

Court No. - 45

Case :- CRIMINAL MISC. WRIT PETITION No. - 15697 of 2023

Petitioner :- Akeel Qureshi And Another

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Rajesh Kumar Bind

Counsel for Respondent :- G.A., Arun Kumar Pundir, Shami Ullah

Hon'ble Vivek Kumar Birla, J.

Hon'ble Vinod Diwakar, J.

1. Heard Shri Rajesh Kumar Bind, learned counsel for the petitioners, Shri Arun Kumar Pundir, learned counsel for the informant, Shri Rajesh Khare, learned A.G.A. for the State-respondents, and perused the record.

2. This writ petition has been filed praying to quash the First Information Report dated 7.11.2022, registered in Case Crime No.0618 of 2022, under Sections 363, 366, 120-B IPC, P.S. Khair, District Aligarh, and not arrest the petitioners pursuant to the said FIR.

3. Submission of learned counsel for the petitioners is that the respondent no.5- victim is a major girl aged about 22 years and the petitioner no.1 is a major boy aged about 28 years. It is further submitted that both have married and one child has also born out of this wedlock. It is submitted that even as per the personal law, the victim is entitled to marry after attaining the age of puberty.

4. Shri Shami Ullah, learned counsel appearing for the respondent no.5 in the present case supported the case of the petitioners and submits that she is major and has married.

5. Learned counsel for the informant submits that as per the FIR the victim is aged about 14 years and as per the Aadhar Card and PAN card, her date of birth is 19.12.2008, however, it is submitted that the High School certificate is not available in support of the verification of the age.

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 respondent no.5- Alshifa 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 30.11.2023 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 petitioners, 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 stand vacated.

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

Order Date :- 13.10.2023

Anil K. Sharma