

Court No. - 15

Case :- HABEAS CORPUS WRIT PETITION No. - 322 of 2023

Petitioner :- Goldi Yadav Thru. Father Devendra Kumar Singh

Respondent :- State Of U.P Thru. Prin. Secy. Home Lko. And 9 Others

Counsel for Petitioner :- Avdhesh Kumar Singh Yadav, Prabhat Kumar Saxena

Counsel for Respondent :- G.A.

Hon'ble Shamim Ahmed, J.

Heard Sri Avdhesh Kumar Singh, learned counsel for the petitioner and Sri Vivek Gupta, learned A.G.A. for the State as well as perused the material placed on record.

The instant petition has been filed with a prayer to issue a writ, order or direction in the nature of Habeas Corpus commanding and directing the opposite parties no.1 to 5 to produce the alleged detainee, who is in illegal detention of opposite parties no.6 to 10 before this Court.

At the very outset, learned A.G.A. for the State has raised objection regarding maintainability of this petition. He submits that in this case, Division Bench of this Court has already passed an interim order in favour of Goldi Yadav, the victim girl and Sahil Sonker in Criminal Misc. Writ Petition No.6922 of 2023 vide order dated 05.09.2023, which is filed as annexure no.3 to this writ petition and the case is still pending. Learned A.G.A. for the State, thus, submits that whatever grievance the petitioner wants to address, he may address the same before the Division Bench where the aforesaid case is pending by availing appropriate remedy. It is also submitted that the parties are major and till date charge sheet has not been filed in the case and investigation is going on.

After hearing learned counsel for the respective parties and perusing the entire record, this Court finds that the Division Bench of this Court in Criminal Misc. Writ Petition No.6922 of 2022 has passed the following order on 05.09.2023, which is being reproduced hereunder:-

"It has been informed that the advocates are abstaining from judicial work. Learned A.G.A. is present for the State/respondents.

We have heard the learned A.G.A. and perused the material placed on record.

The present writ petition has been filed by the petitioners with the prayers to issue a writ, order or direction in the nature of Certiorari thereby quashing the impugned F.I.R. dated 17.08.2023, registered as F.I.R./Case

Crime No.0490 of 2023, under Section 366 I.P.C. at Police Station - Kotwali City, District - Sitapur. A further prayer has been made to issue a writ in the nature of mandamus thereby commanding and directing the respondents to not arrest the petitioners in pursuance to the impugned F.I.R.

It has been stated in the writ petition that petitioner No.1 and petitioner No.2, both are major. They got married on their own free will and accord, which, however, is not being accepted by the family members of the petitioner No.1 and in order to put pressure the impugned F.I.R. has been lodged and the local police authorities are harassing them. It has further been stated that the petitioner No.1 is major, as she is aged about 20 years and 02 months, in support of the same copy of the Marks-sheet of Secondary School Examination, 2018 has been annexed with the petition, according to which her date of birth is 27.05.2003. The petitioners have also annexed the Marriage Certificate issued by the Pragatisheel Hindu Samaj Trust, Chhota Barha, Alambagh, Lucknow.

Matter requires consideration.

Issue notice to respondent no.5. Petitioners shall take steps within a week.

Each of the respondent is granted four weeks time to file counter affidavit. Rejoinder affidavit, if any, may also be filed within two weeks thereafter.

List this case on 27th October, 2023.

Till the next date of listing or till submission of police report under Section 173(2) Cr.P.C., if any, before the Competent Court, whichever is earlier, the arrest of the petitioners in pursuance to the impugned F.I.R. dated 17.08.2023, registered as F.I.R./Case Crime No.0490 of 2023, under Section 366 I.P.C. at Police Station - Kotwali City, District - Sitapur, shall remain stayed, of course, subject to the restraint that the petitioners shall fully cooperate with the investigation and shall appear as and when called upon to assist in the investigation.

The petitioners are also directed to approach the Investigating Officer concerned, who shall ensure the statement of petitioner No.1 to be taken before the Magistrate concerned under Section 164 Cr.P.C."

In view of above, there appears force in the argument of learned A.G.A. for the State. As the aforesaid case is pending before the Division Bench of this Court, the petitioner may approach the same by filing appropriate application for redressal of his grievance.

*With the aforesaid observation, the instant writ petition is **dismissed** at this stage.*

Order Date :- 10.10.2023
Saurabh