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

% ***Date of decision: 22nd February, 2024***

+ **W.P.(CRL) 542/2024**

AYAN ANSARI

..... Petitioner

Through: **Mr. Himanshu Sharma and Mr.
Sumit Kumar, Advocates**

versus

STATE (GNCT OF DELHI) AND ANR **.... Respondents**

Through: **Mr. Sanjay Lao, Standing Counsel
(Crl.) with Mr. Priyam Agarwal, Mr.
Abhinav Krumar Arya, Mr. Shivesh
Kaushik, Advocates
WSI Rajbir and Insp. Manjeet Kr. In
person**

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

Crl.M.A.4952/2024 (exemption)

1. Allowed, subject to all just exceptions.
2. The application is accordingly disposed of.

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3. Present petition has been filed under Article 226 of the Constitution of India read with Section 482 Cr.P.C. in the form of Habeas Corpus seeking directions to the respondents to produce petitioner's minor sister



Miss 'A' and to handover her custody to the petitioner.

4. It has been averred in the present petition that on the complaint of Miss 'A', aged 15 years, studying in 6th class, an FIR No.733/2023 under Sections 376/354-B IPC and Section 6 POCSO Act was registered at Police Station Neb Sarai, Delhi against her step-father wherein she alleged that in the first week of December, 2023, when her mother had gone to hospital to see her aunt, he had sexually assaulted her. She further alleged that the similar incident had happened earlier also for 2-3 times when her mother was out for work.

5. Notice issued.

6. Mr. Sanjay Lao, learned Standing Counsel accepts notice on behalf of respondent-State, who has handed over a status report dated 22.02.2024 in the Court today which is taken on record.

7. It is noted in the status report that during investigation of the case, the victim was examined before DCW Counsellor and was sent for medical examination. In her MLC No.3000/2023, the victim levelled allegations of physical violence and assault against her step-father. Her statement under Section 164 Cr.P.C. was got recorded wherein she supported her previous version. On her complaint, her step-father was arrested and was sent to judicial custody. The victim Miss 'A' was produced before CWC-II, Lajpat Nagar, New Delhi and later on, she was sent to shelter home, namely, Global Home Chattarpur, Delhi and since then she is living there.

8. The present petition has been filed on behalf of real brother seeking custody of his minor sister Miss 'A' on the ground that she is in confinement of shelter home named above and is deprived of her study, growth and betterment and in the interest of justice, her custody be handed



over to him. The petitioner has undertaken that he is capable of maintaining his sister and to fulfill her educational and other requirements, and if her custody is handed over to him, he will take care of any exposure to her step-father.

9. Victim Miss 'A' is present in Court along with Child Welfare Officer and she submits that neither her mother nor her step-father, who has sexually abused her and is behind bars, took any care of her and, therefore, she would like to stay with her real brother, i.e. the petitioner.

10. 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 of the child. 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 while deciding the child custody cases, the Court is not bound by mere legal right of the parent or guardian but the welfare of the minor child is of paramount consideration. In the given facts, it seems to us that welfare of Miss 'A' would be to live with her sibling.

11. In the present case, the victim Miss 'A' is aged 15 years and has shown her willingness to stay with her real brother. In the facts of the present case, when victim Miss 'A' has raised serious allegations of sexual assault upon her step-father, due to which she has been forced to live in shelter home, sacrificing her educational and her normal well-being; liberty is granted to the petitioner to move an application before CWC-II, Lajpat Nagar, New Delhi seeking custody of Miss 'A' and on receipt of the same, the CWC may consider grant of custody of Miss 'A' to petitioner in



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accordance with law.

12. With aforesaid directions, the present petition is disposed of.

Copy of order be given *dasti* under signatures of Court Master.

(SURESH KUMAR KAIT)
JUDGE

(MANOJ JAIN)
JUDGE

FEBRUARY 22, 2024/rk