

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.3175 OF 2024
WITH
INTERIM APPLICATION (STAMP) NO. 23597 OF 2024
IN
WRIT PETITION NO. 3175 OF 2024

Annapurna w/o Harikrishna
Mohanty (On behalf of minor - Sopna
Behera) .. Petitioner/Applicant

Versus

The State of Maharashtra and Ors. .. Respondents

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Ms Devki Sahu, for the Petitioner/Applicant.

Ms M.M. Deshmukh, APP, for the Respondent – State.

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CORAM: BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.
DATED : 18th NOVEMBER, 2024

P.C:-

1. On 07.08.2024 we disposed off the Criminal Writ Petition filed by one Smt. Annapurna Harikrishna Mohanty, the grandmother of the minor girl, a POCSO victim, who sought issuance of writ of habeas corpus for producing the minor before the Court and for handing over her custody to the petitioner, taking into consideration her well being, safety and continuation for her studies.

2. When the Writ Petition was filed, the minor girl was in the custody of Child Welfare Committee, Thane (for short, “CWC Thane”) i.e. Respondent No. 2. Though in the past she was residing with the petitioner in Orissa, but was moved by

her parents to Bengaluru, when she turned seven.

The petitioner - grandmother prayed before us that she was attached to the girl and since she was subjected to sexual abuse by her own father, an offence being registered and she was taken in custody by the CWC, when the grandmother accompanied the minor girl, she approached Manpada Police Station for filing the complaint, which resulted in registration of C.R.No. 771 of 2024, invoking Section 354 of the IPC and Sections 8, 10 and 12 of the POCSO Act.

3. The CWC filed its affidavit responding to the Petition, and the child was also produced before us as per our direction in Chamber, and we interacted with her as well as the petitioner.

The child clearly expressed to us that she is not desirous of accompanying her parents but she want to stay with her grandmother, and noticing that the child was cared and nurtured by the grandmother, and looking at her interest when we were assured by the petitioner that she would take physical and psychological care of the girl, and also taking care of the fact that the grandmother had enough financial resources to take care of the girl, we handed over the custody of the girl to the petitioner and permitted to be admitted in the school in Orissa, with an intention that her education can be completed.

We directed that the CWC, Thane shall monitor the progress of the child for a period of one year in co-ordination with CWC, Orissa or any other agency, which is entrusted with the task of caring for children in need of care and protection in

State of Orissa.

4. An Interim Application is taken out by the petitioner on 12.11.2024, where she has made a grievance that on 03.10.2024, early morning at 07:30 a.m. respondent Nos. 6 and 7 alongwith 14 to 15 unidentified people kidnapped the minor from her house by assaulting and threatening the child and she was dragged and pushed into a vehicle and she could do nothing.

According to the petitioner, she made all attempts to call the police but since the presence of the miscreants in large number, she could not stop them. Thereafter she immediately approached the local police station and she also approached CWC, Bhadrak, Orissa. An FIR has now been registered with Bhadrak Town Police Station, Orrisa, under Sections 137, 115(2), 296, 351(2), 3(5) of the Bharatiya Nyaya Sanhita, 2023.

5. It is in this background, the petitioner/applicant has once again approached this Court claiming that the child has now been abducted and appropriate directions be issued to the Respondent – Authorities to produce the child and restore her custody.

In the array of Respondents, the CWC, Thane alongwith Manpada Police Station and the Inspector Incharge of Bhadrak Town Police Station, Bhadrak, Orissa, as well as the CWC, Bonth Chhak, Dist- Bhadrak, Odisha are impleaded as Respondents.

6. When we have perused the grievance raised in the

Application, we fail to understand how we can assist the petitioner and though except recording that the situation is really unfortunate, since trusting the petitioner and considering the welfare of the child, we have handed over the custody of the child to the petitioner, but now it is informed that her own parents i.e. Respondent Nos. 6 and 7 have kidnapped the daughter, and for this purpose she has already lodged the complaint with the local police station, which is converted into an FIR, and we just hope and trust with utmost promptitude, it is being investigated into. Similarly, as far as the writ of habeas corpus is concerned, since the girl is not within our territorial jurisdiction, we are unable to exercise our writ jurisdiction to seek her production before us so that the custody can be handed over to the petitioner, as we did in the first round of litigation. Finding that we are helpless in the circumstances on account of lack of territorial jurisdiction within us, left with no alternative, we dismiss the Interim Application.

Though the learned counsel for the Applicant has insisted that it was the duty and responsibility of the CWC to keep a check on the girl, as indicated in para 10 of the order dated 07.08.2024, what we intended was only to supervise physical and mental development of the child, and by no stretch of imagination we intended to extend the direction to the protection of the minor girl in the custody of the petitioner.

For the reasons recorded above, the Interim Application is dismissed.

(MANJUSHA DESHPANDE, J.)

(BHARATI DANGRE, J.)