

(2020) 02 DEL CK 0209

In the Delhi High Court

Case No : Criminal Writ Petition No. 3239 Of 2019

Surender Sah

APPELLANT

Vs

State & Anr

RESPONDENT

Date of Decision : 19-02-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 164

Citation : (2020) 02 DEL CK 0209

Hon'ble Judges : Manmohan, J; Sangita Dhingra Sehgal, J

Bench : Division Bench

Advocate : Mallika Parmar, Rahul Mehra, Chaitanya Gosain, Divyank Tyagi, R.A. Iyer

Judgement

Manmohan, J

1. The present proceedings arise out of a petition for a writ of habeas corpus preferred by the father of a girl child-Ms.Naina Kumari @ Moushmi

Kumari allegedly aged 15 years, who has been missing since 14th October, 2019.

2. Today learned standing counsel (Crl.) for the State has produced the missing girl- Ms.Naina Kumari @ Moushmi Kumari. He states that her

statement under Section 164 Cr.P.C has been recorded by the ACMM, Karkardooma Court today.

3. We have interacted with Ms.Naina Kumari @ Moushmi Kumari. She emphasises that she had gone with Neeraj out of her own free will. She also states that she will be turning 18 years of age tomorrow.

4. However, learned counsel for the petitioner, on instructions of the mother of Ms.Naina Kumari @ Moushmi Kumari, states that the girl is about 16 years old.

5. Keeping in view the dispute with regard to the age, this Court directs the police to carry out ossification test of Ms.Naina Kumari @ Moushmi

Kumari. Let the said report be brought on record within a week. The Medical Superintendent, LNJP Hospital is directed to conduct the ossification

test at the earliest, preferably within a week.

6. Since Ms.Naina Kumari @ Moushmi Kumari states that she does not want to reside with her parents, she is directed to be lodged at Sanskar

Ashram, Dilshad Garden.

7. The police is directed to produce Ms.Naina Kumari @ Moushmi Kumari on the next date of hearing.

8. Pending the report of ossification test, the police is directed not to take any coercive action against Mr.Neeraj.

9. Mr.Neeraj is also directed to be personally present in Court on the next date of hearing.

10. It has been noticed by this Court that on various occasions involving missing children, the local police / AHTUs functioning at district level typically

seem unable to trace missing children, whereas when the investigation is transferred under orders of this Court to AHTU (Crime), typically the

missing children are traced.

11. In the circumstances, and given the sensitive nature of the issues involved, during the course of hearing the present matter, this Court found it

appropriate, additionally, to consider issues as to the working of the Anti Human Trafficking Units (AHTUs) in the NCT of Delhi, and had also sought

suggestions from the Delhi Police, which were recorded in our order dated 20th December, 2019.

12. Having since considered the action taken reports and further status reports filed by the Delhi Police, and having interacted with the two DCPs

present in Court today and having heard the submissions made on behalf of the Delhi Police, this Court is of the view that it would be appropriate to

issue the following directions with a view to streamlining the functioning of the Delhi Police / AHTUs in matters pertaining to tracing missing children:-

(i) District AHTUs are currently functioning to investigate (a) cases of children between the ages of 3 to 8 that are missing for four months or more,

and (b) cases where there is a suspicion of links to trafficking and organised crime. It is directed that the District AHTUs shall henceforth function as

a nodal agency for all cases of missing children in the district concerned. The District AHTUs shall work in close coordination with the local police, as

well as other agencies, providing expert assistance to Investigating Officers, including in respect of collection and analysis of technical evidence.

(ii) In every district, an officer not below the rank of a DCP shall, on a fortnightly basis, review the progress of investigation in every case registered

in respect of missing children in the respective districts. Every Investigating Officer shall be responsible for drawing up and maintaining a Guard File

for each case being investigated by them. The ACPs of the District AHTU shall be responsible for submission of such file to the superior officer.

(iii) Within a period of 48 hours, an officer not below the rank of an ACP should be nominated at every District AHTU, who shall thereafter, on a

regular basis, i.e., at least twice a month, analyse the pending as well as closed cases of missing children to identify patterns or other circumstances

indicating the likelihood of links to trafficking or organised crime. Appropriate reports shall be drawn up in this regard every month. The said officer

shall, additionally, consider such further and other intelligence as may be required in this regard. In cases where there are indications of links to

trafficking or organised crime, appropriate steps ought to be taken, including gathering such additional intelligence as may be necessary, and launching

operations no later than within 24 hours to apprehend persons involved, and to rescue the missing children.

(iv) Pro-active steps should be taken by the Delhi Police to curb the menace of missing children. To this end, within a period of 48 hours, an officer

not below the rank of an Addl. DCP shall be nominated in each district, who shall thereafter hold at least one meeting each month with ACP (AHTU)

and the SHOs concerned, to identify sections /pockets of their respective districts that are worst affected in terms of missing children. An appropriate

action plan shall be drawn up with inputs from other stakeholders such as NGOs and community leaders for steps to be taken in this regard. The

officer concerned shall regularly, i.e., at least once a month review the implementation of the plan, making such changes as are necessary depending

on the circumstances as may arise.

(v) Children rescued under Operation Milap are placed in Children Homes pending their restoration. Within a period of 48 hours, a team shall be

formed at each district under an officer not below the rank of an Inspector (AHTU), to streamline and expedite the process of restoring such children.

As and when a child is placed in a Children Home, the team shall interact with the children within a period of 24 hours, to find details of their family

members / acquaintances, in order that steps may be taken towards restoring them. This exercise shall be undertaken in respect of children already

placed in Children Home within 72 hours from today. The said Inspector (AHTU) shall also be responsible to ensure that all details as can be

ascertained from / about the children and photographs of the children rescued, are promptly, and in any event not later than within 24 hours from the

children being placed in the Homes, uploaded by them on the Zonal Integrated Police Network (ZIPNET).

(vi) In the order dated 20th December, 2019, it was noted that the suggestion to delegate powers to Additional DCP-I as well as DCPs of the District

to obtain CDRs in cases involved missing children was approved by the Commissioner of Police. It was noted that the Commissioner also approved

that the assistance of the District Cyber Cell should invariably be taken by the Investigating Officers to analyse the CDRs obtained. In our view, it is

also essential that such analysis be eventually carried out by the District AHTUs by themselves expeditiously. It is directed that within a period of one

week, appropriate mechanisms ought to be put in place, including weekly training, to ensure that the District AHTUs themselves have a robust system

to obtain and analyse CDRs of suspects at the earliest during the course of investigation.

(vii) It is submitted on behalf of the Delhi Police that investigation in cases involving missing children is travelling-intensive, both within and outside the

NCT of Delhi. It is submitted that the cost of travel becomes prohibitively expensive, especially in view of a lengthy process of claiming

reimbursement from the Department. It has been suggested that the Delhi Police ought to enter into an appropriate arrangement with radio-taxi / cab

service provider to provide transport services on pre-approved rates, payments wherefor may be made by the Delhi Police through a centralised billing

service. The Delhi Police is directed to examine and implement within a period of four weeks the entering into an arrangement with a radio-taxi / cab

service providers after due consultation with the Finance and other departments concerned, wherein appropriate arrangements shall be made for:

(a) Making cabs available on immediate basis at request, for transportation of police officers investigating cases of missing children,

(b) Payment made on a bi-monthly or monthly basis to the service provider, preferably from a centralised section at each district,

(c) Appropriate safeguards to ensure payment is made only after due verification. Safeguards must also be put in place to prevent misuse of the facility, which is expected to be used only during Investigation.

(d) It has been brought to the attention of this Court that the AHTU Crime branch has evolved certain good practices in respect of reimbursing

expenses incurred by Investigating Officers during the course of investigation. It is submitted that these practices are effective in enabling

Investigating Officers to effectively make use of appropriate transportation resources during the course of investigation. The Standing Counsel

(Criminal) submits that the same ought to be adopted by AHTUs at every district, as well as the local police.

(e) Consequently, we direct that the SHO and the ACP of the Sub-Division concerned shall be responsible for, on a weekly basis, verifying and

forwarding to the central billing sections necessary documents to enable the section to process payments to be made. The SHO and ACP concerned

are directed to verify copies of arrival/departure Daily Diary Entry made by Investigating Officers during investigation, and other documents as are

currently required to be produced by Investigating Officers seeking reimbursement of such expenses.

(f) The DCP (PHQ) shall draw up an appropriate circular and circulate it to the AHTUs / police stations within a period of one week. The same shall

also be placed on the record of this Court.

(g) It is expected that Circulars No. 11063-11122/A-VI/PHQ dated 24th July, 2015, 36744-80/A-VI/PHQ dated 23rd August, 2005, 1610-40/A-

VI/PHQ dated 9th January, 2008, and 32935-60/A-VI/PHQ dated 25th June, 2008 are suitably amended and duly complied with in the above process.

(viii) It has further been submitted that though the Commissioner had approved the suggestion that the Indian Railways be requested that an

emergency quota be made for reservation of tickets for Investigating Officers required to travel outside the NCT of Delhi, orders of this Court may be

required in this regard. The Ministry of Railways is directed to initiate appropriate

steps in this regard within a period of one week, and have such quota made expeditiously, and in any event within a period of four weeks from today. A copy of this order be furnished by the Standing Counsel

(Criminal) dasti under the signatures of the Court Master to Mr. Jagjit Singh, Standing Counsel, Ministry of Railways forthwith to communicate to the

Ministry.

(ix) It is directed that henceforth, publication of advertisements of missing children shall be published in terms of Circular No. 24/2014 dated 13th

February, 2020, which amends and streamlines the process of publication. It is directed that the publications shall be made no later than 72 hours from

receipt of information by the Police in this regard.

13. An action taken report shall be filed by the Delhi Police as well as the Ministry of Railways by the next date of hearing in respect of the above

directions.

14. List on 3rd March, 2020 at 3.00 P.M.

Order dasti under the signature of the Court Master.