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

Date of Decision: 18th February, 2025

+ **W.P.(CRL) 290/2025**

MANOBAL FOUNDATION

.....Petitioner

Through: Mr. Utkarsh Singh, Mr. Mayank Gupta
Mr. Tauheed Arshi & Mr. Humaid,
Advs.

versus

STATE OF DELHI & ORS.

.....Respondent

Through: Mr. Sanjay Lao, Standing Counsel
(Crml.) with Ms. Priyam Aggarwal &
Mr. Abhinav Arya, Advs. with SI
Preeti, PS Kalkaji, Insp. Shashank, SI
Jitender Yadav, PS Mohan Garden.
Mr. Harvinder Singh, ACP/AFRRO,
Mr. Shashank Tripathi,
Inspector/AFRRO Unit (M-
8700062400) and Mr. Pratap Singh
Rawat, Under Secretary, MHA.
Mr. Sandeep Kumar Mahapatra CGSC
with Mr. Tribhuvan, Mr. Ishaan
Malhotra & Mr. Shashank Tripathi,
Advs. for R-7/FRRO.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE DHARMESH SHARMA

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The present petition has been filed by the Petitioner - Manobal Foundation under Article 226 of the Constitution of India read with Section 528 of the BNSS, 2023 for issuance of a writ in the nature of *habeas corpus* for production of minor child, Master ARK, who is stated to be in the illegal



custody of Respondent Nos. 3 & 4-- Ms. Jacklyin Nakayima @ Julie and Ms. Namakula Dooren. The Petitioner claims to be an NGO attempting to help the victims of human trafficking.

3. The case of the Petitioner-NGO is that a Ugandan national - Ms. J who was in India had given birth to a child *i.e.*, Master ARK, in India. The Petitioner NGO was assisting Ms. J with moving back to Uganda, however, Ms. J passed away due to HIV. It is the allegation of the Petitioner-NGO that the Respondent Nos. 3 and 4 are passing the custody of the child from person to person. The child is not traceable and hence, the present petition.

4. The Court on 27th January, 2025, directed issuance of notice to all the Respondents, as also to serve the present petition to Uganda High Commission through the Ministry of External Affairs. Thereafter, on 10th February, 2025, the child was produced in Court and was stated to be in the company of Respondent No.4 after the mother of the child passed away. It is stated that the Petitioner- Manobal Foundation handed over the child to her. Respondent No.3- Jacklyin Nakayima @ Julie also appeared on the said date and is stated to be a friend of the late mother of the child. Both the Respondent Nos.3 and 4 informed the Court on the said date that the biological father of the child Mr. Hassan lives in Uganda and is willing to take back the child. The Court then gave the following directions:

“4. Both informed the Court that the biological father of the child Mr. Hassan lives in Uganda and is willing to take back the child. The child having been bom to two Ugandan nationals, this Court deems it appropriate to issue notice to the Central Government Standing Counsel for appearance tomorrow i.e., 11th February, 2025 along with a competent official from the Ugandan



High Commission so that steps can be taken to send the child to her biological father.

5. The biological father may also be requested to join the proceedings virtually when the matter is taken up tomorrow.

6. The Court is also informed that the mother of the child passed away on 20th January, 2025 and her physical remains are kept in a mortuary in Deen Dayal Upadhyay Hospital. In this regard, the Investigating Officer-Mr. Sumit from PS Mohan Garden shall also remain present in the hearing listed tomorrow.

7. The Respondent No. 4 is free to take the child with her today and shall produce the child before the Court tomorrow.”

5. Pursuant to the above stated order, on 11th February, 2025, the Court had an in chamber interaction with Mr. Hassan who is stated to be the biological father of the child. He joined virtually from Kampala, Uganda, and stated that he does business of mobile phones, smart phones, etc. On being queried about his relationship with the deceased- Ms. J, he stated that he was engaged to Ms. J, who is the mother of the child- Abdul Rahman Kizito for more than five years and she was living with him in Kampala in his house. She then left Uganda to come to India in November, 2022 and at that time she was pregnant. The child was subsequently born on 14th July, 2023. He further submitted that Ms. J had informed him about the pregnancy and birth of the child. He also learnt about the demise of Ms. J and had made arrangements for transportation of the mortal remains and made requisite payments for the same, only Delhi Police clearance is required. He further submitted that he would accept the child as his son and would like to bring him up as a



biological father. The Court then gave the following directions:

“9. Considering that this case involves a child of less than one and a half years who has to be sent to his biological father in Kampala, Uganda, let the Joint Secretary, MEA contact the Hon’ble High Commissioner at the Ugandan High Commission so that the necessary arrangements for sending the mortal remains of Ms. Justine and the child to Kampala can be made. The Delhi Police shall also process the required clearances for sending the mortal remains of the same.

10. Ld. Standing Counsel submits that no objection for conducting the post mortem has been received yesterday from Uganda High Commission and the same would be conducted today.

11. The Court has also interacted with both the Respondent Nos. 3 and 4 in chamber today, who were present physically along with the child. It is observed that the child is comfortable with them and it will be good for the well-being of the child to stay with Respondent Nos. 3 and 4 until the time he is sent back to his father.

12. Considering that the mother of the child was HIV positive, it is directed that the child be also tested at the medical centre in Delhi High Court. Accordingly, Respondent Nos. 3 and 4 are directed to bring the child to the Delhi High Court on Thursday i.e., 13th February, 2025 at 10:00 A.M for testing. In addition, as suggested by the Doctor, the Court enquired if the child has been given any vaccinations. Both respondent nos 3 and 4 submit that the child has not been given any vaccinations. In the overall interest of the child, the Court is of the opinion that since the child would have to be sent to Kampala, Uganda, he can be administered the same here in India. Accordingly, if there are any vaccinations that are prescribed by the doctor at the medical centre, Delhi High Court after perusing the



medical records of the child and after examining the child, the IO who is an SI from PS Kalkaji shall approach the health care centre for the same. The doctor from the High Court medical centre shall render necessary assistance for the same.

13. The child would also need travel permission to travel to Uganda. Accordingly, a copy of this order be communicated to Uganda High Commission with a request for deputing a competent official before this Court on the next date of hearing for assisting the court with the procedure to send back the child to his father in Uganda.

14. Considering the facts that have been revealed during the course of this case, it is also directed that a senior official from the Ministry of Home Affairs shall remain present in Court before the next date of hearing.

15. Accordingly, order be communicated to the Ugandan High Commission, Ministry of External Affairs and Ministry of Home Affairs by Mr. Sandeep Kumar Mahapatra, ld. CGSC for necessary information and compliance.”

6. As can be seen from the above, the Court had directed the presence of officials from the MEA and MHA. None is present for the MEA. However Mr. Sandeep Mahapatra appears for MEA. Further to the previous order, following officials are present from Ministry of Home Affairs (MHA):

- i) Mr. Pratap Singh Rawat, Under Secretary, MHA (M-9953608455)
- ii) Mr. Harvinder Singh, ACP/AFRRO Unit (M-9891995747)
- iii) Mr. Shashank Tripathi, Insp., legal cell/AFRRO Unit (M-8700062400)

7. Mr. Sandeep Mahapatra, ld. CGSC submits that the concerned officials from the Ministry of External Affairs (hereinafter ‘MEA’) have also been in



touch with the Uganda High Commission and they have stated that they will cooperate in sending the child back to Uganda.

8. During the course of the hearing, we are told that Respondent No.4 also wishes to go back to Uganda, however, she has financial problems and she is unable to arrange the expenses to travel back to Uganda. Respondent No.4 is also stated to be HIV positive. However, this Court had a medical test conducted of the child of Ms. J, who is now deceased and the same shows that the child is HIV negative.

9. This Court is of the opinion that since birth, the child is living with Respondent No.4 who also wishes to go back to Uganda. Under these circumstances, the MHA/FRRO/MEA officials shall coordinate with each other as also with the Uganda High Commission and arrange for the travel of the Respondent No.4 and the child to Uganda without charging any expenses. This order be served to the above stated Ministries for necessary information and compliance by the above stated concerned officials from the Ministry of Home Affairs.

10. In addition, the mortal remains of Ms. J shall also be sent back to Uganda as Mr. Hasan who is the biological father of the child has submitted to the Court on the last date that he has made all the necessary arrangements for bringing back the mortal remains. The Delhi Police has already given a no-objection for release of mortal remains as well.

11. The Ministry shall accordingly give effect to this order within a period of next two weeks. The Ministry officials shall also help Respondent No.4 and the child's applications to be processed in order to enable them to travel to Uganda.



2025:DHC:1058-DB



12. Parties are free to approach the Court if any further directions are required.

13. Petition is disposed of in these terms. All pending applications, if any, are also disposed of.

PRATHIBA M. SINGH
JUDGE

DHARMESH SHARMA
JUDGE

FEBRUARY 18, 2025

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