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

Date of decision: 23rd January, 2025

+ **W.P.(CRL) 3918/2024**

CHIRAG ARORA

.....Petitioner

Through: Mr. Anant Mishra, Mr. Shashi Kant Pandey, Mr. Hritvik Verma, Mr. Rakshit Munjal & Ms. Ekta, Advs. with Petitioner and his father in person. (M:9878208413)

versus

THE STATE OF NCT OF DELHI & ANR.Respondents

Through: Mr. Sanjay Lao, Standing Counsel (Crl.) with Ms. Priyam Aggarwal & Mr. Abhinav Kumar Arya, Advs., with Insp. Rajiv Kumar & SI Ajay PS Ashok Vihar.
Mr. Ankur Mahindroo, Mr. Mohit, Mr. Atul, Mr. Dinesh Sharma and Mr. Abhishek Chauhan, Advs. for R-2 with R-2 and her son in person.

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 on behalf of the Petitioner-Chirag Arora under Article 226 of the Constitution of India read with Section 528 of the BNSS, 2023 seeking issuance of a writ in the nature of the *habeas corpus* for production of his 5 years old son.
3. According to the Petitioner, matrimonial disputes had arisen between



him and his wife/Respondent No.2 and an arrangement was reached between them on 25th November, 2023. As per the arrangement, the custody of the child was given to the father. The Petitioner relies on a handwritten letter admittedly signed by the Respondent No.2/Wife

4. It is the case of the Petitioner that suddenly on 6th November, 2024, the wife/Respondent No. 2 picked up the child without the consent of the Petitioner from the school and refused to hand over custody of the child.

5. This position is disputed by the Respondent No.2 and according to her, she had taken the child on the said day from her matrimonial home with the knowledge of the Petitioner and his father. Subsequently, on 18th April, 2024 a complaint under Section 12 of the Protection of Women from Domestic Violence Act, 2005 was filed by the wife/Respondent No. 2 before the Magistrate, Mahila Court, North West, Delhi wherein custody of the child was also sought by her. The said complaint is still pending.

6. This Court has perused the declaration dated 25th November, 2023 signed by the wife/Respondent No. 2. The same reads as under:-

"I Vaishali Chauhan w/o Chirag Arora R/o of 34 BA block Ashok vihar, phase-1 Delhi-52, today I came to my matrimonial house at BA-34B, phase-1 Ashok ihar, Delhi-52 to collect all my remaining clothes and other articles and to give the child custody voluntarily to my husband namely Chirag Arora I would like to further the declare as follow: -

1. Earlier I already to all my jewellery, Honda City car, jewellery gift to my husband by my family. (stree dhan)

2. That today I am voluntary providing my child namely Shivaansh Arora aged 4-year 7-months custody to my husband on condition of visiting right any two weekends in a month for the all the expenses of my child will be borne by my husband namely



Chirag Arora

3. today I have collected the following articles from my matrimonial house

(a) all jewellery

(b) clothes

(c) book

(d) footwear

4. That all the above articles are return to me without any resistance and I am providing the child custody with my own will and without any pressure

5. that I further assure that neither me nor my family member will not create any hindrance regarding the child study provided by me today at my husband is your dad he will provide me the visiting right and discussed above the above disposal of our divorce proceedings.”

7. In view of the above declaration, the Court on the last date of hearing *i.e.*, on 17th December, 2024, had directed Respondent No.2/Wife to produce the child before the Court.

8. Today, the Respondent No.2/Wife and the child have appeared before the Court. The Petitioner is also accompanied by his father. The Court has had in chamber interactions with the parties *i.e.*, the Petitioner and his father and the wife and her son, who is about 5 years old.

9. The facts which have been gathered by the Court, on the basis of the interactions, are that the Petitioner and his father live together. The Petitioner is a practicing lawyer. His mother passed away 10 years ago. His father has retired from government service. They live in Ashok Vihar, which is the matrimonial home of the Respondent No.2/Wife as well. Due to matrimonial discord between the Petitioner and Respondent No.2/Wife, sometime in October, 2023, the Respondent No.2/Wife had left the matrimonial home and at that stage, she had signed a declaration that is extracted above. Thereafter,



on 6th November, 2024, almost one year later, the Respondent No.2/Wife took the child to her parental home.

10. The Respondent is living in Mukherjee Nagar. She is a qualified lawyer but is working in a coaching centre in an administrative position. She currently lives with her parents, her brother and bhabhi and their two children in Mukherjee Nagar.

11. The Petitioner, upon the child being moved, made an application before the Chief Judicial Magistrate, North West District, Rohini where he prayed for an investigation. Further, in the said proceedings, various status reports have been filed. The said proceedings have been closed.

12. The child was earlier studying in Kulachi Hansraj Model School in Ashok Vihar, which was close to the Petitioner's residence. However, since November he has been with the mother/Respondent No.2 and he is going to a private school called Venus Public School. The Respondent No.2/Wife now intends to admit the child into Rosery Sr. Secondary School, which is a missionary school close to her house. According to Respondent No.2/Wife, her brother's children also go to the same school and it is quite close from where she lives. It is also submitted that she has no objection if for some period, during the weekends, the child spends time with the Petitioner/father and paternal grandfather *i.e.*, his *dada ji*.

13. The child himself is comfortable with both sets of families. He did not demonstrate any negativity towards the Petitioner/father and the parental grandfather. He is also comfortable in his mother's home.

14. In the overall facts and circumstances, the Court had directed to the parties, with the intervention of the Counsels, to agree upon an interim visitation arrangement, though the father has serious objection due to the fact



that the child was wrongly taken away from his custody. Considering the overall well-being of the child and after consulting the parties and their Counsels, the following interim arrangement is put in place.

- (i) The child shall be in shared parenting of both the Respondent No.2/mother and Petitioner/father.
- (ii) The child shall, however, continue to live with the mother and study in Rosery Sr. Secondary School from the next academic session.
- (iii) Every second and fourth weekend, on Fridays, the father is free to pick up the child from the school and the child can spend time with the father and paternal grandfather and he shall be returned to the mother's place on Sunday by 5:00 PM.
- (iv) On the first and third Sunday, the father can pick up the child around 10am and drop him back by 7pm.
- (v) Petitioner and his wife shall maintain cordiality while interacting with each other and their family members, especially in front of the child.
- (vi) The school expenses such as tuition fee, transportation costs, uniform, books, *etc.*, shall be borne by the Petitioner/father and the daily living expenses shall be borne by the Respondent No.2/mother.
- (vii) If there is a long vacation or holiday, the parents shall agree upon the time to be spent by the child with both the parents.
- (viii) During festivals and birthdays, parents shall celebrate the same together in the overall interest of the child.

15. The above directions are merely an interim arrangement. The parties are free to avail of their remedies including seeking custody/guardianship as



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also modification of visitation rights, beyond what has been put in place by this Court, before the appropriate Family Court, in accordance with law. In such proceedings, the observations made by this Court shall not have any bearing.

16. The petition is disposed of in these terms. Applications (if any) are also disposed of.

PRATHIBA M. SINGH, J.

DHARMESH SHARMA, J.

JANUARY 23, 2025/dk/Am