

Neutral Citation No. - 2023:AHC:231125

**Court No. - 87**

**Case :-** APPLICATION U/S 482 No. - 40600 of 2023

**Applicant :-** Manoj Kumar @ Monu Katheriya

**Opposite Party :-** State Of U.P. And 3 Others

**Counsel for Applicant :-** Kartikeya Shukla

**Counsel for Opposite Party :-** G.A.

**Hon'ble Neeraj Tiwari,J.**

1. Heard learned counsel for the applicant and learned A.G.A. for the State.

2. Present 482 Cr.P.C. application has been filed seeking quashing of impugned charge sheet dated 03.02.2023 in Session Trial No. 22 of 2023, arising out of Case Crime No. 581 of 2022, under Section 363, 366, 376 IPC and 5(j)(ii)/6 of POCSO Act, Police Station-Kotwali Orai, District-Jalaun as well as order dated 01.02.2023 passed by Child Welfare Committee, Jalaun.

3. Pursuant to order of this Court dated 23.11.2023, applicant, namely, Manoj Kumar @ Monu Katheriya is present before this Court, duly identified by his counsel, Sri Kartikeya Shukla. Victim- Mangala along with child aged about four months are also produced before this Court by S.I. Vinod Kumar Singh (PNO- 892260399) and M/e184 Ragini (PNO 182370410),) P.S. Kotwali, Orai, District Jalaun.

4. Learned counsel for the applicant submitted that opposite party No. 4 (**mother of victim**) has lodged FIR dated 30.10.2022 against the applicant, upon which, applicant was also arrested and ultimately, was enlarged on bail by this Court vide order dated 07.08.2023 passed in Criminal Misc. Bail Application No. 31467 of 2023. He next submitted allegations leveled against the applicant in the aforesaid FIR is absolutely frivolous and in fact, applicant and victim are having love affair and have also solemnized marriage on 01.11.2022. He next submitted that against her wish, the victim has been sent to Government Children's Home(Girls) by opposite party No. 3 vide order dated 01.02.2023 on the basis of the fact that her age as per the Medical report is 16 years, as the victim is unducated. She was also blessed with a female child on 02.08.2023. He next that in the statement of victim recorded under Section 164 Cr.P.C., she has

clearly mentioned that her age is 19 years. He next submitted that though the FIR dated 30.10.2022 has been lodged by opposite party No. 4, but she did not come before opposite party no. 3 for custody of the victim. He also submitted that it is a peculiar case and being husband of the victim applicant is fully entitled for custody of victim as well as his child. In support of his contention, he has placed reliance upon the judgment of this Court dated 31.07.2020 passed in Criminal Misc. U/S 482 No. 12047 of 2020: **Satish Kumar Vs. State of U.P. and 2 others.**

5. He next submitted that once, opposite party No. 4 herself is not ready to accept her custody, therefore, in light of law laid down by the Courts as well as peculiar facts of the case, applicant (husband of victim) is fully entitled to take custody of child along with his wife. Victim has given statement before this Court that she is aged about 19 years and on her own will, solemnized marriage with applicant and presently, she wants to live with him along with her child. Her statement has been recorded in the order sheet and also verified by Sri Kartikeya Shukla, learned counsel for the applicant.

6. Learned AGA could not dispute the other facts except age of victim.

7. I have considered the submission raised by learned counsel for the parties and perused the record. Similar issue was before this Court in the matter of **Satish Kumar (supra)** in which Court has framed the question, which is quoted below;

*“Formulating moot question of law, as to whether girl's freedom could be numbed, butchered or sacrificed in the name of minority, though she has changed her marital status after tying marital knots with Satish Kumar; in the garb of pendency of criminal trial against Satish Kumar (herein the applicant).”*

8. After considering the different judgments, Court has answered the same in detail. Relevant paragraphs are quoted below;

*“18. In Habeas Corpus Writ Petition No. 33676 of 2015 (Smt. Kanchan Singh and another Vs. State of U.P. and others) decided on 14.07.2015 this Court has held as under: -*

*“For the aforesaid reasons and in view of the settled law on the issue that even a minor cannot be detained in the Government Protective Home against her wishes, the petitioner no.1, who is seventeen and half years old as per her High School Certificate and as per medical opinion, is aged about nineteen years and she understands her well*

*being, her detention in Nari Niketan against her wishes, is per se undesirable and the order dated 28.2.2015 passed by the Special Judge, POCSO Act, Deoria directing her detention in Nari Niketan without specifying the period of detention is not sustainable".*

*The tone, texture and tanner of above observation is the same which relates to girl's liberty, respect and acknowledgment of her desire and any number of criminal prosecution or technical justification would not going to curt or deter her from her desire.*

*19. Let us examine rest of cases one by one:-*

*(I) In the case of KAJAL AND OTHERS VS. STATE OF U.P. (supra), the father lodged a FIR that his minor daughter aged about 15 years left his house and it was suspected that accused might have enticed her away. Her interest was protected by this Court that she may produced for recording her statement and for medical examination. Though in her 164 Cr.P.C. statement where she has blasted the prosecution story in the court. In this case too ignoring the wish and desire to join the company of her husband, she was dumped into Nari Niketan.*

*(II) The Division Bench relying upon the judgment in the case of JAYMALA VS. HOME SECRETARY, GOVERNMENT OF JAMMU AND KASHMIR [AIR 1982 SC 1296] has held that:-*

*It may be further appreciated that a victim of offence under section 363, 366-A, 366 of 376 I.P.C. could not be falling in the category of an accused and as such no court could be authorized under any provisions of law to authorize the detention of such a lady even into protective custody if the lady objects to such detention. In various decisions this Court opined that generally an order was passed sending the girl to Nari Niketan being ignorant of the constitutional provisions. Liberty being the most valuable fundamental right of a person. There is no age bar when it comes to valuing the liberty of a person be she a woman or be he agent. Even a child has a right to avail of his or her liberties, of course within the caring custody of parents. No law could be upheld even in a case of a child if he is deprived of the right to life and valued the right to liberty.*

*It may also be appreciated that the issue whether the victim/detenuue who is a minor, can be sent to Nari Niketan against her wish, is no longer res in tegra and has been conclusively settled by a catena of decisions of this Court. In the case of Smt. Kalyani Chowdhary Versus State of U.P. reported in 1978 Cr.L.J. 1003 (D.B.), a Division Bench of this Court has taken the view that:*

*"No person can be kept in a Protective Home unless she is required to be kept there either in pursuance of Immoral Traffic in Women and Girls Protection Act or under some other law permitting her detention in such a home. In such cases, the question of minority is irrelevant as even a minor cannot be detained against her will or at the will of her father in a protective home."*

*"In any event, the question of age is not very material in the petitions of the nature of habeas corpus as even a minor has a right to keep her person and even the parents cannot compel the detention of the minor against her will, unless there is some other reason for it.*

*20. After going through the above citation and decisions, the court is of the considered opinion that when a particular minor is set at liberty in respect of her person or whether she shall be governed by a direction of her parent, the question of the custody of a minor girl will depend upon various factors, such as her marriage, which she has stated that taken place with Satish Kumar/the applicant and she wants to go with him. After changing her marital status, she has got every right to chose her future as to whom with she wants to go, ignoring her wish, she was virtually detained an dumped into*

*Protection Home/ Nari Niketan since last one year, is against one's freedom and liberty which is a touch stone of Article 21 of the Constitution of India.*

21. In the case of SMT. RAJ KUMARI VS. SUPERINTENDENT, WOMEN PROTECTION, MEERUT & OTHERS reported in 1997 (2) AWC 720 decided by co-ordinate Bench of this Court has opined that:-

*"In view of the above, it is well settled view of this Court that even a minor cannot be detained in Government Protective Home against her wishes. In the instant matter, petitioner has desired to go with Sunil Kumar besides this according to the two medical reports i.e. of the Chief Medical Officer and L.L.R.M. College, Meerut, the petitioner is certainly not less than 17 years and she understands her well being and also is capable of considering her future welfare. As such, we are of the opinion that her detention in Government Protective Home, Meerut against her wishes is undesirable and impugned order dated 23.11.1996 passed by the Magistrate directing her detention till the party concerned gets a declaration by the civil court or the competent court law regarding her age, is not sustainable and is liable to be quashed."*

28. To segregate the couple, on the ground that she is minor by few months or other technical reasons, is not only unreasonable but tangent to the established norms. Under these circumstances, her detention in the light of above judgments is too harsh and would lead to grave and unfathomable miscarriage of justice without any justifiable or reason just because that she is "subject" of Sessions Trial, her husband is facing prosecution and on the other hand she is detained in a Protective Home at Meerut under the perverse judicial order of C.J.M. Hapur dated 18.10.2019.

29. Last but not the least, the counsel for the applicant has placed the reliance of SAHEEN PARVEEN AND ANOTHER VS. STATE OF U.P. AND OTHERS decided by Lucknow Bench of this Court bearing Misc. Bench No. 3519 of 2015 (decided on 23.7.2015) wherein the Court has observed as under: -

*"If a minor, of her own, abandons the guardianship of her parents and joins a boy without any role having been played by the boy in her abandoning the guardianship of her parents and without her having been subjected to any kind of pressure, inducement, etc. and without any offer or promise from the accused, no offence punishable under Section 363 I.P.C. will be made out when the girl is aged more than 17 years and is mature enough to understand what she is doing. Of course, if the accused induces or allures the girl and that influences the minor in leaving her guardian's custody and the keeping and going with the accused, then it would be difficult for the Court to accept that minor had voluntarily come to the accused. In case the victim/prosecutrix willingly, of her own accord, accompanies the boy, the law does not cast a duty on the boy of taking her back to her father's house or even of telling her not to accompany him."*

34. Retrieving to the current case, after thorough scrutiny of the material available on record and respecting and acknowledging the desire of the girl, Ms. Sonam, this court is of the firm opinion that the charge sheet dated 19.10.2019 U/s 363, 376 I.P.C. and U/s 3/4 POCSO Act, Police Station Bahadurgarh, Hapur, leading S.S.T. No.

*107/2019 (State Vs. Satish Kumar) pending in the court of Addl. Sessions Judge (Special Judge), Hapur is an exercise in futility and accordingly quashed in exercise of powers U/s 482 Cr.P.C.*

*35. The victim, Ms. Sonam is set at liberty forthwith, she may be permitted to join the company of her husband Satish Kumar/applicant. The Superintendent of Police, Hapur would ensure the safety and security of the couple. Though there are no chance that opposite party no.2, Nepal Singh or his allies would commit some mischief against the applicant and his wife Ms. Sonam., however, for the purposes of their safety, Superintendent of Police, Hapur may keep close vigil regarding their welfare. The police personal named above need not to attend the court in connection with the case in future. The office is directed to send a copy of this judgment to Superintendent, Nari Niketan, Meerut and the learned Trial Judge, Hapur to apprise them about the order and suitable follow-up action, pursuant to the judgment."*

9. Facts of this case are undisputed and further as per order dated 01.02.2023 passed by Judicial Magistrate-I, Child Welfare Committee, Jalaun, it is apparently clear that even after lodging of FIR, opposite party No. 4 (mother of victim) has not come forward to take the custody of her daughter (victim). Applicant (husband of victim) is present before this Court and also given statement that he is ready to take custody of his wife alongwith child for their welfare and safety. His statement has also been recorded in the order sheet and verified by Sri Kartikeya Shukla, learned counsel for the applicant.

10. In the matter of **Satish Kumar (supra)**, this Court dealt with same issue in detail and has expressed clear opinion that even in case of minor, a person cannot be forced to live at Government Children's Home(Girls) or any other protection home.

11. Now coming to the age of victim. As per Medical report dated 20.01.2023, she is aged about 16 years and law is settled that always such determination of age is taken into consideration with accuracy of  $\pm 2$ . In present case, it is undisputed that victim has been blessed with a child and mother and child both are happy and healthy. Therefore, Court is having no hesitation to treat her age more than 18 years.

12. Under such peculiar facts and circumstances of the case as well as law discussed above, proceeding of the aforesaid case is hereby quashed. Victim- Mangala is set at liberty forthwith to join the company of her husband- Manoj Kumar @ Monu Katheriya/ applicant alongwith child. S.I. Vinod Kumar Singh (PNO- 892260399) and M/e184 Ragini (PNO 182370410),) are directed to set free the victim to go with her

husband as per her wish.

13. Entire proceeding of Session Trial No. 22 of 2023, arising out of Case Crime No. 581 of 2022 as well as order dated 01.02.2023 passed by Child Welfare Committee, Jalaun are hereby quashed.

14. The present 482 Cr.P.C. application stands **allowed**.

15. No order as to costs.

16. Registrar(Compliance) is directed to send a copy of this order to opposite party No. 2 for keeping the same on record forthwith.

**Order Date :- 6.12.2023**

Arvind