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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(CRL) 1763/2024 & CRL.M.A. 17156/2024**
JENNIFER THOMAS Petitioner

Through: Ms. Amritanand Chakravorty with
Mr. Mihir Samson and Ms. Sitamsini
Cherukumalli, Advocates.

versus

THE GOVERNMENT OF NCT OF DELHI & ORS.

..... Respondents

Through: Mr. Sanjay Lao, Standing Counsel
(Crl.) with Ms. Priyam Agarwal,
Mr. Abhinav Kumar Arya and
Mr. Shivesh Kaushik, Advocates with
Inspr. Durga Dass Rathore and SI
Vipin Kumar, PS Keshav Puram.
Mr. Vikas Walia with Mr. Yash
Sharma, Advocates for respondent
No.3.
Mr. Tushar Sannu, Standing Counsel
with Sahaj Karan Singh, Advocate,
Dr. Mahadev Singh Sen, Asstt. Prof.
IHBAS, Dr. Simran, Sr. Resident,
IHBAS, Dr. Rudrani, Asstt. Prof.
Deptt. CP, IHBAS.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MR. JUSTICE MANOJ JAIN

ORDER
30.05.2024

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1. As per the directions given by us on 29.05.2024, the parties concerned are present. We have interacted with them separately in our chamber.

W.P.(CRL) 1763/2024

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2. During our interaction with xxxx, she desired that she be called xxxx as she identifies herself as a woman. We had also called her record pertaining to her treatment at IHBAS and Dr. Mahadev Singh Sen from IHBAS has come and has shown us the relevant record. As per such record, when xxxx was examined at IHBAS on 22.05.2024, she had expressed distress about her “male body parts” and reiterated before the doctor that she identified herself as a female. The doctor also noted the symptoms of anger outburst and anxiety with apprehension of impulsive self-harm. Her clinical status was tentatively noted as “Gender Dysphoria” and “adjustment issues” and she was advised Supportive Therapy as well.

3. We have separately interacted with her parents also and they seem to be conscious of sexual orientation of their child. They, however, are, at the same time, concerned about her safety and apprehend that she may harm herself and feel that she has been misguided.

4. We are mindful of the guidelines issued by the Hon’ble Supreme Court in *Devu G Nair vs. The State of Kerela & Ors.*: 2024 INSC 228 and said guidelines are extracted herein below:-

“16. Guidelines for the courts in dealing with habeas corpus petitions or petitions for police protection are formulated below:

a. Habeas corpus petitions and petitions for protection filed by a partner, friend or a natal family member must be given a priority in listing and hearing before the court. A court must avoid adjourning the matter, or delays in the disposal of the case;



- b. In evaluating the locus standi of a partner or friend, the court must not make a roving enquiry into the precise nature of the relationship between the appellant and the person;*
- c. The effort must be to create an environment conducive for a free and uncoerced dialogue to ascertain the wishes of the corpus;*
- d. The court must ensure that the corpus is produced before the court and given the opportunity to interact with the judges in-person in chambers to ensure the privacy and safety of the detained or missing person. The court must conduct in-camera proceedings. The recording of the statement must be transcribed and the recording must be secured to ensure that it is not accessible to any other party;*
- e. The court must ensure that the wishes of the detained person is not unduly influenced by the Court, or the police, or the natal family during the course of the proceedings. In particular, the court must ensure that the individuals(s) alleged to be detaining the individual against their volition are not present in the same environment as the detained or missing person. Similarly, in petitions seeking police protection from the natal family of the parties, the family must not be placed in the same environment as the petitioners;*
- f. Upon securing the environment and inviting the detained or missing person in chambers, the court must make active efforts to put the detained or missing person at ease. The preferred name and pronouns of the detained or missing person may be asked. The person must be given a comfortable seating, access to drinking water and washroom. They must be allowed to take periodic breaks to collect themselves. The judge must adopt a friendly and compassionate demeanor and make all efforts to defuse any tension or discomfort. Courts must ensure that the detained or missing person faces no obstacles in being able to express their wishes to the court;*
- g. A court while dealing with the detained or missing person may ascertain the age of the detained or missing person. However, the minority of the detained or missing person must not be used, at the threshold, to dismiss a habeas corpus petition against illegal detention by a natal family;*
- h. The judges must showcase sincere empathy and compassion for the case of the detained or missing person. Social morality laden with homophobic or transphobic views or any personal predilection of the judge or sympathy for the natal family must be eschewed. The court must ensure that the law is followed in ascertaining the free will of the detained or missing person;*



i. If a detained or missing person expresses their wish to not go back to the alleged detainer or the natal family, then the person must be released immediately without any further delay;

j. The court must acknowledge that some intimate partners may face social stigma and a neutral stand of the law would be detrimental to the fundamental freedoms of the appellant. Therefore, a court while dealing with a petition for police protection by intimate partners on the grounds that they are a same sex, transgender, inter-faith or inter-caste couple must grant an ad-interim measure, such as immediately granting police protection to the petitioners, before establishing the threshold requirement of being at grave risk of violence and abuse. The protection granted to intimate partners must be with a view to maintain their privacy and dignity;

k. The Court shall not pass any directions for counselling or parental care when the corpus is produced before the Court. The role of the Court is limited to ascertaining the will of the person. The Court must not adopt counselling as a means of changing the mind of the appellant, or the detained/missing person;

l. The Judge during the interaction with the corpus to ascertain their views must not attempt to change or influence the admission of the sexual orientation or gender identity of the appellant or the corpus. The court must act swiftly against any queerphobic, transphobic, or otherwise derogatory conduct or remark by the alleged detainers, court staff, or lawyers; and

m. Sexual orientation and gender identity fall in a core zone of privacy of an individual. These identities are a matter of self-identification and no stigma or moral judgment must be imposed when dealing with cases involving parties from the LGBTQ+ community. Courts must exercise caution in passing any direction or making any comment which may be perceived as pejorative.

5. There is no doubt that xxxx is major, her date of birth being xxxx.
6. Presently, she is not at all desirous of going back to the residence of her parents and is not interested in having any sort of communication with them either.
7. During our interaction with xxxx, she, however, expressed her desire to be properly examined, evaluated and counseled by a team of



doctors from some renowned hospital and expresses her willingness to undergo requisite surgery.

8. During such interaction, we asked her to tell us the name of any hospital where she would like to undergo such medical examination or counseling but she has left it to us to take appropriate decision in this regard. After having interaction with all concerned and with Dr. Mahadev of IHBAS, we deem it appropriate if xxxx is examined at AIIMS by a team of doctors and to then advice accordingly, keeping in mind her sexual orientation.

9. Shri Jennifer Thomas is also present in person and we have also interacted with her and she also assures that no harm would be caused to xxxx by anyone and she would keep the police posted and updated about her place of residence in the interregnum.

10. Let communication be also sent to Director, AIIMS for arranging such examination on 03.06.2024 at 11 AM.

11. Let report, in a sealed cover, be submitted before us on the next date of hearing, i.e. 10.07.2024.

12. Since xxxx is major and is not at all interested in going back to the residence of her parents, she is at liberty to go back wherever she wants. She, states that she would be going to xxxx.

13. Her mobile number is xxxx and we also direct ACP Sanjeev Kumar, Sub Division Ashok Vihar, Office Address :- PS Keshav Puram (Mobile No.8750870204) to be in touch with her so that she can



be provided with any assistance, if so required.

14. Keeping in mind the peculiar nature of this case, we also direct Registry to redact the name of xxxx and names, contact details, address etc. of her relatives wherever so appear in the order and then to upload the same. Necessary redaction be also done in the pleadings.

15. The order which we had passed yesterday be also appropriately redacted and thereafter uploaded again on the website of Delhi High Court. Earlier order dated 29.05.2024, containing names etc., be pulled from the website of Delhi High Court and be replaced with the redacted order as per above directions.

16. We also clarify that in order to comprehend the entire matter properly, un-redacted copy of this order be sent to Director, AIIMS, Delhi immediately in a closed cover through special messenger.

17. List on 10th July, 2024.

SURESH KUMAR KAIT, J

MANOJ JAIN, J

MAY 30, 2024/st



This is a digitally signed order.

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