

GAHC010272092023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : W.P.(Crl.)/42/2023

SEIKH MEHBOOB HUSSAIN
S/O- AKBAR HUSSAIN, RESIDENT OF BHAKHURADIA, P.O. TUPAMARI, P.S.
NAGARBERA, DIST.- KAMRUP, ASSAM

VERSUS

THE STATE OF ASSAM AND 8 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, HOME DEPARTMENT, DISPUR, GHY-6

2:THE DIRECTOR GENERAL OF POLICE
ASSAM
ULUBARI
GUWAHATI-07

3:THE DEPUTY COMMISSIONER
KAMRUP AT AMINGAON
PIN- 781031

4:THE SUPERINTENDENT OF POLICE
KAMRUP AT AMINGAON
PIN- 781031

5:THE OFFICER-IN-CHARGE
NAGARBERA POLICE STATION
PO AND PS- NAGARBERA
DIST.- KAMRUP
ASSAM
PIN- 781137

6:KORBAN ALI
SON OF LATE MOKSED ALI

RESIDENT OF VILLAGE- SONAHARA
PO- KHARMUZA
P.S. BAGUAN
DIST.- GOALPARA
ASSAM
PIN- 783101

7:SOFIUR RAHMAN
SON OF LATE MOKSED ALI
RESIDENT OF VILLAGE- SONAHARA
PO- KHARMUZA
P.S. BAGUAN
DIST.- GOALPARA
ASSAM
PIN- 783101

8:MUSTAFIZUR RAHMAN
SON OF SOFIOR RAHMAN
RESIDENT OF VILLAGE- SONAHARA
PO- KHARMUZA
P.S. BAGUAN
DIST.- GOALPARA
ASSAM
PIN- 783101

9:ASHRAFUR RAHMAN
SON OF SOFIOR RAHMAN
RESIDENT OF VILLAGE- SONAHARA
PO- KHARMUZA
P.S. BAGUAN
DIST.- GOALPARA
ASSAM
PIN- 78310

Advocate for the Petitioner : MR. A ALI

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

19-12-2023

(M.R.Pathak, J)

Heard Mr. A Ali, learned counsel for the petitioner and Mr. P Sharma, learned Additional Senior Government Advocate, Assam for the official respondent Nos. 1 to 5. Also heard Mr. B C Das, learned Senior counsel assisted by Mr. S H Rahman, learned counsel for the private respondent Nos. 6 to 9.

2. By this Habeas Corpus petition, the petitioner, namely, Seikh Mehboob Hussain has prayed for a direction to the official respondents to recover the victim, his alleged wife, Aysha Siddiqua from the clutch of the private respondent Nos. 6 to 9 and to produce her before the Court from the illegal detention of those private respondents and to give full security to the petitioner and the said victim so as to protect them from any apprehended danger/threat of the private respondents, thereby making all accommodations for recovery of the said victim from the custody of the private respondents and further, to direct the private respondents to pay a sum of Rs. 10,00,000/- (Rupees Ten Lakhs only) as compensation for illegally detaining the said victim that resulted in severe mental stress and other sufferings to the petitioner and his family members.

3. It is contended by the petitioner that he is a well educated person and was also a faculty of the Goalpara College of Pharmacy at Goalpara. While serving in the said college, he came into contact with one of its students, namely, Aysha Siddiqua, i.e., the victim, daughter of the private respondent No. 6, who was pursuing her Diploma in Pharmacy (D. Pharm) Course in the said college.

4. It is stated by the petitioner that both, he and the victim entered into a Deed of Marriage Agreement on 25.08.2023, whereby they agreed to marry each other and live together as husband and wife after solemnizing their marriage according to the Muslim Rites and also

agreed to enter into marriage between them without any interference of any person/persons and further, agreed that their marriage would be solemnized according to the Muslim Rites and Rituals and Mohar would be fixed @ Rs. 70,100/- at the time of their marriage.

5. It is stated by the petitioner that after her exam in the Goalpara College of Pharmacy, the victim went back to her house where the private respondents were forcing her to marry someone else of their choice, which she vehemently objected and after coming to know about the said marriage agreement between the petitioner and the victim, the private respondents tried to divert her on various pretexts.

6. Though the petitioner tried to contact her in her mobile number, he failed to contact her and rather got warnings from the private respondents to face the consequences if he dares to contact her. The petitioner stated that he on his own enquired and confirmed that the victim has been detained by the private respondents and has been kept confined at unknown place and that the victim has been put to severe mental and physical torture by the private respondents for not abandoning him.

7. The petitioner further stated that though he asked for the hands of the victim from her parents to be his wife by way of formal marriage, but it was refused by the private respondents.

8. Having no alternative and being helpless, the petitioner submitted that he approached the police personnel of Nagarbera Police Station with an application on 22.11.2023 narrating the whole incident. But, according to him, the police personnel refused to accept his said application on jurisdictional grounds.

9. The petitioner stated that he also approached the Superintendent of Police, Kamrup at Amingaon vide his application dated 01.12.2023 and prayed for doing the needful in that behalf.

10. The petitioner further stated that he had received text messages from the victim and that the illegal detention of the victim by the private respondents resulted in a lot of suffering for him and his entire family members.

11. As such, the petitioner has prayed for a direction to the respondent authorities to conduct a high level enquiry into the matter and accordingly filed this Habeas Corpus petition.

12. Along with his writ petition, the petitioner has annexed the copy of the Deed of Marriage Agreement dated 25.08.2023 executed between him and one Aysha Siddiqua, alleged victim, daughter of Korban Ali, private respondent No. 6, that was signed before the Notary at Kamrup (Giasuddin Ahmed), copy of the FIR dated 22.11.2023 signed by him addressing the Officer-in-Charge of Nagarbera Police Station and a copy of the application dated 01.12.2023 submitted before the Superintendent of Police, Kamrup, Amingaon to recover the victim from the custody of the private respondents herein and further annexed few photographs of the alleged victim with him as well as certain messages that he received in his mobile etc. from the alleged victim.

13. The petitioner in this writ petition did not annex any Kabinnama/Nikahnama regarding his marriage with the alleged victim, except the Deed of Marriage Agreement dated 25.08.2023, noted above.

14. For issuance of a writ of Habeas Corpus, the learned counsel for the petitioner, Mr. Ali has relied upon two judgment of the Hon'ble Punjab & Haryana High Court, one that of *Gulam Deen and Another -Vs.- State of Punjab and Others* decided on 13.06.2022 and another, *Javed -Vs.- State of Haryana and Others* decided on 30.09.2022.

15. In *Gulam Deen and Another (Supra)*, both the petitioners were husband and wife, who performed their marriage and apprehended danger to their life and liberty at the hands of the private respondents therein and sought for protection as envisaged under Article 21 of the Constitution.

16. In *Javed (Supra)*, the detenue whom said Javed allegedly married fled away from her home at her own will and the family members of the detenue/victim forcefully engaged her with her maternal uncle, though she performed Nikah with said petitioner, Javed and in that backdrop said Javed prayed for production of the detenue/victim by a writ of Habeas Corpus.

17. The facts of both the cases, noted above, are different in relation to the case in hand.

18. On behalf of the petitioner, Mr. Ali, learned counsel has also placed a copy of the judgment of the Hon'ble Apex Court in the case of *Shafin Jahan -Vs.- Asokan K.M. & Ors. (Criminal Appeal No. 366 of 2018)*.

19. In the said case of *Shafin Jahan (supra)*, the victim girl belonged to another religion and

the appellant belonged to other. Both the appellant and the victim got married and the victim converted herself to the religion of her husband after their marriage. At that point of time the father of the victim girl lodged an FIR with regard to forceful conversion of her daughter to another religion and marrying his daughter by the accused person.

20. In that context, the Hon'ble Apex Court passed the judgment in the said case of *Shafin Jahan*.

21. We found that the facts of the cases placed by the petitioner including that of *Shafin Jahan* are not similar to the facts and context of the present case.

22. Earlier on 12.12.2023, we directed the Director General of Police, Assam, respondent No. 2 to apprise the Court about the status of the alleged victim girl, Aysha Siddiqua, daughter of Korban Ali, respondent No. 6, resident of Village-Sonahara, Post Office-Kharmuza, Police Station-Baguan, District-Goalpara and also to apprise the Court as to whether she is healthy and hearty with her parents or not, fixing the matter today.

23. Mr. P Sharma, learned Additional Senior Government Advocate, Assam has submitted a report of the Superintendent of Police, Goalpara dated 16.12.2023, apprising the Court that the Sub-Inspector of Baguan Police Station, namely, Sarif Uddin Choudhury visited the house of the alleged victim located at village- Sonahara, Post Office-Kharmuza, Police Station-Baguan of District-Goalpara, examined the victim; her mother, namely, Morjina Khatun and her father, namely, Korban Ali and as per their statements, the concerned S.I. found that the victim girl was taken proper care. The said S.I. reported that said Aysha Siddiqua, the alleged victim girl told him that she recently appeared in her D-Pharm Final Semester Examination from Goalpara Pharmacy Institute, Goalpara and thereafter, since 30.10.2023 she is staying happily at her home with her parents.

24. In that regard the said Sub-Inspector of Baguan Police Station examined the former Principal of Kharmuja Higher Secondary School, namely, Sandulla Miya as well as one Abdus Salam, teacher of Karaikhowa MV School and they reported before him that they did not notice any untoward incident in the house of the respondent No. 6 and that the victim is living happily and peacefully with her family members.

25. The concerned S.I., who enquired into the matter also placed a photograph of the victim

with her parents and family members taken at her home during such enquiry and the said Sub-Inspector of Police, Baguan Police Station submitted his report in Baguan Police Station GDE Entry No. 262 dated 15.12.2023.

26. Mr. B C Das, learned Senior counsel appearing on behalf of the private respondent Nos. 6 to 9 has submitted that the alleged victim girl is with her parents and living peacefully and happily.

27. Mr. Das, learned Senior counsel further pointed out that the Deed of Agreement dated 25.08.2023 annexed by the petitioner as Annexure-1 itself reflects that the marriage between the petitioner and the victim girl did not take place, as it is only an agreement to marriage.

28. Mr. Das, learned Senior counsel has also submitted that the petitioner failed to place the Kabinnama/Nikahnama pertaining to his alleged marriage with the victim girl and in that regard Mr. Das, learned Senior counsel placed reliance on the amended provisions of Section 2A of the Assam Moslem Marriages and Divorces Registration Act, 1935, whereby w.e.f 08.06.2010, registration of Muslim Marriage and Divorce are compulsory and mandatory within the State of Assam.

29. We have noted that both the petitioner and the victim girl are majors in their age.

30. After hearing the learned counsels for the parties and considering the entire aspect of the matter as well as the report placed before the Court by Mr. P Sharma, learned Additional Senior Government Advocate, Assam pursuant to the order dated 12.12.2023 with regard to the Baguan Police Station GDE Entry No. 262 dated 15.12.2023, we have found that the victim namely, Aysha Siddiqua after appearing in the D-Pharm Final Semester Examination from Goalpara Pharmacy Institute of Goalpara has been living at her home with her parents since 30.10.2023 at her own will.

31. In view of the above, finding no merit in this writ petition, the prayers of the petitioner made in this writ petition for issuance of writ of Habeas Corpus for production of the alleged victim girl Aysha Siddiqua stands rejected.

32. The report dated 16.12.2023 submitted by Mr. P Sharma, learned Additional Senior Government Advocate, Assam placed before the Court today, be kept as part of the record.

JUDGE

JUDGE

Comparing Assistant