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

Date of decision: 26th November, 2025

+ W.P.(CRL) 3631/2025 & CRL.M.A. 32663/2025

SH RAJEEV MASSEY AND ANR

.....Petitioners

Through: Mr. Vikas Bhatia and Ms. Jyoti Bhatia, Advocates with Petitioners (in-Persons).

versus

THE STATE NCT OF DELHI AND ORS

.....Respondents

Through: Mr. Sanjeev Bhandari, ASC (Crl.) with Mr. Arjit Sharma and Ms. Sakshi Jha, Advocates for State.

SI Shubham Chaudhary, Spl. Staff, South-East.

Mr. Amit Tiwari, CGSC with Ms. Ayushi Srivastava, Mr. Ayush Tanwar, Mr. Arpan Narewal and Mr. Kushagra Malik, Advocates for UOI.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J. (Oral):

[The matter has been taken up today as 25th November, 2025 was declared a holiday on account of 350th anniversary of "Guru Teg Bahadur's Martyrdom Day"]

1. The Petitioners, who claim to be the adoptive parents of a minor baby girl in their care since she was 16 days old, have approached this Court



aggrieved by the action of the State and Child Welfare Committee¹ in taking over the custody of the child. They invoke Article 226 of the Constitution of India and seek directions to the Respondents to restore the custody of the minor to them.

2. The Petitioners state that in September 2019, through a friend of Petitioner No. 2, they came to know that a 16-day-old baby girl at Agra was available for adoption, as the biological mother was allegedly not in a position to raise her. Since the Petitioners were unable to have a child of their own, they expressed willingness to adopt the baby and claim to have taken her in adoption according to Christian rites and rituals. They rely on photographs of a welcoming ceremony held at their residence and contend that, ever since, they have been caring for the child, including meeting her medical needs and ensuring timely immunisation. It is further stated that the child has been participating in family functions and has developed a strong emotional bond with them, as seen from photographs demonstrating her integration into the family.

3. The Petitioners allege that on 27th August, 2025, police officials visited their residence and made a general inquiry regarding the minor child. They were thereafter called to Delhi and, without being apprised of the basis or particulars of any proceedings, the custody of the child was taken from them and handed over to Respondent No. 2/CWC. According to the Petitioners, the child was removed from their care abruptly, causing them deep anguish and exposing the child to avoidable stress and trauma.

4. On making further inquiries, the Petitioners learnt that the custody of

¹ “CWC”



the child had been taken over in connection with an ongoing investigation arising out of FIR No. 0366/2025 registered at P.S. Sunlight Colony.

5. The State has filed a status report indicating that the FIR was registered on the complaint of one Suresh, a brick kiln labourer travelling from Behror, Rajasthan, along with his wife and four children. He stated that on reaching ISBT Sarai Kale Khan at about 02:00 PM, as he did not have sufficient money to travel further to Behror by bus, he and his family stayed at the ISBT premises. While they were waiting at platform No. 2, they fell asleep. At about 11:00 PM, the complainant awoke to find that his youngest child, a six-month-old boy 'P', had been kidnapped by unknown persons. During investigation, on the basis of CCTV footage and technical analysis, one of the two kidnappers, namely Veerbhan, was identified and apprehended from Pinahat, Agra. He disclosed that he had kidnapped 'P' from ISBT Sarai Kale Khan and sold the child through co-accused Rambaran to Kamlesh Kumar, who in turn sold the child through another co-accused Sundar Singh to two sisters, Krishna and Preeti. On 25th August, 2025, at the instance of Sundar Singh, the kidnapped and trafficked child 'P' was recovered from the unlawful custody of Krishna and Preeti Sharma at their residence in Rajnagar, Agra. All the accused, namely Krishna, Preeti Sharma, Veerbhan, Kalicharan, Kamlesh and Sundar, were arrested and booked under Sections 143(4) and 3(5) of the Bharatiya Nyaya Sanhita, 2023, read with the corresponding provisions of Section 370(4)/34 of the Indian Penal Code, 1860.

6. According to the status report, the detailed interrogation of these accused revealed an organised network involved in illegal trafficking of



children, which led to the recovery of six children, including the baby girl ‘A’ who is the subject of the present proceedings.

7. Insofar as the baby girl ‘A’ is concerned, the prosecution case is that co-accused Krishna, who works as a *dai* (midwife) at her private clinic in Agra, along with her sister, co-accused Preeti, disclosed that in September 2024, an unmarried girl delivered a baby girl at their clinic. Since the mother expressed unwillingness to keep the child due to social stigma, Krishna retained the baby. Krishna is then stated to have approached her former co-nurse at Rainbow Hospital, Agra, Joshna (who is also a friend of Petitioner No. 2), and asked her to help “sell” the child, telling her that she would receive a commission for facilitating the arrangement.

8. Accused Joshna disclosed that she was aware that Petitioner No. 2 had been unable to conceive and did not have children. She, therefore, informed Petitioner Nos. 1 and 2 about the availability of the infant and discussed the possibility of their taking the child.

9. The prosecution further alleges that on 5th September, 2024, accused Joshna, along with Petitioner Nos. 1 and 2, travelled to Agra, where they met Krishna and Preeti. On that occasion, Krishna and Preeti allegedly handed over baby ‘A’ to the Petitioners in exchange for a sum of Rs. 1,60,000/-, purportedly towards “treatment expenses” incurred for the child.

10. On 2nd September, 2025, the baby girl ‘A’ was rescued from the possession of Petitioners and produced before CWC, Kalkaji.

11. Although the status report notes that the Petitioners do not appear to be involved in the organised child-trafficking racket, the Investigating Officer has confirmed that a chargesheet has been filed and that the



Petitioners have been arrayed as accused for offences under Sections 80 and 81 of the Juvenile Justice (Care and Protection of Children) Act, 2015.²

Petitioner's contentions

12. Counsel for the Petitioners submits that they are the de facto adoptive parents of baby girl 'A'. They have no biological children and are in deep emotional distress on account of their separation from the child, with whom they have developed a strong parental bond since she came into their care at about 16 days of age and remained with them for nearly a year. They state that they took custody of the child in good faith, unaware of the statutory adoption framework, having been informed that the biological mother had abandoned the child and did not wish to retain her. They assert that no money was paid for 'purchase' of the child and that, they were told that certain treatment expenditure incurred by the intermediaries would have to be reimbursed. On this basis, they claim to be bona fide, albeit technically irregular, adoptive parents with no intent to participate in any trafficking activity. It is further submitted that, after the present incident, they have initiated proceedings for lawful adoption before the Central Adoption Resource Authority³, a statutory body under Section 68 of the JJ Act, functioning under the Ministry of Women & Child Development, Government of India.

13. Counsel further submits that, in matters involving custody of children, the paramount consideration is the welfare and best interests of the child. Since baby "A" has known no other home and has bonded with the Petitioners from infancy, abrupt removal from their care has caused her

² "JJ Act"



trauma and emotional instability. It is stressed that the biological mother has not come forward to assert any claim over the child, while the Petitioners have already set in motion the process for regular adoption. In these circumstances, it is urged that the Court may, at the very least, direct that the custody of baby “A” be restored to the Petitioners on a temporary or interim basis, subject to any safeguards the Court may impose, pending completion of the legal adoption process. Reliance is placed on the decisions of the Supreme Court in *Dasari Anil Kumar & Another v. The Child Welfare Project Director & Ors.*⁴, and *Kiran Raju Penumacha v. Tejuswini Chowdhury*⁵, to contend that in situations where the Court is confronted with rival claims to the custody of a minor, the controlling test must remain the child’s welfare, and formalities must yield to the interests of the child in an appropriate case.

Analysis

14. Certain critical facts are, at this stage, not in dispute. The Petitioners are not the biological parents of baby girl “A”. They obtained her custody through a private arrangement, outside the statutory framework for adoption, and now stand charge-sheeted for contravention of Sections 80 and 81 of the JJ Act. The child has since been treated as a “child in need of care and protection” and is presently under the supervision of the CWC, to be dealt with in accordance with the scheme of the JJ Act and the Adoption Regulations.

15. The emotional bond which the Petitioners have developed with the

³ “CARA”

⁴ 2025 INSC 972

⁵ 2025 INSC 358



child, and the length of time she remained in their care, is evident on the record and cannot be doubted. The question, however, is whether that affection, by itself, permits the Court, in exercise of writ jurisdiction, to direct restoration of custody in a manner that runs contrary to the statutory adoption mechanism.

16. The JJ Act is a self-contained code for care, protection, rehabilitation and adoption of children who are orphaned, abandoned, surrendered or otherwise in need of care and protection. Its architecture is rooted in a rights-based, child-centric approach, drawing strength from Articles 14, 15(3), 39 and 45 of the Constitution and India's international obligations under instruments such as the UN Convention on the Rights of the Child and the Hague Convention on Inter-country Adoption. Section 3 of expressly declares that all decisions concerning a child must be guided by the "best interest of the child", but that best interest is to be realised through the procedures, safeguards and institutions created under the Act, not through ad hoc or private arrangements.

17. Chapter VIII (Sections 56-73) lays down the statutory regime for adoption. Section 56 treats adoption as a legal process by which the adopted child becomes the lawful child of the adoptive parents with all corresponding rights and obligations. The availability of a child for adoption is not left to individual assertions; it is channelised through the CWC, which alone can, after due inquiry, declare an orphan, abandoned or surrendered child "legally free for adoption" under Section 38 read with the Adoption Regulations. Only thereafter can the child be placed in a pool for adoption and referred to prospective adoptive parents through the CARA.



18. The Act deliberately brings within its fold various categories of adoption, to ensure that transfer of orphan, abandoned and surrendered children child, is subject to scrutiny, counselling and documentation. This is to prevent sale, purchase, coercion or trafficking masquerading as “informal” or “good-faith” adoption. Sections 80 and 81 give teeth to this objective by criminalising giving, taking or receiving a child for adoption without following the prescribed procedure, and by penalising sale and procurement of children for any purpose.

19. The JJ Act provides a legal and compassionate framework through which biological parents, who are genuinely unable to raise a child, may relinquish the child for adoption. Section 35, read with the Adoption Regulations, permits a parent or guardian to surrender a child before the CWC in a confidential, non-stigmatic process, with counselling and a reconsideration period. A surrender of this nature is protected by statute and does not attract penal consequences. What the law proscribes is not helplessness, but clandestine transfer of children through private channels outside the scrutiny of the CWC and CARA.

20. Permitting individuals to take a child into their custody, without CWC approval and declaration, without the child being registered as legally free for adoption, and without routing the process through CARA, would defeat the very safeguards the legislature has consciously built to protect children against trafficking, exploitation and future disputes.

21. Considering this statutory scheme, the Petitioners’ arrangement cannot be brought within the fold of lawful adoption. By their own showing, they did not approach the CWC, did not seek any declaration regarding the



child's status, did not register as prospective adoptive parents prior to taking the child, and do not know, with any certainty, the identity or whereabouts of the biological parents. The FIR and charge-sheet disclose that the child's custody reached them through a chain of intermediaries who are now facing prosecution for offences relating to trafficking of children, and the Petitioners themselves have been charge-sheeted under Sections 80 and 81. In these circumstances, the Court cannot treat the arrangement as a mere technical irregularity.

22. The Petitioners profess good faith and claim to have believed that the biological mother had voluntarily given up the child. However, even if one were to accept, for present purposes, that they did not consciously participate in the trafficking network, the fact remains that they took custody outside the statutory framework and are now facing prosecution under the provisions that seek to curb informal and unsafe transfers of children. Any direction that legitimises such custody at this stage would be against the pending criminal process and dilute the deterrent effect of Sections 80 and 81.

23. The Court is conscious of the Petitioners' anguish and the emotional bond they share with the child. Indeed, the principle of "best interest of the child" espoused by them is not a mere slogan; it is a guiding norm of the JJ Act and of constitutional jurisprudence. However, best interest must be understood in a structured, long-term sense, not only through the lens of present attachment. The statutory scheme proceeds on the premise that a child's welfare is best protected when: (i) the child's legal status is clear; (ii) the source of the child is verified and lawful; (iii) the adoptive placement is



screened, documented and supervised; and (iv) the process is transparent and auditable. Allowing private custody to be restored outside this framework may appear compassionate in an individual case, but it carries systemic risks that ultimately undermine the welfare of children as a class.

24. The submissions advanced on the basis of judgments such as *Dasari Anil Kumar v. Child Welfare Project Director*, and *Kiran Raju Penumacha v. Tejuswini Chowdhury* also do not take the matter further. In *Dasari Anil Kumar*, the Supreme Court was exercising its extraordinary power under Article 142 of the Constitution to do complete justice in peculiar facts, while expressly resting its directions on that constitutional power. That jurisdiction as per the Constitution is unique to the Supreme Court and cannot be replicated by this Court under Article 226 to dilute a clear statutory mandate. The other decisions similarly turned on their own facts and do not warrant carving out an extra-statutory exception to the JJ Act in the manner sought.

25. There is yet another dimension. The JJ Act and the Adoption Regulations provide a single, national queue for prospective adoptive parents, many of whom wait for years after fulfilling every procedural requirement, including home study, background checks and continuous scrutiny. If private, direct arrangements with biological parents or intermediaries were tolerated or indirectly encouraged by directing restoration of such custody, it would create an unfair parallel track outside the legal system. Those who can access informal networks would secure children outside the queue, while law-abiding prospective parents would continue to wait. Such an outcome would be plainly inconsistent with the



rule of law and with the equality of all prospective adoptive parents under the statutory scheme.

26. The JJ Act proceeds on the doctrine of *parens patriae*, recognising the State's ultimate responsibility for children in need of care and protection. Once baby "A" has been rescued in the course of a trafficking investigation and brought within the fold of the child-protection system, the Court cannot, in the face of a pending prosecution under Sections 80 and 81 and without any declaration by the CWC or CARA, direct that she be handed back to individuals who obtained custody through an extra-legal route. That would amount, in substance, to bypassing the CWC and CARA and rewriting the statutory conditions for adoption.

27. For these reasons, this Court is unable to accept the plea that sympathy, or even genuine affection, can be the foundation for a direction restoring custody to the Petitioners. The "best interest of the child" in the statutory sense is better served by ensuring that her future placement is determined strictly in accordance with the JJ Act and the Adoption Regulations, after the CWC and CARA complete the processes mandated by law. The Petitioners are not barred from participating in that process; if they are otherwise eligible, their application as prospective adoptive parents will be considered by the competent authorities in the same manner as that of any other applicant. What they cannot seek is a judicial short-circuit of the statutory mechanism.

28. Having regard to the above discussion, there is no legal ground to direct restoration of custody of baby "A" to the Petitioners. The petition is, therefore, dismissed.



29. The Petitioners have had the care of the child from infancy; the separation has plainly caused them emotional distress; and it is stated that they intend to pursue their remedies before the Supreme Court, including a possible plea for exercise of power under Article 142. In these circumstances, and purely as an interim arrangement to soften the immediate impact on the child, the limited interaction permitted by this Court's order dated 7th November, 2025, namely, supervised meetings between the Petitioners and the child in the presence of a counsellor at the institution where she is housed, shall continue for a further period of fifteen days from today.

30. It is clarified that this extension of supervised interaction does not create any right in favour of the Petitioners to seek custody, nor shall it influence the CWC, CARA, or any criminal court in any pending or future proceedings. It is intended only as a short bridge while the Petitioners avail such further remedies as may be open to them in law.

31. The petition is dismissed in the above terms. All pending applications also stand disposed of.

SANJEEV NARULA, J

NOVEMBER 26, 2025

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