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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 9th July, 2024

+ W.P.(CRL) 1864/2024

REENA GUPTA

.....Petitioner

Through: Mr. Nitin Chaudhary, Mr. Abhishek Singh, Mr. Lokesh Kumar, Mr. Arun Kumar, Mr. Ajay Kumar & Mr. Ravi Sharma, Advocates (M: 9953606671)

versus

GOVT OF NCT OF DELHI THROUGH
SHO SEEMAPURI & ORS.

.....Respondents

Through: Mr. Sanjay Lao, Standing Counsel (Crl.) for State with Ms. Priyam Agarwal and Mr. Abhinav Kumar Arya, Advocates

CORAM:**JUSTICE PRATHIBA M. SINGH****JUSTICE AMIT SHARMA****JUDGMENT****Prathiba M. Singh, J.**

1. This hearing has been done through hybrid mode.
2. The present writ petition has been filed by the Petitioner- Smt. Reena Gupta under Article 226 of the Constitution of India, seeking issuance of a writ of Habeas Corpus directing the Respondent No.3- husband of the Petitioner to produce the two minor children of the Petitioner namely 'K' and 'A'. As stated in the petition, the two children are residing with their father presently.
3. On 5th June, 2024, this Court had directed the children to be produced in the Court. However, on 2nd July, 2024, neither the husband nor the children were produced and the Investigating Officer had submitted that the



Respondent No. 3 had assured that he would bring the children and it so happened that Respondent No.3 could not travel to Delhi from Mumbai alongwith with the children due to non-confirmation of tickets.

4. On behalf of the Petitioner, it was submitted that the children have been separated from their mother/the Petitioner. It was further submitted that the children are aged three and six years respectively and their academic session has already started, and on account thereof they are also losing out on their education. It was pointed out that one child is studying in Greenway Modern School, Dilshad Garden. It was also submitted that when the Petitioner had tried to contact her husband, the latter stated that he would not come to Delhi along with the children. It was further submitted that even on the video call, the Petitioner could only interact with the children briefly, for even less than a minute. On the said date, an updated Status Report was called for and it was also directed that the SHO would take steps to produce the husband of the petitioner along with the children.

5. Thereafter, on 5th July, 2024, the husband and the children appeared before the Court. The Court met the parties in Chamber and directed as under:-

“2. Vide order dated 2nd July, 2024, the Court had directed the concerned SHO to produce the husband i.e., Respondent No.3 along with the children in Court. The Respondent No. 3 has appeared today along with both the children. The Court has interacted with the Petitioner, Respondent No. 3 and the children. There are various allegations and counter allegations being made by both the parties against each other.

3. The Petitioner is presently living with her mother and other relatives. The Respondent No. 3 is also living with some of his relatives in Seelampur, Delhi.

4. Let the concerned Investigating Officer (10) make comprehensive enquiries in respect of the residence of



both the parties i.e., Petitioner and Respondent No.3 including on the following aspects :

*i. Where the Petitioner is presently residing;
ii. The number of people who are residing there with the Petitioner. Enquiry shall also be made in respect of the Petitioner's residence as to who all are living in the said residence;*

iii. The kind of relationship that exists between the Petitioner and her family members with whom she is residing and whether the atmosphere is appropriate for the welfare of the children or not;

5. The IO shall also obtain the address where the Respondent No. 3 is residing as also the contact numbers of the relatives with whom he is residing.

6. The Respondent No. 3 shall not leave Delhi till further orders of this Court. The IO shall remain in continuous touch with Respondent No.3."

6. As per the above order, certain verifications of the residence of the Petitioner and the husband were directed to be conducted. In addition, the Court had directed that the mother/Petitioner would meet the children every day in the Delhi High Court Mediation and Conciliation Centre for a period of two hours, *i.e.*, from 3:00 P.M. to 5:00 PM.

7. The updated Status Report dated 08th July, 2024 by SHO Seemapuri, Delhi has been handed over in Court and the same is taken on record. As per the said report, the Petitioner is residing with her mother, brother's family and some other acquaintances. The Status Report records that the atmosphere is not very conducive for the welfare of the children as the house is small for a family of six members. The father-Respondent No.3 is living with the family of his friend, whose credentials have been verified.

8. The Court met the parties again today in Chambers along with the children.



9. It is clear that the children were taken away by the father/Respondent No. 3 from the mother's residence in Delhi. The children are comfortable with the mother/Petitioner as also the father/Respondent no. 3.

10. Considering the fact that the children are separated from the mother/Petitioner, without her permission, this Court is of the opinion that the children have to be restored to the mother/Petitioner. Ordered accordingly. The same is however, subject to the following conditions:-

- (i) The mother/Petitioner would endeavor to obtain a separate accommodation for herself and her children and the said new address of her accommodation shall be communicated to the father/Respondent No. 3;
- (ii) That on a daily basis, the mother/Petitioner shall permit interaction between the father/Respondent No.3 and children either telephonically or through video calls;
- (iii) Whenever the father/Respondent no. 3 visits Delhi, he is free to visit the children and also take the children out, if required, for playing or for an outing without any limitations. The only condition is that the father/Respondent No.3 shall not remove the children from the jurisdiction of Delhi NCR, and shall not retain the children overnight. It is further made clear that the children should continue to reside with their mother/Petitioner.

11. On interaction with the parties, the Court has observed that there is some discord in the matrimony of the parties and in respect thereof, the parties are free to work on their relationship and depending upon the decision they may take with respect of their marriage, the parties are permitted to avail of



their remedies in accordance with law either for separation or for custody of the children.

12. It is made clear that the present order shall continue to operate till any further order(s) with respect to the Guardians and Wards Act, 1890 is passed by the Learned Trial Court on a petition(s) by either of the parties, if any.

13. The petition is disposed of accordingly.

14. Pending application(s), if any, also stands disposed of.

PRATHIBA M. SINGH
JUDGE

AMIT SHARMA
JUDGE

JULY 9, 2024/nk/PC/ks