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

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Date of decision: 03rd April, 2024

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W.P.(CRL) 416/2024

GAUTAM KUMAR DAS

..... Petitioner

Through: Mr. Saurav Agrawal with Mr. Ashish Tiwari, Mr. Sahib Patel and Mr. Ajay Sharma, Advocates

versus

NCT OF DELHI THROUGH THE COMMISSIONER OF POLICE & ORS.

..... Respondent

Through: Mr. Sanjay Lao, Standing Counsel (Crl.) with Mr. Shivesh Kaushik, Mr. Abhinav Arya & Mr. Priyam Aggarwal, Advocates
Ms. Madhumita Bhattacharjee, Advocate for R-3, State of West Bengal
Mr. Hirein Sharma, Mr. Aditya Saluja & Mr. Saurabh Goel, Advocates for R-5 & R-6

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. Present petition has been filed by the petitioner seeking following prayer:-

a) To issue a writ of Habeas Corpus or any other appropriate writ, order or direction as this Hon'ble Court may deem appropriate directing the Respondents herein to immediately produce the minor daughter of the Petitioner before this Hon'ble Court;



b) To direct the concerned Respondents particularly Respondents No. 1 to 4 to ensure that the custody of the minor daughter is handed over to his biological father and only surviving natural guardian i.e. Petitioner in the interest of justice from the unlawful custody of the Respondents No. 5, namely, Ms. Aparna Pradhan & the Respondent No. 6 namely Ms. Sujata Das Adhikary.

2. Vide order dated 18.03.2024, this Court had passed the following order:-

3. *Respondent Nos.5 and 6 are the real sisters- in-law of the petitioner (sisters of petitioner's deceased wife).*

4. *The girl child of the petitioner was born on 20.04.2021. It is not in dispute that the wife of the petitioner had expired ten days after the birth of her girl child, i.e., on 30.04.2021. It is also not in dispute that for some period, even the son of the petitioner, who is now 10 years old, had remained with respondent Nos.5 and 6 though later on, he had been handed over to the petitioner, his biological father. The girl child of the petitioner has remained with respondent Nos.5 and 6 after 10 days of her birth and is being taken care of by them till now.*

5. *It is informed that the petitioner got remarried in the year 2023. His second wife is also present in Court. She submits that she is ready and willing to take the responsibility of both the children and if the girl child is handed over to the petitioner, she would take care of her with unconditional motherly love and affection.*

6. *We have interacted with respondent Nos.5 and 6, petitioner and son of the petitioner, in Court as well as in chamber. The daughter of the petitioner does not seem to even recognize her brother.*

7. *Undoubtedly, the petitioner, being natural guardian of the child, has every right to seek custody for the betterment of her daughter.*

8. *Learned counsel for the petitioner submits that the son of the petitioner is studying in Delhi Public School, Dwarka and the admission process has started in that school. He submits that the girl child of the petitioner is going to attain the age of 3 years and being sibling, she would, easily, get admission in the same school.*

9. *On interaction with respondent Nos.5 and 6, we found that their love and affection with the girl child is immense. They submit that she is too young and needs proper care and affection and they wish to take care of*



her till she attains the age of 8 or 9 years. They submit that since she is living with them since birth, she may not be comfortable with her father at this tender age and thus she may not be able to adjust with her parents.

10. It is a difficult situation and dilemma for this Court to take a decision in such a situation as love and affection of both the parties for the girl child seems to be immense. Presently, it may be difficult to hold that the girl child is in illegal custody as the child was handed over by the petitioner himself to respondent Nos.5 and 6 to look after her as there was no other arrangement in his difficult times when his wife had expired soon after the birth of the girl child.

11. Therefore, in these peculiar circumstances and fact that it is a family matter, we deem it appropriate to send this matter to Delhi High Court Mediation & Conciliation Centre.

12. Accordingly, the In-charge of the Delhi High Court Mediation & Conciliation Centre is requested to appoint Ms. Beenashaw N. Soni, the Senior Mediator to mediate in the present case today itself at 3:30 pm.

13. We direct the said mediator to interact with both the parties for three days, i.e., 18th March, 2024 to 20th March, 2024 and submit a report before this Court accordingly. The Mediator would be at liberty to allow the children some time so that they both can interact with each other. We expect that the mediator shall suggest a workable solution to this Court.

14. At this stage, learned counsel for respondent Nos.5 and 6 submits that respondents have a train to board to Kolkata today itself.

15. We accordingly direct respondent Nos.5 and 6 to get their tickets cancelled and respondent No.6 shall stay at the residence of respondent No.5, who is her real sister, at Dwarka. As agreed, the expenses, if any, shall be borne by the petitioner.

3. Thereafter, vide order dated 21.03.2024, this Court, on receiving the report of Mediator, had observed as under:-

1. Pursuant to order dated 18.03.2024, the report of mediator dated nil has been produced in Court.

2. The same is taken on record. Copy of the same has also been supplied to learned counsel for the parties.

3. We have perused the report wherein it is observed that after



interacting with the parties for hours and observing the girl child and her behavior with the petitioner and her brother and petitioner's family, the only workable solution, in the interest of the girl child, in her opinion, would be to slowly make the girl child comfortable with the petitioner and his family in the presence of respondent Nos.5 or 6 and when the girl child starts properly recognizing her father and brother, her custody should be handed over to the petitioner. It is further observed that the girl child should spend ample time on daily basis with the petitioner and his family so that she starts treating them as her family. The girl child should spend time on daily basis with her brother so that the siblings can interact and develop a relationship among themselves which would make the girl child comfortable. It is also observed that the girl child after spending some time with her brother was comfortable in his company and was playing with him and that the brother was also excited and happy to play with her. Thus, once the girl child gets comfortable in the company of petitioner and his family, she should be then handed over to the petitioner.

4. *Learned counsel appearing on behalf of respondent Nos.5 and 6, after going through the report of the mediator, seeks one week's time to apprise this Court about workable solution in terms of said report.*

5. *Learned counsel for respondent Nos.5 and 6, under instructions from respondent Nos.5 and 6, who are present in Court, submits that petitioner and his family can visit F-22, First Floor, Lajpat Nagar-II where respondent Nos.5 and 6 are residing at the moment and may meet his daughter.*

6. *Accordingly, petitioner and his family are at liberty to go to said place of respondent Nos.5 and 6 to meet the girl child on weekdays, on alternative day basis, between 5 pm to 8 pm and on Saturdays and Sundays between 10 am to 2 pm.*

7. *Till next date, the child shall not be taken out from the jurisdiction of this Court.*

8. *It is also made clear that the expenses incurred/to be incurred by respondent Nos.5 and 6 towards their stay in Delhi, shall be cleared by petitioner, as assured by him, within one week from today".*

4. Today, learned counsel appearing on behalf of petitioner has produced some photographs depicting the girl child of the petitioner playing comfortably with her brother, father (petitioner herein) and step-mother.



The basic yardstick would always be the welfare of the child which is paramount and which aspect can be evaluated in most appropriate manner by Family Court. Without commenting on the conduct of the parties and merits and demerits of the rival contentions, we hereby dispose of the present petition by giving opportunity to the parties to approach the Family Court of competent jurisdiction for seeking custody of the child in question.

5. Arrangement made vide order dated 21.03.2024 shall remain in force for further two weeks from today to enable the concerned party to approach the competent court and to obtain further order, if any.

6. Petition stands disposed of in the aforesaid terms.

(SURESH KUMAR KAIT)
JUDGE

(MANOJ JAIN)
JUDGE

APRIL 3, 2024/dr