

Court No. - 45

Case :- CRIMINAL MISC. WRIT PETITION No. - 17225 of 2023

Petitioner :- Neha Devi And Another

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

Counsel for Petitioner :- Yatish Kumar Dwivedi

Counsel for Respondent :- G.A., Arun Kumar Tiwari

Hon'ble Vivek Kumar Birla, J.

Hon'ble Vinod Diwakar, J.

1. Sri Arun Kumar Tiwari has filed his Vakalatnama today on behalf of the informant, the same is taken on record.
2. Heard Sri Yatish Kumar Dwivedi, learned counsel for the petitioners, Arun Kumar Tiwari, learned counsel appearing for the informant and Sri Virendra Kumar Pal, learned A.G.A. for the State and perused the record.
3. This writ petition has been filed praying to quash the first information report dated 19.9.2023 registered as Case Crime No. 227 of 2023, under Sections 363 IPC, P.S. Kuthaund, District Jalaun and not to arrest the petitioners pursuant to the said FIR.
4. The contention of learned counsel for the petitioners is that as per AADHAR card, the date of birth of petitioner no. 1 is 11.4.2005 and petitioner no. 2 is 10.1.2002 and both are major and have married with each other out of their own free will and as such no offence under Section 363 IPC is made out. It is also submitted that as per personal law the petitioners can marry. Drawing attention of Annexure-5 to the petition it is submitted that the petitioners have applied online for registration of the marriage.
5. Learned counsel appearing for the informant submits that as per school leaving certificate the date of birth of the petitioner no. 1 is 14.2.2006.
6. Learned A.G.A. submits that he is not having any instructions in this regard. It is next submitted that no authentic proof of age is appended with the writ petition.
7. 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 judgment dated 18.7.2023 passed in **Criminal Appeal No. 1898 of 2023 (P. Yuvaprakash vs. State Rep. By Inspector of Police)** and submits that in all such matters Hon'ble Apex Court has directed for age determination test of the girl.

8. In view thereof, we direct that the petitioner no.1-Neha Devi 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 8.12.2023 or within six weeks from today.

9. 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.

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

11. 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.

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

Order Date :- 3.11.2023

Lalit Shukla