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

+ **W.P.(CRL) 3128/2024 & CRL.M.A. 30686/2024**

DHIRAJ KUMAR

.....Petitioner

Through: Mr. Anurag Soan and Mr. Akshay Saxena, Advocates alongwith Petitioner and his wife in person (M-7709512446).

versus

THE STATE OF NCT OF DELHI & ORS.Respondents

Through: Mr. Sanjay Lao, Standing Counsel (criminal) for the State with Ms. Priyam Agarwal and Mr. Abhinav Kumar Arya, Advocates.
SI Murari PS Kamala Market.
SI Sudhir Yadav, Anti-Narcotics Cell
Central Delhi
Mr. M. K.Singh, Advocate for Airtel
IO Pinky Rani, AHTU, Crime
Branch.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE AMIT SHARMA

ORDER

% **09.10.2024**

1. This hearing has been done through hybrid mode.
2. The present petition under Article 226 of the Constitution of India read with Section 528 of the Bharatiya Nagarika Suraksha Sanhita, 2023 has been filed by the Petitioner, *inter alia*, seeking production of his baby girl, who is less than 14 days old.
3. The Petitioner is a 20 year old person who is a laborer by profession. It is his case that his wife had given birth to a girl child on 24th September, 2024



at the Maternity Home, Sri Niwaspuri, Delhi Municipal Corporation, Delhi. According to the Petitioner and his wife, one lady namely, Monica, approached them claiming that they could give the said child for adoption to an economically well off family through Court procedures and that they would be compensated by the family members for such adoption.

4. The further allegation is that, on 26th September, 2024, when the Petitioner and his wife after leaving their home, went in for adoption, as guided by Monica, to Lajpat Nagar bus stand, Monica came with another lady and met them. Thereafter, all four of them along with the Child, went to Ramakrishna Ashram Metro Station in two autos, and claim to have been guided to another place from there. At that place where they arrived, according to the Petitioner, there were 5-6 people who arrived in two vehicles and took the child, and also, snatched their phones and other belongings. They were then taken to an undisclosed location near Kamla Market Police Station.

5. According to the Petitioner, he and his wife were brutally assaulted by the 5-6 people whom they suspect were male and female police personnel. The Petitioner states that his mobile phone was seized by the police during the said incident. During the process of their interrogation, one lady constable had guided the Petitioner's wife to the washroom and had helped them escape from the said room.

6. According to the Petitioner, the child was taken away by the police, at that stage itself, in that remand room. The prayer in this petition, therefore, is for production of the child, *i.e.*, the baby girl and for calling for a status report in the matter.

7. On the 7th October, 2024, on advance copy being served on the State, learned Standing Counsel Mr. Lao, had appeared and placed before this Court,



FIR No. 382/2024 which was registered on 27th September, 2024 at P.S. Kamala Market, under Sections 143(4), 61(2), 3(5) of the Bharatiya Nyaya Sanhita, 2023 ('BNS') and Section 81 of the Juvenile Justice (Care and Protection of Children) Act, 2015. The said FIR depicts a completely different version. The said FIR records that a child was recovered during a raid conducted near Girdhari Lal Maternity Hospital, Kamala Market, Delhi. Four persons have been arrested Sunita @ Soniya R/o Paschim Vihar; Asha Toppo w/o Mujib Akhtar R/o Gadhi Kalka, East of Kailash; Monika w/o Abdul R/o Okhla Mandi and Fajila Khatoon w/o Fazhar Ali R/o Saran Vihar.

8. As per the said FIR, secret information was received by the police in respect of illegal trafficking of children and a decoy customer was prepared and a raid was conducted which revealed that all these accused persons were involved in child trafficking and the concerned child in the instant case was then rescued. The FIR contains various details of the persons involved and also states that the Petitioner and his wife had fled from the spot.

9. After hearing learned Counsel for the Petitioner and learned Standing Counsel for the State, this Court had directed as under:-

"10. The versions of the Petitioner and of the Police are clearly at variance. As per the State, the child is currently kept at the Holy Cross NGO Social Service Centre, Nirankari Colony, Delhi. While this Court is considering this matter, and a status report is being called, in view of the fact that the missing baby is less than 2 weeks old, the following urgent directions are issued: -

"i. The further investigation of this entire matter shall be handed over to the AHTU, Crime Branch. Let a status report be filed by the AHTU, Crime Branch, by the next date of hearing. The concerned Investigating Officer is directed to hand over the case file of this case



along with all the records to AHTU within 24 hours.

ii. The IO-Ms. Pinky Rani from the AHTU, Crime Branch, shall visit the Maternity Home, Sri Niwasपुरi, Delhi Municipal Corporation, Delhi to confirm whether the Petitioner's wife- Ms. Garima had given birth to a girl child on 24th September, 2024 in the said hospital/maternity home.

iii. Let any other available details at the said hospital shall also be obtained including copies of the medical records, if any, corroborating the birth of the child, be collected.

iv. Let the Call Detail Records ('CDR') of the **Petitioner's mobile No. 9068698048** for the last three months be procured from Airtel. The usage/activity of the said mobile number and the location wherein it has been used for the last 15 days shall also be obtained. Mr. M. K. Singh, Id. Counsel appearing for Airtel shall place a short affidavit on record along with the CDR giving the above said details.

v. The Crime Branch/Airtel shall also immediately look into the current location of usage of the **Petitioner's mobile phone (Lava mobile handset)** as also whether the said mobile has been used for any other number. The IMEI number of the phone shall be given either by Id. Counsel for the Petitioner or by Id. Counsel for Airtel to the IO-Ms. Rani.

11. The Petitioner and his wife shall continue to cooperate in the investigation without being harassed in any manner by the State and no coercive steps be taken against them till the next date of hearing."

10. As per the above order, the CDR of the Petitioner's mobile handset was to be obtained from Airtel as also the last location. Further the IO, AHTU Crime Branch, Ms. Pinky Rani was directed to visit the Maternity Home, Sri Niwasपुरi, Delhi Municipal Corporation, Delhi, to verify the credentials of the Petitioner and his wife-Garima and the *factum* of delivery of the child on



the said date.

11. Learned Counsel for Airtel has appeared and submits that the CDRs of the Petitioner's mobile number, as directed by this Court on the last date of hearing, have been handed over to the IO.

12. Today, a status report dated 9th October, 2024 has been handed over by the learned Standing Counsel, as per which the IO has been able to verify from the Maternity Home, Sri Niwasपुरi, Delhi Municipal Corporation, Delhi that the Petitioner's wife-Garima was admitted to the hospital on 23rd September, 2024 at 2:00 P.M. and on 24th September, 2024 at 5:28 A.M., she gave birth to a baby girl and was discharged from the said maternity home on 26th September, 2024. The said status report is taken on record.

13. The status report also sets out the details of the mobile numbers of the various accused persons, who have been arrested. After verification of the CDR of the Petitioner's mobile, the status report also records that there were 23 calls between the Petitioner and the accused Ms. Monica w/o Abdul Farooq on 25th and 26th September, 2024. Further, on 26th September, 2024 the location of the mobile is stated to be near R.K. Ashram Metro Station, and thereafter, near New Delhi Railway Station.

14. It is submitted by learned Standing Counsel for the State that there were 23 calls between the Petitioner and the said lady-Monica, who is now suspected to be involved in illegal human trafficking, establishes that the Petitioner and his wife intended to indulge in trafficking of their girl child. In fact, the 4 accused persons have been taken into custody in the aforesaid FIR, however, the Petitioner and his wife had managed to escape. The present writ petition, according to the learned Standing Counsel, is nothing but a ruse to deflect the attention on the Petitioner's own conduct and blame the Delhi



Police.

15. On behalf of the Petitioner, the Call Details Records ('CDRs') of the Petitioner's mobile was submitted, wherein a call was received by him from his sister on 26th September, 2024 at 11:52 P.M. which lasted for 3 minutes and 19 seconds. It is submitted that the call recording of the said call is available with him and it would show that the Petitioner had stated in the call that he is in the police station and could not talk further.

16. Heard learned Counsel for the parties. The status report is quite detailed and reveals various facts which are now the subject matter of the investigation in the FIR No. 382/2024 PS, Kamla Market, District-Central Delhi which has been taken over by the AHTU, Crime Branch on 8th October, 2024. The CDRs as also the call recording which may be available with the Petitioner has already been handed over to the concerned IO-Ms. Pinky. Let the police examine the said recording as well and proceed with the investigation in the present FIR in accordance with law without any impediment.

17. Considering that the girl child is an infant, who is less than 2 weeks old and is currently in the care of Holy Cross NGO Social Service Centre, Nirankari Colony, Delhi, let her be handed over to her parents *i.e.*, to the Petitioner and his wife-Ms. Garima.

18. The Petitioner and his wife's statements are recorded today to the effect that they shall take proper care of the child and shall not indulge in any illegal and unlawful activity. The concerned IO-Ms. Pinky shall speak regularly to the Petitioner and/or his wife to ensure the well being of the child. The handing over of the child to the wife of the Petitioner shall take place today itself before the concerned Id. CJM, Central District, Tis Hazari Courts at



04:00 P.M., who shall record the statements of the Petitioner and his wife, record satisfaction, and then, direct the handing over.

19. The police are free to proceed with the investigation in accordance with law. The Petitioner and his wife shall join the investigation and fully cooperate.

20. Considering the extraordinary circumstances of this case, where there is an allegation that a three day old child may have been subjected to the trafficking, Ms. Anu Narula, Id. Counsel, who is present in Court today, is appointed as the guardian *ad litem*. She has volunteered to keep in touch with the Petitioner and his wife as also with the child as she grows up.

21. Ms. Anu Narula, Id. Counsel, shall accordingly, initially file a report every six months till the child is five years old before the concerned Id. CJM, Central District, Tis Hazari Courts, where the statement of the parents is to be recorded today. If at any point Ms. Narula, Id. Counsel feels that the intervention of this Court is required, she is at liberty to approach this Court by way of an application in the present petition.

22. The present petition is disposed of in the aforesaid terms.

23. Pending applications, if any, also stand disposed of accordingly.

24. Order be uploaded on the website of this Court *forthwith*.

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

PRATHIBA M. SINGH, J

AMIT SHARMA, J

OCTOBER 9, 2024
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