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

+ **W.P.(CRL) 3720/2024**

A (MOTHER OF MINOR VICTIM)Petitioner

Through: Mr. Devender Kumar, Adv. with
Petitioner in person.

versus

STATE OF NCT OF DELHI & ORS.Respondents

Through: Ms. Priyam Aggarwal & Mr. Abhinav
Kumar Arya, Advs. on behalf of Mr.
Sanjay Lao Standing Counsel for
State.

WSI Preeti Saini, with Victim, PS
Kanjhawala.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE AMIT SHARMA

ORDER

% 11.12.2024

1. This hearing has been done through hybrid mode.
2. The present petition has been filed by the Petitioner - 'A' under Article 226 of the Constitution of India read with Section 528 of the BNSS seeking issuance of a writ in the nature of *Habeas Corpus* for production of her minor daughter.
3. The case of the Petitioner is that she is of Nepali origin belonging to Himachal Pradesh. The chronology of events leading to the filing of the present petition are that the Petitioner has 7 children - 6 sons and 1 daughter. It is alleged that one Mr. 'N' had threatened 2 of the sons of the Petitioner with whom her minor daughter was living and had a forceful physical relationship with the said daughter. It is further alleged that consequently the minor daughter got pregnant pursuant to which she took certain pills to abort



the said pregnancy. The Petitioner further claims that presently her daughter has been residing in Rescue Foundation, Kanjhawala, Delhi and the Petitioner has not been allowed to meet her daughter. Accordingly, the present petition has been filed by the Petitioner praying for the release of her daughter.

4. Upon advance service, the State has appeared and a status report dated 27th November, 2024 was handed over by the Id. Standing Counsel. From the said status report, it became clear that the Petitioner's daughter was found in Himachal Pradesh with her elder brother and bhabhi. A FIR No. 356/2024 under Section 376/506 IPC & Section 6 of POCSO Act was registered at PS Kanjhawala pursuant to the statement of the Petitioner's daughter recorded on 8th August, 2024. Further, on 9th August, 2024, the statement under Section 164 Cr.P.C., of the Petitioner's daughter was also recorded by the concerned Id. Metropolitan Magistrate, Rohini Court, Delhi.

5. As per the said status report, medical examination of the Petitioner's daughter was conducted on 8th August, 2024, at SGM Hospital Mangol Puri, Delhi and the MLC No. 208/2024 was recorded. However, the daughter is stated to have refused to undergo an internal medical examination. Thereafter, the Petitioner's daughter has been placed at the Rescue Foundation, Kanjhawala.

6. The Petitioner's daughter was also produced before the Child Welfare Committee - VI (CWC), Aman Vihar, Delhi and based on her statements, the accused 'Mr. N' was arrested on 9th August, 2024. Thereafter, the accused applied for regular bail on 23rd August, 2024, and the same was vehemently opposed on behalf of the alleged survivor i.e., daughter of the Petitioner. The said bail application was denied by the Id. Trial Court. It is stated in the said status report that during the investigation the daughter of the Petitioner could



not identify the hospital or medical store from where she is alleged to have bought the pills for abortion. There was doubt expressed as to the pregnancy itself.

7. Further, during the course of hearing of the second regular bail application filed on behalf of Mr. N, the Petitioner's daughter i.e. survivor had stated before the Id. Trial Court that she was tutored by her mother and her advocate to make allegations against the accused. Considering the same, the Id. Trial Court granted bail to Mr. N vide order dated 13th September, 2024.

8. The survivor was also produced before the CWC in respect of the **FIR No. 356/2024**. The statements recorded have also been placed on record. The CWC after having taken note of the matter, has passed various orders including an order dated 26th September, 2024, in which during the counselling session, the Petitioner's daughter revealed various additional facts. In fact, even the bail order passed by the Id. Trial Court records that the Petitioner's daughter had submitted that she was tutored by the Petitioner's advocate and by her mother to implicate Mr. 'N'.

9. On the last date of hearing i.e., 28th November, 2024, the Petitioner's daughter was produced in Court and she denied that she was pregnant or had undergone an abortion. The Court on the said date also observed that the present petition is not maintainable but considering the overall factual situation gave the following directions:

“(i) Mr. ‘N’, who is the accused in FIR No. 356/2024 registered at PS Kanjhawala, be served a notice in this matter through the concerned IO. Mr. ‘N’ or his family may appear before this Court on the next date of hearing.

(ii) A comprehensive report be sent by the CWC in Case No. CWCVI/ 2024-25/495 and with regard to the events



that have transpired in the present matter.

(iii) A status report be filed by the State after verifying all the correct facts and place the same before the Court by the next date of hearing. The State may conduct an ossification test in order to ascertain the age of the Petitioner's daughter. The ossification test shall be conducted speedily and the result shall be placed before the Court by the next date of hearing."

10. Today, a status report dated 11th December, 2024, has been handed over in Court in compliance of the last order, by the Id. Standing Counsel and the same is taken on record. Along with the Status Report a report from the Child Welfare Committee-VI, District North West (*hereinafter "CWC"*) has also been filed. As per the said report, the restoration of the child to the mother is likely to harm and compromise the position of the child. The CWC's observation is taken on record.

11. The girl's ossification test has also been conducted as per which she is stated to be between 15 to 16 years of age. Paragraph 15 of the status report reads as under:

*"15.It is further submitted that, on 28.11.2024, the Hon'ble Court has passed direction **to conduct bone ossification test of victim to ascertain age. In compliance, the bone age test of victim was conducted at Sanjay Gandhi Memorial Hospital on 03/12/24, as per the opinion of medical board the approximate age of victim is 15-16 yrs.** Further, a notice was given to alleged N for appearance before Hon'ble High Court of Delhi and a mail was sent to the CWC-VI/Aman Vihar regarding the direction passed by the Hon'ble Court. "*

12. In view of the above stated facts, the girl shall continue to remain in the Rescue Foundation Kanjhawala, Delhi. Her stay therein shall be subjected to the outcome of the proceedings before the CWC. Therefore, the petition for



Habeas Corpus is not maintainable in view of these facts. If the CWC finds that the mother or the advocate have indulged in any improper conduct, the CWC is free to pass directions in accordance with law. Needless to state the Petitioner and the advocate are free to avail their remedies in respect of the CWC's order in accordance with law. The status report is taken on record.

13. The petition is disposed of accordingly. All pending applications are also disposed of.

PRATHIBA M. SINGH, J.

AMIT SHARMA, J.

DECEMBER 11, 2024

dj/ks/ps