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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(CRL) 2843/2024

UPENDERA MAHTO

.....Petitioner

Through: Mr. Aftab Hussain & Ms. Anita,
Advocates alongwith Petitioner in
person.

versus

STATE (NCT) OF DELHI AND ORS

.....Respondents

Through: Mr. Sanjay Lao, Standing Counsel
(Criminal) with Ms. Priyam Agarwal
& Mr. Abinav Kumar Arya, Advs.
SI Chandan PS Vasant Kunj (North).

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE AMIT SHARMA

ORDER

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21.10.2024

1. This hearing has been done through hybrid mode.
2. The present petition has been filed on behalf of the Petitioner-Mr. Upendera Mahto under Article 226 of the Constitution of India read with Section 528 of the Bharatiya Nagarika Suraksha Sanhita, 2023 seeking issuance of a writ of *habeas corpus* for production of his wife Ms. 'A' and their two children, who are stated to be missing since 19th December, 2023.
3. It is the allegation of the Petitioner that his wife and children are illegally detained by the Respondent no. 4.
4. On 12th September, 2024, a status report was handed over to the Court which stated that a missing report had been received at P.S. Vasant Kunj on 23rd December, 2023 with respect to the Petitioner's wife and children, and

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steps were being taken to trace them. Further, on the said date, the Court directed that the concerned police authorities shall constitute a team to trace the wife and children of the Petitioner expeditiously. The relevant portion of the order dated 12th September, 2024 is extracted hereunder:

“4. A status report dated 12th September, 2024 has been handed over by the police informing this Court that a missing report was received by the police at PS Vasant Kunj on 23rd December, 2023 and after that various steps have been undertaken to trace out the aforesaid persons. As per the status report the suspect- Mr. Amit Mahto is stated to have been contacted on phone and he has claimed that he has been in Saudi Arabia since October 2023. The said status report has been taken on record.

5. The matter is serious in nature as the wife is 31 years of age and two minor children are 12 years and 8 years of age respectively. The police ought to have taken urgent steps to trace them as it has been more than 9 months.

6. Accordingly, it is directed that the concerned police authorities under the ACP, North shall constitute a team so that the wife and the children can be traced as expeditiously as possible and produced on the next date.

7. List on 4th October, 2024.”

5. On the last date of hearing i.e., on 4th October, 2024, the Petitioner's wife- Ms. 'A' and children were produced before this Court. The Petitioner was also present. This Court had an in chamber interaction with them and after interacting with the parties, the following order was passed: -

“6. From the chamber interaction, the facts that have emerged are that, the children of the Petitioner are now studying in Sarvodaya Bal Vidyalaya, Radhe Shyam Park, near Preet Vihar, Delhi in classes 7th and 4th. They were earlier studying in Kendriya Vidyalaya,



APS Colony, Delhi when the family was residing together with the father. The mother, i.e., wife of the Petitioner- Ms. 'A' has rented an accommodation in Delhi. The parents of Ms. A are residents of Durg, Chhattisgarh. They have expressed that they wish to take their daughter and the children to Chhattisgarh. The father/Petitioner objects to the wife and children being moved to Chhattisgarh, on the ground that the education of the children could be adversely affected.

7. In the opinion of this Court, an amicable resolution would have to firstly be explored between the parties. Until then, the wife of the Petitioner, Ms. 'A' and the children would not move out of Delhi and shall continue to study and live where they are currently living.

8. The father/Petitioner is free to meet the children for the next one week on a daily basis for 2 hours. The address where the wife and children are living has been handed over to the husband/Petitioner. The husband/Petitioner shall ensure that when he visits the children in the residence of the wife- Ms. 'A', he shall not misbehave with Ms. 'A' or abuse her in any manner or the children. The children are free to interact with the Petitioner in a peaceful and cordial atmosphere.

9. The parties are directed to appear before the Delhi High Court Mediation and Conciliation Centre along with their Counsel, on 7th October, 2024 at 03:00 PM.

10. The Mediation Centre shall appoint a seasoned Mediator to assist the parties in arriving at an amicable resolution with respect to the disputes that have arisen between the parties.

11. Until the next date of hearing, the wife and children of the Petitioner shall not move out of Delhi.

12. To await the report of the Mediator, list before the Court on 21st October, 2024.

13. In the mediation proceedings, the parents of the Petitioner and wife are permitted to participate.”

6. Today, the parties have again appeared before this Court. The grievance



of the husband is that the wife has not permitted him to meet his children. The grievance of the wife is that he was allowed to meet the children but as soon as the Petitioner met the children, he started making enquiries from the children about various private matters related to the mother.

7. It is also alleged by the Petitioner that the present address of his wife and the children is not known. This is in contravention to the order dated 4th October, 2024.

8. This Court has interacted with the Petitioner as also the wife. The children are also present. After hearing the parties and the Id. Counsels, it is directed as under:-

- i) The concerned Investigating Officer ('IO') shall accompany the Petitioner, his wife and their children to identify the residence of the Petitioner's wife, today itself. The Petitioner shall also be present when the IO goes with the wife and the children to her residence.
- ii) The exact address of the Petitioner's wife would also be given to the Petitioner. However, the Petitioner would not be permitted to visit the wife and the children at that residence.
- iii) The Petitioner's wife shall, at least three times in a week *i.e.*, on Monday, Wednesday and Friday, bring the children to the Mediation Centre of Karkardooma Courts where the husband will be allowed to meet the children for at least two hours.
- iv) If the husband wishes to meet the children in any public place also, the same would be permissible on weekends.
- v) Overall, on a weekly basis, the father shall meet the children at least three times a week.

9. The Petitioner/father has also agreed, on his own, to pay a sum of Rs.



10,000/- per month to the children for their day to day expenses, schooling etc.

10. The Petitioner's wife undertakes not to change the school of the children where they are currently studying *i.e.*, Sarvodaya Bal Vidyalaya, Radhe Shyam Park, near Preet Vihar, Delhi. Their education shall continue without any hindrance.

11. The Petitioner's wife also undertakes to this Court that she would not permanently move to Chhattisgarh to her parent's house. If she is travelling to Chhattisgarh for any other reasons, she shall inform the Petitioner and the concerned IO of the date of travel.

12. The Petitioner is now stated to have filed a petition under Section 9 of the Hindu Marriage Act, 1955 before the Dwarka Court, Delhi. The parties are free to pursue their remedies in accordance with law.

13. Payment of Rs.10,000/- shall be made by the Petitioner before the 10th of every month to his wife's account directly.

14. The present order is subject to any order passed by the Court of competent jurisdiction in any proceedings between the parties.

15. Copy of this order be sent to Karkardooma Court Mediation Centre for necessary information and compliance.

16. Petition is disposed of with all pending applications, if any.

PRATHIBA M. SINGH, J.

AMIT SHARMA, J.

OCTOBER 21, 2024
MR/RKS