

Court No. - 45

Case :- CRIMINAL MISC. WRIT PETITION No. - 15662 of 2023

Petitioner :- Smt. Khushbu And Another

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

Counsel for Petitioner :- Sukrampal, Tikendra Pratap Singh

Counsel for Respondent :- G.A., Kamlesh Kumar Dwivedi

Hon'ble Vivek Kumar Birla, J.

Hon'ble Vinod Diwakar, J.

1. Heard Sri Tikendra Pratap Singh, learned counsel for the petitioners, Sri Kamlesh Kumar Dwivedi, learned counsel for the informant and Sri Virendra Kumar Pal, 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 12.7.2023, registered in Case Crime No. 0171 of 2023 under Section 363 IPC, P.S. Shergarh, District Mathura and not arrest the petitioners pursuant to the said FIR.

3. The contention of the learned counsel for the petitioners is that both the petitioners are major and married to each other out of their own free will, as such no offence under Section 363 I.P.C. is made out. Their marriage has also been registered. Attention of this Court has been drawn to the certificate of marriage registration dated 11.7.2023 (Annexure-4 to the writ petition).

4. Per contra, learned counsel for the informant submitted that the Aadhar Cards are forged document and cannot be considered as authentic document for the purpose of certification of their age. Learned AGA also submits that as per educational certificate, the date of petitioner no. 1 is 1.1.2009 and as such she is a minor on the date of incident.

5. During course of argument, it was contended by learned counsel for the petitioners that the statement of victim under Section 164 Cr. P.C. has already been recorded wherein she has declared her age as 18 years and 2 months and as such she is major.

6. 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 and judgement dated 18.7.2023 passed in **Criminal Appeal No. 1898 of 2023 (P. Yuvaprakash vs. State Rep. by Inspector of Police)** submits that in all such matters Hon'ble Apex Court has directed for age determination test of the girl.

7. In view thereof, we direct that the petitioner no.1-Smt. Khushbu 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 27.11.2023 or within six weeks from today.

8. 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.

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

10. 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.

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

Order Date :- 13.10.2023

S.K.S.