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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(CRL) 3602/2024 & CRL.M.A. 1505/2025

AMITA

.....Petitioner

Through: Mr. Girish Chander, Mr.
Vaibhav Gusain & Mr. Ashish
Kandpal, Advs. alongwith
Petitioner in person

versus

STATE GOVT. OF NCT OF DELHI AND ANR.

.....Respondents

Through: Mr. Sanjay Lao, Standing
Counsel with Ms. Priyam
Aggarwal, Mr. Aryan and Mr.
Abhinav Arya, Advs. with W/SI
Shikha PS: Dwarka North.
Mr. Nikhil Palli, Ms. Niyati
Razdan, Ms. A.S. Chauhan and
Mr. Amitabh Chauhan, Advs.
for R-2 (M: 8178933750)

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE DHARMESH SHARMA

ORDER

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14.02.2025

1. This hearing has been done through hybrid mode.
2. The present is a petition filed by the Petitioner - Ms. Amita under Article 226 of the Constitution of India read with Section 528 of Bharatiya Nagrik Suraksha Sanhita (for short, 'BNSS') seeking a writ in the nature of *habeas corpus* for the production of her eight years old son, who is stated to have been removed from her custody by her husband with whom she has a matrimonial dispute.



3. Considering the nature of dispute, *vide* order dated 28th November, 2024, this Court directed that the child shall be produced in Court along with the husband of the Petitioner.

4. The child was produced on 3rd December, 2024, and the matter was sent to Mediation. On 12th December 2024, while the mediation was underway this Court directed certain visitation arrangements to be followed by both the parties i.e., Petitioner and Respondent No.2 (husband of the Petitioner) till the child's examination and thereafter for winter vacation.

5. The mediation however did not fructify and the Petitioner filed an application, stating that the arrangements which were made on 12th December 2024 was not adhered to by the Respondent No.2. On 20th January, 2025, the Court directed that the Respondent No.2 to be present in the Court. On 21st January, 2025, the Respondent No.2 along with the child was present in Court and the following order was passed:-

“4. For the overall well-being of the child, today he shall accompany the mother and stay with her. He shall also attend school while living with the mother. The mother shall take care of arrangements to pick and drop the child from school and if she needs any help in that respect, she may contact the husband.

5. The mother shall ensure that the child is not left alone at home nor is dropped to any neighbours or acquaintances. If any help is required due to the mother's employment, the husband shall spend time with the son, when the Petitioner is at her work place.



6. The mediation has also failed in this matter. In view thereof, let the parties be present on the next date of hearing for further consideration.

7. **In the meanwhile, as a temporary arrangement, the father may pick up the child on Friday evening after school and drop him back on Sunday by 2:00 p.m. to the mother's place at Dwarka.**”

CRL.M.A. 1505/2025(for direction) in W.P.(CRL) 3602/2024

2. The present application filed by the Petitioner/Application under Section 528 of BNSS, 2023 seeking directions mandating the Respondent No.2 to comply with the order dated 12th December 2024.

3. The Court vide said order dated 12th December, 2024 had given mutual custody to the parties in the following terms.

“5. In the meantime, the examination schedule of the child in the Saraswati Model School has been placed on record. The examinations are to be held from 16th to 19th December, 2024. Accordingly, the child, Master ‘N’ shall stay with the mother/Petitioner from today onwards till 19th December, 2024.

6. The father of the child, i.e., Respondent No. 2 (Petitioner’s husband) is free to visit the house of the Petitioner for picking up the child, dropping the child to and from the school. If he wishes This is to live in the same apartment, where the wife is living, she states that she has no objection.

7. From 20th December, 2024, **during the school vacations**, the child shall primarily



live with the father and his joint family. The child shall continuously stay in touch with the mother (Petitioner) through video calls on daily basis during vacation, and whenever the Petitioner wishes to visit the child she is free to do so at her

4. It is alleged that the school has already started and the child is not handed over to the Petitioner nor is he being sent to school.

5. The Petitioner is present, however, the husband along with the child is not present today.

6. Let the husband, child and the mother-in-law of the Petitioner be presented tomorrow, in person.

7. List on 21st January, 2025.

6. Pursuant to the above stated directions, again fresh applications were filed by the Petitioner alleging that on one weekend, the Respondent No.2 adhered with the direction of 21st January, 2025, however, thereafter, the Respondent No.2 failed to adhere to the same and retained the child with himself. Considering this position, on 4th February, 2025, the Court directed as under:-

“2. These applications have been filed by the Petitioner- Wife seeking directions to Respondent No.2-husband to comply with the order dated 21st January, 2025. The allegation of the wife is that in terms of the said order, the husband picked up the child after school on one Friday and then dropped back on Sunday in terms of the order dated 21st January, 2025. However, this order was complied with by the husband only on one weekend. But on subsequent weekend, the child was not dropped back, hence these applications have been filed seeking directions to the husband to handover the child.



3. Today, the submission on behalf of the husband is that the child is not willing to go with the mother. This Court has previously interacted on many occasions with this family and is of the opinion that the child has no discomfort with the mother. Even in the open Court, the child has come forward and it is seen that he is quite comfortable with the mother. The child is accordingly permitted to accompany the mother. Accordingly, the husband shall ensure that he fully complies with the order dated 21st January, 2025, failing which he would not be liable to be heard in this matter. Directions given in the said order shall continue to be complied with by the parties.”

7. Today, the matter has been listed. Both the Petitioner and the Respondent No.2 are present today before the Court. They both have agreed upon a temporary arrangement as under:

- a. the child shall continue to live with the mother in Dwarka and go to school during the week;
- b. that the Respondent No.2 would pick up the child on Friday (evening) after school and drop him back on Sunday by 02:00 PM to the Petitioner's residence.
- c. if during the week, due to the Petitioner's job, she is being delayed in office in any way, she would request the Respondent No.2 to either pick up the child or take care of the child, till she returns from her employment. Petitioner undertakes not to leave the child with any neighbours or at any relatives' home alone.
- d. The Respondent No.2 has also assured the Court that he would drop back the child by 02:00 PM without fail on Sunday, as the



Petitioner has expressed apprehension about the school work which the child would have to complete over the weekend.

8. The petition is now disposed of in the above terms, clearly observing that the child shall continue to live with the mother and shall spend the weekends with the father from Friday (Evening) till 02:00 PM on Sunday.

9. Since, the dispute has not been resolved amicably between the parties, at this stage, the parties are free to avail of the remedies in accordance with the law. Any Court of competent jurisdiction including the Family Court may reconsider the arrangement, if a modification is sought by either of the parties.

10. The petition is disposed of in the above terms. Pending applications, if any, are also disposed of.

PRATHIBA M. SINGH, J.

DHARMESH SHARMA, J.

FEBRUARY 14, 2025/sp/ks