWC for the very apparent reason that the girl, who was in state of trauma, on receiving counselling has garnered confidence and, therefore, we expect the counselling to be continued in Orissa and if not possible physically, through video conferencing by CWC Thane.

11. As far as the investigation of C.R. registered at the instance of 'S' against her father is concerned, it is open for the investigating agency to visit her in Orissa and carry out the investigation and except for the exceptional circumstances, when for any limited purpose she is required to be taken on the spot, she shall be taken to Karnataka, accompanied by the police officers attached to local police station at Orissa, for the shortest possible tenure.

12. We, therefore, deem it appropriate to direct the custody of minor 'S' to be handed over to the Petitioner, who shall furnish her address and contact number to CWC Thane, which shall also be transmitted to Orissa CWC, as expressed above.

13. The Writ Petition is made absolute in the aforesaid terms, by directing that Respondent No.2 shall hand over the custody of 'S' to her grandmother within 48 hours from passing of this order, by taking into consideration her welfare and future.

14. We direct the Petition to be listed, under caption 'For Directions', for submission of CWC Report, on 18/11/2024.

(MANJUSHA DESHPANDE,J.) (BHARATI DANGRE, J.)