

Court No. - 45

Case :- CRIMINAL MISC. WRIT PETITION No. - 14746 of 2023

Petitioner :- Smt. Jubairiya Ibrahim And 2 Others

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Yasir Ahmed, Mohd Afzal, Syed Mohammad Abbas Abdy

Counsel for Respondent :- G.A.

Hon'ble Vivek Kumar Birla, J.

Hon'ble Vinod Diwakar, J.

1. Heard Sri S.M.A. Abdy, learned counsel for the petitioners and Vaibhav Ojha, learned A.G.A. for the State and perused the record.

2. This writ petition has been filed praying to quash the first information report dated 28.12.2021, registered in Case Crime No. 1250 of 2021, under Sections 363, 366 IPC, P.S. Dhoomanganj, District Prayagraj and not arrest the petitioners pursuant to the said FIR.

3. Submission of the learned counsel for the petitioners is that the petitioner no. 1 though at the time of incident was minor, however, she married the petitioner no. 2 on her own sweet will and out of the wedlock, she gave birth to one female child and as per personal law, she is entitled to get married after attaining the puberty and as such, their marriage is valid. He further submits that no offence as alleged is made out as the petitioner no. 1 is a major girl and the entire criminal case lodged by the informant is nothing but an abuse of the process of the law. It is further submitted that as per marks-sheet of Secondary School examination, date of birth of petitioner no. 1 is 27.3.2005 and as per High School marks-sheet the date of birth of petitioner no. 2 is 17.8.2000 and as such, the petitioners no. 1 and 2 are major on the date of incident and they have married on their sweet will and no offence has been committed. By drawing attention to page 35 of the paper book, it is submitted that they have applied online for registration of their marriage.

4. Per contra, learned AGA on instructions submits that the date of birth of the girl- petitioner no. 1 is 27.3.2005 and as such she was a minor on the date of incident. He further submits that during investigation petitioner no. 3-Syade Abrar @ Sayyade has been exonerated.

5. At this stage, learned counsel for the petitioners has placed reliance upon a judgment of Hon'ble Supreme Court in the case of **Suhani vs. State of U.P.** reported in 2018 0 Supreme (SC) 1430 to contend that in all such matters Hon'ble Apex Court has directed for age determination test of the girl.

6. In view thereof, we direct that the petitioner no.1-Smt. Jubairiya Ibrahim wife of Sharukh @ Ballu be produced before the Magistrate concerned, for recording her statement under section 164(1) and (5) of Cr.P.C. and thereafter, she shall be brought before the Chief Medical Officer concerned by the I.O. of the case who shall constitute a panel of three doctors, for her age

determination test (ossification test). Both these exercises must conclude on or before 20.11.2023 or within six weeks from today.

7. It is incumbent upon the petitioners to provide all necessary assistance to the Investigation Officer during investigation, however, the petitioners shall not be arrested during this period.

8. The arrest of the petitioners shall be subject to the 164 Cr.P.C. statement of the girl and her age.

9. In the event, if it is found that she had attained the age of majority and her 164 Cr.P.C. statement favours the petitioner no. 2, then the petitioners shall not be arrested till the submission of report by the police under section 173(2) Cr.P.C. OTHERWISE, the procedure of law would follow against the petitioners and the protection given to the petitioners would automatically stands vacated.

10. With this observation, the writ petition stands disposed of.

Order Date :- 19.10.2023

Abhishek