

Court No. - 45

Case :- HABEAS CORPUS WRIT PETITION No. - 243 of 2025

Petitioner :- Sanjay And Another

Respondent :- State Of U.P. And 7 Others

Counsel for Petitioner :- Atul Singh, Shraddha Singh

Counsel for Respondent :- G.A.

Hon'ble Saumitra Dayal Singh, J.

Hon'ble Dr. Gautam Chowdhary, J.

1. Heard Shri Atul Singh, learned counsel for the petitioners and Shri Patanjali Mishra, learned A.G.A. for the State.
2. Pursuant to last order, the petitioner no.2 has filed Supplementary Affidavit. It is taken on record.
3. Learned A.G.A. has filed three Personal Affidavits. One of S.I. Kamboj Singh. Second of Shri Anil Kumar Mishra, S.H.O. Nawabganj and third of Shri Ashwini Kumar Singh, S.H.O. Phaphamau.
4. Learned A.G.A. has also produced in sealed cover, the report of the Commissioner of Police, Prayagraj which was also called for, by the last order. It has been opened and retained on record.
5. In short, it may be noted, the report of the Commissioner of Police, Prayagraj dated 4.4.2025 confirms that the petitioner no.1 and respondent no.7 married of their own free will. The report of the Commissioner of Police, Prayagraj, also confirms that the petitioner no.1 and respondent no.7 were detained within the premises of the Police Station, Nawabganj, from the evening on 18.3.2025 up to 20.3.2025. On 20.3.2025, respondent no.7 was released. Thereafter, petitioner no.1 was released on 21.3.2025. No criminal case was ever registered against either petitioner no.1 or respondent no.7. They were not wanted in any case registered by

the police. No G.D. entry whatsoever exists with respect to that detention extending beyond 24 hours. Neither petitioner no.1 nor respondent no.7 was produced before the competent Magistrate, prior to their release.

6. As to the release, it has been suggested, the family members of the detainees indicated to the police authorities some doubts and differences that existed between them - to the recognition of the marriage performed by the petitioner no.1 and respondent no.7. In that regard, the family of respondent no.7 represented by her elder brother, was agreeable to recognize their marriage. However, reservation was expressed by the family members of petitioner no.1 to recognize such marriage. In such circumstances, according to the affidavits filed by the state functionaries (today), petitioner no.1 and respondent no.7 were "kept within the premises of police station, Nawabganj," ostensibly for their safety and security. As to what appraisal (as to safety), was made by the police authorities, either to detain or as to their custody or for their release, the facts are not known to the Court.

7. It is also the case of such state functionaries, while the detainees were thus detained, a Written Compromise (copy marked as 'X') was drawn by the private parties, on 20.3.2025. Thereafter, respondent no.7 was released from P.S. Nawabganj. As to the continued detention of petitioner no.1, as noted in the earlier order, an allegation has emerged that the police authorities at P.S. Nawabganj were demanding Rs. 50,000/-, to release petitioner no.1.

8. As on date, both petitioner no.1 and respondent no.7 are living at a place of their choice. To that extent, the relief claimed in the Habeas Corpus Writ Petition may not survive. At the same time,

the petitioner no.2 has relied on different mark-sheets of petitioner no.1 to claim he is under age. At Annexure no.1 page 16 of the writ petition, the document is described to be a copy of the mark-sheet issued by Shri Kunwar Bahadur Mishra Uttar Madhyamik Vidyalaya Maryunagar, Bari, Soraon, Prayagraj. Some overwriting appears to exist on that mark-sheet with respect to the name of the scholar. However, on the surface, that document appears to relate to petitioner no.1 Sanjay Kumar. It may have been issued on 30.3.2024 by the Principal, Shri Kunwar Bahadur Mishra Uttar Madhyamik Vidyalaya Maryunagar, Bari, Soraon, Prayagraj. It discloses his date of birth as 10.6.2009.

9. On the last date, another original mark-sheet was produced by petitioner no.1. It was perused. Thereafter, a copy of the same was marked as 'Y' and retained on record. It discloses his date of birth as 10.6.2003. Today, the original of that document has again been produced by petitioner no.1. It has been marked as 'P' and retained on record.

10. Also, by means of a Supplementary Affidavit filed by petitioner no.2 (today), copy of another mark-sheet dated 30.3.2019 issued by Smt. Raj Kali Devi Prathmik Vidyalaya, Hathigahan, Soraon, Prayagraj has been annexed as Annexure 'S.A.-1' at page 9 of the said affidavit. It has now been disclosed that the date of birth of petitioner no.1 recorded in that mark-sheet is 10.6.2006. On being queried, learned counsel for the petitioner no.2 has produced the original of the above document. The same has been marked as 'R' and retained on record. Both 'P' and 'R' have been sealed and retained on record.

11. Thus, petitioner no.2 has herself relied on two conflicted mark-sheets pertaining to petitioner no.1 - one disclosing his date of

birth to be 10.6.2009 and the other 10.6.2006. At the same time, petitioner no.1 has relied on a third mark-sheet disclosing his date of birth as 10.6.2003.

12. Thus, we find, in the present case, the date of birth of petitioner no. 1 as recorded in school records is wholly disputed, conflicted and therefore wholly unreliable. At this stage, before the issue of age of petitioner no.1 may have been considered further, on a further query made by the Court, it was stated by Ajay Kumar and Smt. Pooja Devi, who are parents of the petitioner no.1 and who are also present in Court, that in changed circumstances, they are not pressing for the custody of the petitioner no.1.

13. On such statement made by the said Ajay Kumar and Smt. Pooja Devi, we considered it appropriate to make available to petitioner no.1 and respondent no.7, legal aid. Shri Anshul Tiwari, Advocate, who regularly practices before this Court, offered to represent petitioner no.1 and respondent no.7, *pro bono*. Thus, it has been stated to the Court, that petitioner no.1 was more than 21 years of age on the date of occurrence. Reliance has been placed on the mark-sheet dated 30.3.2024 disclosing his date of birth as 10.06.2003.

14. At this stage, we required learned counsel for the petitioner no.2 to file personal affidavit of both Ajay Kumar and Smt. Pooja Devi/petitioner no.2. It has been filed by Sri Atul Singh, learned counsel for the petitioner no.2. It is taken on record. Perusal of the said affidavit reveals, petitioner no. 2 feared for the life and liberty of petitioner no.1 while he remained in police custody. Therefore, she had filed this petition. It has been further stated that now those deponents are "are not willing to take the custody of the petitioner no.1". Such fact has been stated in paragraph no.4 of the said joint

affidavit.

15. Then, a Counter Affidavit described as "Short Counter Affidavit" has been filed by Sri Anshul Tiwari, on behalf of Ram Asrey, Smt. Shiv Kali (both parents of respondent no.7) and Shiv Bahadur (elder brother of respondent no.7). In that affidavit, it has been stated that those parties have no objection to the marriage solemnized by the petitioner no.1 with respondent no.7. During oral interaction with those parties, they also indicated to the Court, in no uncertain terms, petitioner no.1 and respondent no.7 may reside with Ram Asrey and Smt. Shiv Kali.

16. In such facts, learned A.G.A. has prayed that the scope of the Habeas Corpus Writ Petition has exhausted. The same may be consigned.

17. In view of the facts noted above, especially the joint affidavit of petitioner no.2, Ajay Kumar, petitioner no.1 as also the other joint affidavit of Ram Asrey, Smt. Shiv Kali and Shiv Bahadur, the proceeding brought in the nature of Habeas Corpus is **consigned to record**, in the peculiar facts noted above i.e. notwithstanding the dispute as to the age of petitioner no.1. Once his natural guardians have refused his custody and practically given their consent in favour of the parents and brother of respondent no.7, no useful purpose may be served in dealing with that issue, in such facts, even if it be assumed that petitioner no.1 has not attained the age of consent/majority.

18. In the meanwhile, it is directed, the Commissioner of Police, Prayagraj shall ensure that the petitioner no. 1 and respondent no. 7 and the family of respondent no. 2 are not harassed or obstructed either by the police authorities or petitioner no. 2 and/or Ajay Kumar or other members of their family for reason of marriage

performed by petitioner no.1 with respondent no.7.

19. We appreciate valuable assistance of Sri Anshul Tiwari, Advocate, *pro bono*.

20. Yet, we must note, in **D.K. Basu Vs. State of West Bengal, (1997) 1 SCC 416**, the Supreme Court had laid down the following requirements to be followed in all cases of arrest or detention. The guidelines issued by the Supreme Court are worth remembering, at this stage. In that regard, paragraph no. 35 of the report reads as below:

"35. We, therefore, consider it appropriate to issue the following requirements to be followed in all cases of arrest or detention till legal provisions are made in that behalf as preventive measures:

(1) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.

(2) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may either be a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest.

(3) A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.

(4) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

(5) The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.

(6) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.

(7) The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.

(8) The arrestee should be subjected to medical examination by a trained doctor every 48

hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the State or Union Territory concerned. Director, Health Services should prepare such a panel for all tehsils and districts as well.

(9) Copies of all the documents including the memo of arrest, referred to above, should be sent to the Illaqa Magistrate for his record.

(10) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

(11) A police control room should be provided at all district and State headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board."

21. In view of the foregoing discussion, it does not appear that those guidelines are being strictly enforced, in the State of Uttar Pradesh. Thus, the following issues of grave public importance are seen to exist:

(i) Whether citizen/s who may be competent to exercise their free choice - to marry or live with a person of their choice may be detained by the police authorities for reason of, or in the circumstance of that choice made by them?

(ii) Whether citizen/s not wanted in any criminal case may be detained at a police station for reason of a pure civil dispute or difference that may exist either between them or between their family members, though such dispute or difference may not constitute a criminal offence?

(iii) Whether in any case a citizen may ever be detained at a police station beyond 24 hours without any record of his custody? and whether such citizen may be so detained without being produced before a competent Magistrate as mandated under Section 187 Bhartiya Nagrik Suraksha Sanhita, 2023?

(iv) Whether a citizen detained either in accordance with or contrary to the law at any police station may ever be released without any record of such release?

(v) Whether any detention made by the police for a civil dispute or differences between the parties may be justified or continued by such police authorities for reason of "settlement/compromise", being attempted or recorded with the assistance of the police authorities?

(vi) Whether it may ever be permissible to the police authorities to seek settlement between citizens while they or their near relative or friend, etc. is

detained or remains in police custody, as such detention inheres in it element of coercion exercised on the party concerned?

22. Besides the above issues, another issue exists owing to the conduct of the parties - in relying on three ostensibly original mark sheets, disclosing three different date of birth of petitioner no. 1.

23. It is noteworthy, under The Juvenile Justice (Care and Protection of Children) Act, 2015, higher evidentiary value is attached to the date of birth recorded in school records. All other evidence that may be available to or may be led by the parties, stands at a lower evidentiary pedestal.

24. Here, *prima facie* has been shown, within a short span of time, three different date of birth of petitioner no.1 have been recorded, at different schools, within the same district. Apparently, adequate measures may not have been put in place or may not have been fully implemented and enforced by the State-authorities, to ensure singularity/uniformity of date of birth recorded in different school records pertaining to one scholar/citizen, as may also ensure uniformity in other/derived records including PAN, Aadhar, etc. and all being consistent to the registration of birth record. Even where correction may be made in one record, the same should be reflected/recorded/indicated, in all other records, in an easily verifiable/credible manner, preferably through online mode/access.

25. Though, in the present case, there is no occurrence or criminal offence, at the same time, a serious issue of public importance is seen to exist as to the credibility of the date of birth recorded in a school document, inside the State of Uttar Pradesh. Unless a robust mechanism exists and is enforced to ensure recording of singular date of birth of each scholar, as may be easily verified in a transparent and efficient manner, the fair enforcement of The

Juvenile Justice (Care and Protection of Children) Act, 2015 may remain at risk, in vital parts.

26. Also, it is informed to the Court that the Commissioner of Police, Prayagraj is proposing to initiate regular departmental inquiry against the erring officials, and show cause notices have been issued. That is a separate issue pertaining to the peculiar facts on this individual case. That inquiry may be conducted and completed in accordance with law and reported to the Court, within six months from today.

27. In view of the above, let appropriate Public Interest Litigation proceeding be registered in Re Compliance of **D.K. Basu Vs. State of West Bengal, (1997) 1 SCC 416** and Due Maintenance & Verification of Date of Birth in school records in Uttar Pradesh. Such a proceeding may be registered suo moto, on the strength of affidavits filed in these proceedings as also including the documents 'X', 'Y', 'P' & 'R' (at present in sealed cover) and the report of the Commissioner of Police, Prayagraj dated 4.4.2025. Put up as fresh such proceeding before the appropriate bench.

Order Date :- 5.4.2025

Prakhar

(Dr. Gautam Chowdhary, J.)

(S.D. Singh, J.)