

Court No. - 45

Case :- CRIMINAL MISC. WRIT PETITION No. - 15935 of 2023

Petitioner :- Muneem @ Munesh Kumar And 5 Others

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

Counsel for Petitioner :- Pradeep Kumar

Counsel for Respondent :- G.A.

Hon'ble Vivek Kumar Birla,J.

Hon'ble Vinod Diwakar,J.

1. Heard Shri Pradeep Kumar, learned counsel for the petitioners, Shri Rajesh Kumar Madhesiya, 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 13.9.2023, registered in Case Crime No.110 of 2023 under Section 363, 504 IPC, P.S. Saifani, District Rampur, and not to arrest the petitioners pursuant to the said FIR.
3. Submission of learned counsel for the petitioners is that the victim is aged about 19 years, and even as per the FIR, her age is stated to be 17 years at the time of commission of offence. Attention was drawn to the statement recorded under section 164 Cr.P.C. to submit that she has not supported the prosecution version and has categorically stated that she is aged about 19 years and she is illiterate, as such no offence is made out.
4. Per contra, learned A.G.A. submits that he has nothing contrary to the same as per his instructions. He, however, submits that her age is given as 17 years in the FIR, therefore, oral evidence by itself may not be sufficient.
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 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.
6. In view thereof, we direct that the victim- Radhika be produced

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) on or before 6.11.2023.

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

8. The arrest of the petitioners shall be subject to the determination of the age of the victim. In the event, if it is found that she has attained the age of majority, 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.

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

Order Date :- 18.10.2023

Anil K. Sharma