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

+ W.P.(CRL) 1820/2015

% *Judgment dated 7th October, 2015*

ARSHEERAN BAHMEECH

..... Petitioner

Through : Mr.Hasan Anzar, Ms.Samana Suhail and
Mr.Samiullah Mirza, Advs.

versus

STATE (GOVERNMENT OF NCT OF DELHI) Respondent

Through : Mr.Rahul Mehra, CGSC (Crl.), Mr.Amrit
Singh, Mr.Shekhar Budakoti and
Mr.Sanyog Bahadur, Advs. for State
along with Inspr.K.L. Yadav and W/ASI
Urmila, P.S. Chanakya Puri.
Ms.Swati Sukumar, Adv. for Paripoorna
Jeevan Shelter Home.
Ms.Somy Harshan, Welfare Officer,
Paripurna Jeevan Shelter Home.
Ms.Shohini Banerjee, Support Person for
Child.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J (ORAL)

1. Present writ petition has been filed by petitioner under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure seeking a direction to the respondents to release her minor daughter from Paripurna Jeevan Shelter Home and produce her before this Court.

2. The facts of this case reveal a very sad state of affairs.
3. By the present petition, the petitioner complains that her daughter, who is stated to be sixteen years of age, is in wrongful confinement and custody of Paripurna Jeevan Shelter Home on the strength of an order passed by the Child Welfare Committee constituted by the National Capital Territory of Delhi.
4. As per the petition, the daughter of the petitioner was missing from her house w.e.f. 17.3.2015. At the instance of Noor Islam, one of the sons of the petitioner, FIR No.63/15 was lodged under Section 363 of the Indian Penal Code at Police Station Chanakya Puri. Upon investigation, the parents of the minor daughter were called to Police Station. They found their daughter under the influence of the Investigating Officer and a man known as Amit Kumar. One of the sons of the petitioner, namely, Mustafa, was also arrested by the Police officers of Police Station Chanakya Puri, when the petitioner learnt that her minor daughter had complained that her own brother, Mustafa, had raped her. Statement of the minor daughter of the petitioner was also recorded before the Court. The daughter of the petitioner was also produced before the Child Welfare Committee at Mayur Vihar (respondent no.2 herein) in the month of March, 2015. Since then, the minor daughter has been housed in Paripoorna Jeevan Homes for Girls, Karol Bagh, New Delhi, under the orders of respondent no.2. The petitioner has sought her release being the natural guardian.
5. We may notice that the statement of the minor daughter of the petitioner was initially recorded under Section 164 of the Code of Criminal Procedure. In her statement, she had shown no interest to return to her house and in fact expressed her desire to stay at a place where she could live in peace.

6. We have heard learned counsel for the petitioner, counsel for the Paripoorna Jeevan Homes for Girls, the minor daughter of the petitioner, the Welfare Officer and Support Person.
7. Today, the minor daughter of the petitioner is present in Court along with Ms.Somy Harshan, Child Welfare Officer, and Ms.Shohini Banerjee, Support Person. The minor daughter of the petitioner has expressed her desire to join her parents. We had postponed this request of the minor daughter, as her statement before the trial court had not been recorded. We are informed by counsel for the parties that examination-in-chief and cross-examination of the minor daughter of the petitioner stand concluded.
8. Learned counsel for the State, counsel appearing for the Paripoorna Jeevan Homes for Girls, Karol Bagh, New Delhi, the Welfare Officer and Support Person, who have counselled the minor daughter of the petitioner, submit that the minor daughter of the petitioner should be handed back to the petitioner, however, with certain conditions.
9. On a query raised by the Court, we are informed that the accused, Mustafa, brother of the child, is in judicial custody and the co-accused, Amit Kumar, is on bail. Another son of the petitioner is stated to be residing separately.
10. It may be noticed that the UN Office on Drugs and Crime, Vienna, UN, New York 2009 has published '*The UN Model Law on Justice in matters involving Child Victims and Witnesses of Crime*' wherein Guidelines for recording of evidence of vulnerable witnesses in criminal matters have been formulated to enable them to give their best evidence in criminal proceedings. Paras 15 and 16 of the guidelines provide for '*Appointment of Guardian ad litem*' and '*Duties of Guardian ad litem*', respectively, read as under:

“15. Appointment of Guardian ad litem.-

The Court may appoint any person as guardian ad litem as per law to a witness who is a victim of, or a witness to a crime having regard to his best interests after considering the background of the guardian ad litem and his familiarity with the judicial process, social service programs, and child development, giving preference to the parents of the child, if qualified. The guardian ad litem may be a member of bar / practicing advocate, except a person who is a witness in any proceeding involving the child.

16. Duties of guardian ad litem:

It shall be the duty of the guardian ad litem so appointed by court to:

(i) attend all depositions, hearings, and trial proceedings in which a vulnerable witness participates.

(ii) make recommendations to the court concerning the welfare of the vulnerable witness keeping in view the needs of the child and observing the impact of the proceedings on the child.

(iii) explain in a language understandable to the vulnerable witness, all legal proceedings, including police investigations, in which the child is involved;

(iv) assist the vulnerable witness and his family in coping with the emotional effects of crime and subsequent criminal or non-criminal proceedings in which the child is involved;

(v) remain with the vulnerable witness while the vulnerable witness waits to testify;”

11. Additionally, as per guideline no.17, a vulnerable witness would be entitled to legal assistance.
12. Having regard to the facts of the present case, taking into consideration the submission made by counsel for the parties and in view of the Guidelines for recoding of evidence of vulnerable witnesses in criminal matters, we direct that the custody of the minor daughter of the petitioner shall be handed over to the petitioner forthwith, however, having regard to the guidelines for recording of evidence of vulnerable witnesses in criminal matters, more particularly guidelines no.15 and 16, which are reproduced in the paragraphs foregoing, we appoint Ms.Somy Harshan, Welfare Officer, as a *guardian ad litem* for the minor daughter of the petitioner. Ms.Somy Harshan would be entitled to take all necessary steps to safeguard the interest of the minor daughter of the petitioner. She would be guided by Rule 16 of the aforestated guidelines. In view of Guidelines no.17, we authorise Ms.Somy Harshan, *guardian ad litem*, to approach the Delhi High Court Legal Aid Society for legal assistance for the minor daughter of the petitioner. We are also informed that an NGO being 'Counsel to Secure Justice' is providing legal assistance to the daughter of petitioner. We further direct the parents of the minor daughter to permit and grant free access to the minor daughter to visit a counsellor once in every two weeks for a period of two months and thereafter once in a month or as and when the child deems proper.
13. We also direct W/ASI Urmila, No.4284/D, P.S. Chanakya Puri, to visit the house of the petitioner once in fifteen days for a period of two months to make an assessment of the well being of the minor daughter of the petitioner and in case she finds that the child is being harassed she would be entitled to approach the Welfare Officer for proper remedy. W/ASI Urmila will submit a report to the concerned SHO.

14. We request Mr.Mehra, learned Standing counsel for the State, to explain the directions passed by this Court in this order to the parents and other family members of the minor daughter, who are present in Court today.
15. Petition stands disposed of in above terms.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

OCTOBER 07, 2015

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