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

+ BAIL APPLN. 3194/2023

AJAY

..... Petitioner

Through: Mr. Neeraj Bhardwaj, Advocate  
alongwith petitioner in person

versus

STATE(NCT OF DELHI)

..... Respondent

Through: Mr. Manoj Pant, APP for the State  
with SI Shalu, P.S. Gazipur, Inspector  
Brahma Dutta, P.S. Gazipur, Delhi

**CORAM:**

**HON'BLE MS. JUSTICE SWARANA KANTA SHARMA**

**ORDER**  
**06.11.2023**

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1. The petitioner is present in person before this Court. The victim is also present alongwith her mother.
2. On the last date of hearing, this Court was informed that a child was born in this case after the incident in question, however, the DNA report was awaited. Today, it is stated by the investigating officer that the petitioner's blood sample was obtained but the same was putrefied/inhibited and therefore, the report could not be prepared.
3. *Vide* last order dated 12.10.2023, this Court had also directed the investigating officer to produce the entire record of Child Welfare Committee concerned *vide* which the child born in this case had been surrendered and later given in adoption. Today, an official from the CWC is present before this Court and has produced the original records of the



proceedings before CWC in this case.

4. This Court has gone through the records of CWC and notes that Form 23, application of surrender, explanation of surrender, etc. are all written or filled in English which everyone is not able to understand. The victim herein is not educated. This Court has perused the supplementary statement dated 25.04.2021 of the mother of the victim recorded by the Investigating Officer, who categorically states in her statement that her daughter i.e. victim is illiterate and she knows only Urdu. She also states that that the siblings of victim also know only Urdu language. In these circumstances, it was even more critical that the entire proceedings should have been explained to the victim herein as well as her guardian in their vernacular language or the language they speak and understand, and the CWC members, who are expected to show utmost sensitivity and be participating in the proceedings instead of conducting the proceedings in a business-like manner, should have seen that the victim and her mother understood the proceedings that were being conducted.

5. The statements before CWC were also clear that the victim had maintained relationship with the accused out of her own free will and had also opted to continue with the pregnancy. In the meantime, the accused i.e. petitioner herein was in judicial custody, and was unaware about the proceedings, including the surrender of the child before the CWC.

6. In light of such circumstances, Ms. Kumud Lata Das, Advocate-on-Record, Supreme Court of India is appointed as *Amicus Curiae* in this case for assistance since the issues before this Court for consideration are as under:

i. Is there any procedure adopted by the Child Welfare



Committee where the victim of sexual assault cases are informed/explained about the provisions relating to ‘surrender of children’ and consequences of such surrender, in the vernacular language or the language she speaks and understands?

- ii. Who would have been the legal guardian of the child in question, which was surrendered before the Child Welfare Committee, when both the biological father and mother of the child are alive and were in a consensual relationship?
  - iii. Whether victim was informed after expiry of two months before giving the child in adoption?
7. Photocopies of the documents filed by the CWC are taken on record, alongwith the photocopies of documents in the police file.
  8. Re-notify on 22.11.2023.
  9. The order be uploaded on the website forthwith.

**SWARANA KANTA SHARMA, J**

**NOVEMBER 6, 2023/ns**

*Click here to check corrigendum, if any*