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

Date of decision:-30th July, 2024.

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W.P.(CRL) 2071/2024

VANDANA

.....Petitioner

Through: Mr. Dinesh Malik, Adv. from
DHCLSC alongwith Mr. Puneet Jain
and Ms. Kiffi Aggarwal, Advs.. (M:
9810306400)

Versus

STATE THROUGH SHO PS AMAR COLONY
& ANR.

.....Respondents

Through: Mr. Sanjay Lao, Standing Counsel
with Insp. Rizwan PS Amar Colony.
Mr. Sushil Raaja, Adv. (M:
9212717171) for UIDAI with Mr.
Ankur Singh Chauhan and Mr. Deepak
Soni, Deputy Director of UIDAI and
Assistant Director, Legal of UIDAI.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE AMIT SHARMA

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through hybrid mode.
2. The Petitioner has filed the present writ petition under Article 226 of the Constitution of India read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 seeking a writ of *habeas corpus* directing the Respondents to produce her mother, who is missing since 15th May, 2019. Continuous efforts are being made to trace the whereabouts of Petitioner's mother.



3. *Vide* order dated 11th July, 2024 and 23rd July, 2024, the Court had directed the concerned officials of UIDAI to be present in Court and file a status report regarding any information in respect of the Petitioner's mother as also her Aadhaar Card including address *etc.,*.

4. Mr. Ankur Singh Chauhan and Mr. Deepak Soni, Deputy Director of UIDAI and Assistant Director, Legal of UIDAI respectively are present in Court. They have handed over to the Court in a sealed cover the contact details *etc.,* available with them (*without biometric data*) of the missing lady, who is the mother of the Petitioner. The four different printouts, which have been shown to the Court are of data updated as on 11th August, 2011, 26th April, 2016, 21st February, 2024 and 9th July, 2024.

5. The said data also reveals that initially the Petitioner's mother had given her address as Srinivas Puri, New Delhi and thereafter, the address given is of Rudauli, Faizabad, Uttar Pradesh and the latest data given is that she is in Ward No.2, Harijan Basti, Hansari, Jhansi, Uttar Pradesh. The latest mobile number has also been mentioned.

6. The Aadhar data, as per the officials, who have appeared before the Court from the UIDAI, has to be strictly secured and cannot be released without the consent of the individual concerned. Reliance is placed on Sections 28 and 33 of the Aadhar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 (hereinafter '*Aadhar Act*') respectively. Section 28- '*Security and confidentiality of information*' defines the responsibility of the authority to secure the identity of the individual and Section 33- '*Disclosure of information in certain cases*' explains the situations in which the information can be disclosed on the order of a High Court. Relevant provisions have been extracted below:



Section 28- Security and confidentiality of information:

“28. Security and confidentiality of information.—(1) The Authority shall ensure the security of identity information and authentication records of individuals.

(2) Subject to the provisions of this Act, the Authority shall ensure confidentiality of identity information and authentication records of individuals.

(3) The Authority shall take all necessary measures to ensure that the information in the possession or control of the Authority, including information stored in the Central Identities Data Repository, is secured and protected against access, use or disclosure not permitted under this Act or regulations made thereunder, and against accidental or intentional destruction, loss or damage.

(4) Without prejudice to sub-sections (1) and (2), the Authority shall—

(a) adopt and implement appropriate technical and organisational security measures;

(b) ensure that the agencies, consultants, advisors or other persons appointed or engaged for performing any function of the Authority under this Act, have in place appropriate technical and organisational security measures for the information; and

(c) ensure that the agreements or arrangements entered into with such agencies, consultants, advisors or other persons, impose obligations equivalent to those imposed on the Authority under this Act, and require such agencies, consultants, advisors and other persons to act only on instructions from the Authority.

(5) Notwithstanding anything contained in any other law for the time being in force, and save as otherwise provided in this Act, the Authority or any of its officers or other employees or any agency that maintains the Central Identities Data Repository shall not, whether



during his service or thereafter, reveal any information stored in the Central Identities Data Repository or authentication record to anyone:

Provided that an Aadhaar number holder may request the Authority to provide access to his identity information excluding his core biometric information in such manner as may be specified by regulations.”

Section 33- Disclosure of information in certain cases:

33. *Disclosure of information in certain cases.—(1) Nothing contained in sub-section (2) or sub-section (5) of section 28 or sub-section (2) of section 29 shall apply in respect of any disclosure of information, including identity information or authentication records, made pursuant to an order of a court not inferior to that of a Judge of a High Court]:*

Provided that no order by the court under this sub-section shall be made without giving an opportunity of hearing to the Authority ³[and the concerned Aadhaar number holder].

³[Provided further that the core biometric information shall not be disclosed under this sub-section.]

(2) Nothing contained in sub-section (2) or sub-section (5) of section 28 and clause (b) of sub-section (1), sub-section (2) or sub-section (3) of section 29 shall apply in respect of any disclosure of information, including identity information or authentication records, made in the interest of national security in pursuance of a direction of an officer not below the rank of 1 [Secretary] to the Government of India specially authorised in this behalf by an order of the Central Government:

Provided that every direction issued under this sub-section, shall be reviewed by an Oversight Committee consisting of the Cabinet Secretary and the Secretaries to the Government of India in the Department of Legal Affairs and the Department of Electronics and



Information Technology, before it takes effect:

Provided further that any direction issued under this sub-section shall be valid for a period of three months from the date of its issue, which may be extended for a further period of three months after the review by the Oversight Committee.

7. A perusal of Section 28 read with Section 33 of the Aadhaar Act, 2016 would reveal that under Section 33(1) proviso, disclosure of information is permissible pursuant to the order of the High Court. The same is subject to two provisos which are as under:

- i. that an opportunity of hearing shall be given to the authority and the Aadhar number owner,
- ii. The core biometric information shall not be disclosed.

8. In the affidavit dated 22nd July, 2024 filed by the UIDAI, reliance is also placed upon the decision of the Supreme Court in *Justice K.S. Puttuswamy (Retd.) & Anr. v. Union of India, 2019 1 SCC 1* to argue that the privacy rights need to be protected and the UIDAI would have to be heard before an order is passed. The relevant extract from the said decision is set out below:

*“344)..... We, therefore, clarify the provisions of sub- section (1) of Section 33 by reading into the provisions that an individual whose information is sought to be released shall be afforded an opportunity of hearing. **There is a reasonable presumption that the said court shall take into consideration relevant law including Article 20(3) of the Constitution as well as privacy rights or other rights of that person before passing such an order. Moreover, a person in respect of whom order is passed shall also be heard and will have right to challenge the order in a higher forum. Not only this, proviso to Section 33(1) puts an***



additional safeguard by providing that even UIDAI shall be heard before an order is passed to this effect by the Court. In that sense, the Authority is to act as trustee and it may object to passing of the order by the court. Such a happening is actually taken place. We have already noticed that against the order of the High Court of Bombay in some criminal proceedings, order was passed directing the Authority to give biometric information of a person, the Authority had filed Special Leave Petition (Criminal) No. 2524 of 2014 challenging the said order on the ground that giving of such biometric information was contrary to the provisions of the Aadhaar Act as the information was confidential. This Court stays the operation of the said order which depicts that there are sufficient safeguards provided in sub section (I) of Section 33 itself.”

9. In terms of the decision in ***K.S.Puttuswamy (supra)*** it is a settled proposition that the data provided to the UIDAI while making an Aadhar card is private and personal information of an individual. The same needs to be maintained with confidentiality and secrecy should be ensured by the UIDAI. Under normal circumstances the data given by any individual for preparing an Aadhar card would be the personal data of the said individual and would be governed by the law of privacy. However, sometimes there are exceptions to this *i.e.*, for example as in the present petition where the daughter is seeking a writ of *habeas corpus* for production of her mother.

10. The mother of the Petitioner is currently not traceable despite repeated efforts made by the Delhi Police. The daughter has information that recently the Aadhar card of the mother has been updated. Under such circumstances, in a *habeas corpus* writ petition when the Aadhar Card of the missing person may have been updated, the Court dealing with such a petition would not be able to hear the person concerned who is the holder of Aadhar Card and is



missing.

11. In addition, considering the urgency of the matter, and in order to safeguard the safety and security of an individual, UIDAI can also be directed by the High Court dealing with the *Habeas Corpus* petition, in exceptional cases such as the present one, to disclose the data to the Court in a sealed cover, even without being afforded a prior hearing. In a *habeas corpus*, there is a sense of urgency, with which the Court has to act as the missing person could be in danger. Under such circumstances, the UIDAI can be directed to provide the data forthwith.

12. A Status report dated 30th July, 2024 has been handed over by the police in Court and taken on record. The said status report shows that there is no trace of the mother of the Petitioner. Thus, the only available information now is on the basis of updated Aadhar card information.

13. Accordingly, the updated address and mobile number *etc.*, as per the latest Aadhar Card data, of the mother of the Petitioner has been provided to the Delhi Police, who shall now carry out the investigation and file an updated status report with regard to the whereabouts of the mother of the Petitioner.

14. Let an updated status report be filed by the Delhi Police. If there is any updating or editing of information with regard to the Aadhar card of the mother of the Petitioner by the next date of hearing, the same shall also be provided in a sealed cover to the Court, by the UIDAI, on the next date of hearing.

15. The information provided in respect of the Aadhar Card of the Petitioner's mother may also be maintained in a sealed cover by the Registry and be sent in Court on the next date of hearing. The Delhi Police shall also use the data given today of the missing person, for the purposes of tracing her



and shall maintain the confidentiality of the same.

16. List on 20th August, 2024.

**PRATHIBA M. SINGH
JUDGE**

**AMIT SHARMA
JUDGE**

JULY 30, 2024/dk/ks