

Court No. - 10

Case :- CRIMINAL MISC. WRIT PETITION No. - 8393 of 2023

Petitioner :- Yasmin Bano And Another

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Home And Others

Counsel for Petitioner :- Prateek Shrivastava,Vivek Srivastava

Counsel for Respondent :- G.A.,Deepak Kumar Sharma,Mohammad Aziz Mansuri

Hon'ble Mrs. Sangeeta Chandra,J.

Hon'ble Narendra Kumar Johari,J.

Heard learned counsel for the petitioners, learned A.G.A. for the State/Respondent Nos.1 to 3, Shri Mohammad Aziz Mansuri, for respondent No.4 and perused the record.

This petition has been filed with the following main prayers:-

"(i). Issue a writ, order or direction in the nature of Certiorari quashing the impugned First Information Report dated 25.10.2023 as Case Crime No.414 of 2023, Under Sections 328, 364 of Indian Penal Code Police Station - Gudamba, District - Lucknow, as contained in Annexure No.1 to this writ petition. it relates to petitioners only.

(ii). Issue a writ, order or direction in the nature of MANDAMUS directing the opposite parties to secure the marital life and liberty of the petitioners and not to harass the petitioners and their family members in any manner."

It has been submitted by learned counsel for the petitioners that petitioner no.1 and petitioner no.2 are both major, who on their own volition and free will have got married with each other as per Muslim rites and rituals. However, in the impugned F.I.R. the allegation is that the petitioner No.1 has been poisoned by petitioner No.2 and she has been kidnapped and has been forced to marry the petitioner No.2.

It has been submitted that a copy of the High School passed Certificate of the petitioner No.1 shows her date of birth to be 25.05.2003. She is 20 years old and entitled to marry anyone she wishes. A copy of the Nikahnama dated 26.10.2023 has been filed as Annexure No.3 to the writ petition.

Learned counsel for the opposite party No.4 has raised a serious objection to the affidavit that has been filed in support of the writ petition. He says that the affidavit of petitioner No.1- Yashmin Bano shows that her photograph has been taken on 26th October, 2023 at 12.54 P.M. and the affidavit has been sworn and verified at 1.30 P.M. on 26.10.2023, whereas the Nikahnama shows that the marriage has been performed at 2.30 P.M. on 26.10.2023. At the time of swearing of the affidavit in support of this writ petition, the petitioners had not married each other and a false averment has been made that they were married.

This Court has carefully examined the Nikahnama and also the affidavit filed in support of the writ petition and finds that there is apparent discrepancy in the time recorded in the Nikahnama and also in the time recorded in the affidavit.

It has also been submitted by learned counsel for the opposite party No.4 that his sister has been drugged and kept under house arrest by the petitioner No.2 and she is in mortal fear of her life as a result whereof she has been doing whatever petitioner No.2 has been forcing her to do.

This writ petition is **disposed of** with a direction to the petitioner No.2 to produce the petitioner No.1 before the Investigating Officer concerned on 2nd November, 2023 in between 10.00 A.M. to 2.00 P.M. so that her statement is recorded under Section 164 Cr.P.C. before the court concerned expeditiously.

Till recording of statement of petitioner No.1 before the court concerned, petitioner No.2 shall not be arrested in pursuance to the impugned F.I.R. dated 25.10.2023, registered as Case Crime No.414 of 2023, Under Sections 328, 364 of Indian Penal Code Police Station - Gudamba, District - Lucknow, as contained in Annexure No.1 to this writ petition.

Order Date :- 31.10.2023

ML/-