

Court No. - 45

Case :- CRIMINAL MISC. WRIT PETITION No. - 16677 of 2023

Petitioner :- Arab Alias Omvir

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

Counsel for Petitioner :- Prem Chandra Dwivedi

Counsel for Respondent :- G.A.

Hon'ble Vivek Kumar Birla,J.

Hon'ble Vinod Diwakar,J.

1. Heard Shri Prem Chandra Dwivedi, learned counsel for the petitioner, Shri G.P. Singh, 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 25.12.2022, registered as Case Crime No.1046 of 2022 under Sections 363, 366 IPC, P.S. Firozabad North, District Firozabad, and not to arrest the petitioner pursuant to the said FIR.

3. Submission of learned counsel for the petitioner is that the victim is major. It was also submitted that the informant has given an affidavit to the effect that no offence has been committed and the victim is aged about 18 years and she has married voluntarily, and she has no objection to such marriage, and therefore, she does not want to pursue the present criminal prosecution. The victim got married with the petitioner on her own sweet will.

4. Per contra, learned AGA submits that as per the educational certificate of Class-8th, date of birth of the victim is 21.10.2006 and as such she is not major and section 376 IPC has been added during the investigation. However, on being asked, he has fairly stated that the victim has not supported the prosecution version in her statement recorded under section 164 Cr.P.C., and he fairly admits that both the documents relating to the age are not authentic proof of age.

5. At this stage, learned counsel for the petitioner 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- Anjali 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), which must conclude within six weeks from today.

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

8. The arrest of the petitioner shall be subject to age of the the victim.

9. In the event, if it is found that she had attained the age of majority, then the petitioner 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 petitioner and the protection given to the petitioner would automatically stands vacated.

10. With this observation, the writ petition stands ***disposed off***.

Order Date :- 21.11.2023

Anil K. Sharma