

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.47822 of 2013

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1. Suman Kumari @ Guriya, aged about-20 years D/O Ran Vijay Singh Resident Of
 Village- Sarawak, P.S.- Kasma, District- Aurangabad

.... Petitioner/s

Versus

1. The State Of Bihar
 2. The Superintendent Of Nari Niketan, Gay Ghat, Patna City, District- Patna.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ajoy Kumar Chakraborty, Adv
 For the State : Mr. M. K. Khare, APP

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**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
 SRIVASTAVA**

C.A.V. ORDER

5 24-12-2013

1. This order shall dispose of this petition filed under Section 482 of the Cr.P.C. for quashing the orders dated 17.04.2013 and 25.03.2013 passed by learned Ad hoc Additional Sessions Judge-I, Aurangabad in Sessions Trial No. 92 of 2012 by which and whereunder he directed the officials of NARI NIKETAN, Patna to produce the petitioner before him and subsequently, by order dated 17.04.2013 he refused to release the petitioner from NARI NIKETAN, Patna and again sent her to above stated NARI NIKETAN, Patna.

2. One Pinki Devi @ Asha, who happens to be sister of the petitioner, filed complaint case which was converted into Kasma P.S. Case No. 31 of 2012 registered for the offences punishable under Sections 498A, 379, 323, 504, 366/34, 494 of the Indian Penal Code and ¾ of Dowry Prohibition Act against



one Ravindra Singh @ Chandan and others. According to case of above stated Pinki Devi @ Asha, she was married with accused Ravindra Singh @ Chandan but she was subjected to cruelty and harassment by him as well as his other family members on account of non-fulfilment of sufficient dowry and later on, her husband established illicit relation with petitioner and subsequently, he allured the petitioner and took her to Delhi where above stated Ravindra Singh @ Chandan solemnized his marriage with the petitioner. In course of investigation, petitioner was recovered and her statement under Section 164 of the Cr.P.C. was recorded. Petitioner in her statement specifically stated that she has already solemnized her marriage with accused, Ravindra Singh @ Chandan and she does not want to live with her parents as she apprehends danger to her life by her parents. Petitioner was examined by Medical Board and she was found aged about 18 years by the Medical Board. Petitioner disclosed her age as 19 years at the time of recording her statement under Section 164 of the Cr.P.C. and the learned Magistrate too assessed her age as 19 years but photocopy of Admit Card of Bihar School Examination Board, Patna was filed before the Chief Judicial Magistrate and in the said admit card, the Date of Birth of petitioner was found to be entered as 02.01.1997.



3. The mother in law as well as husband of petitioner filed a petition before the learned Chief Judicial Magistrate, Aurangabad for release of the petitioner in their favour but the aforesaid prayer was rejected by the learned Chief Judicial Magistrate, Aurangabad vide order dated 16.10.2012 which was challenged before the Sessions Judge, Aurangabad in Cr. Rev. No. 137 of 2012 but learned Sessions Judge also dismissed the Cr. Rev. No. 137 of 2012 holding that since accused Ravindra Singh @ Chandan solemnized his marriage with petitioner in the lifetime of his first wife, so it is not legally possible to release the petitioner in favour of the aforesaid accused Ravindra Singh @ Chandan as well as in favour of mother in law of the petitioner.

4. Petitioner filed Cr. Writ No. 173 of 2013 before this Court for her release from Nari Niketan, Patna but subsequently, a Division Bench of this Court dismissed the aforesaid writ petition being not maintainable. Thereafter, petitioner filed release petition before the learned Ad hoc Additional Sessions Judge-I, Aurangabad in whose court Sessions Trial No. 92 of 2012 was pending. The learned Ad hoc Additional Sessions Judge-I, Aurangabad directed the officials of NARI NIKETAN, Patna passing impugned order dated 25.03.2013 to produce the petitioner before him so that he could know the



wishes of the petitioner. In pursuant to the aforesaid order dated 25.03.2013, the petitioner was produced before Ad hoc Additional Sessions Judge-I, Aurangabad on 17.04.2013. The parents of petitioner also appeared before the above stated court. The petitioner, specifically, stated before the Ad hoc Additional Sessions Judge-I, Aurangabad that she does not want to reside with her parents as her father is giving threatening to kill her and she wants to reside with her husband, Ravindra Singh @ Chandan.

5. It is pertinent to note here that parents of the petitioner did not make any prayer for release of the petitioner in their favour. Moreover, learned Ad hoc Additional Sessions Judge-I, Aurangabad refused to release the petitioner from NARI NIKETAN, Patna on the ground that learned Sessions Judge had already declined to release the petitioner from Nari Niketan, Patna in Cr. Rev. No. 137 of 2012.

6. Learned counsel appearing for the petitioner submits that order of learned Ad hoc Additional Sessions Judge-I, Aurangabad is erroneous because the petitioner was major at the time of alleged occurrence and she disclosed her age as 19 years and the Medical Board also found the petitioner aged about 18 years but in spite of that the petitioner was sent to NARI NIKETAN, Patna. He further submits that petitioner is not an

accused in Kasma P.S. Case No. 31 of 2012 nor she is victim of the aforesaid case.

7. Learned counsel for the petitioner relied upon a decision of this court reported in **2011(3) PLJR 388 (Rukhasar Khatoon vs. State of Bihar and Ors.)** in which it has been held by a Division Bench of this Court that when girl is not an accused (in kidnapping case lodged by her parents) nor was kidnapped, she was not required to be sent to Remand Home when her mother in law made request for her release in her favour. It was further held in the aforesaid decision that the court below ought to have declared the girl major as per Supreme Court's decision in **Jaymala's case** and should have passed order of release instead of remanding to Remand Home.

8. On the other hand, learned Additional Public Prosecutor supported the impugned orders submitting that the Admit Card of the petitioner goes to show that she was minor at the time of alleged occurrence and according to prosecution case, she was allured by the accused and, therefore, even if petitioner gave her consent for the marriage, the aforesaid consent was not valid in the eye of law and, therefore, learned Ad hoc Additional Sessions Judge-I, Aurangabad rightly refused to release the petitioner from NARI NIKETAN, Patna.



9. Admittedly, in the present case, petitioner has not been made accused and it is stated that she was taken away by co-accused, Ravindra Singh @ Chandan and later on, both solemnized their marriage. It is also obvious from perusal of impugned orders that petitioner does not want to live with her parents nor her parents have made any prayer for her release in their favour. Learned Magistrate, who recorded the statement of petitioner under Section 164 of the Cr.P.C., found her aged about 19 years and similarly, the Medical Board also found her aged about 18 years. The petitioner, too, disclosed her age as 19 years. In the admit card, the Date of Birth of the petitioner has been entered as 02.01.1997 and the alleged occurrence is said to have taken place on 03.07.2012 and, therefore, it is obvious that according to admit card, the petitioner was aged about 15 years at the time of alleged occurrence and presently, she appears to be aged about more than 16 years.

10. In the case of **Jaymala vs. Home Commissioner, State of Jammu & Kashmir reported in A.I.R. 1982 SC 1297**, the Apex Court of this country held that while assessing the age of a girl in such circumstances, two more years should be added in her actual age. Therefore, even if it assumed that the petitioner was minor at the time of alleged occurrence,

then also, if two years are added in her actual age, presently her age becomes more than 18 years and, therefore, it is obvious that petitioner has already become major and she has every right to lead her life by her own choice and she cannot be detained in NARI NIKETAN, Patna.

11. On the basis of aforesaid discussions, this quashing petition is allowed and accordingly, the impugned order dated 17.04.2013 passed by learned Ad hoc Additional Sessions Judge-I, Aurangabad by which he refused to release the petitioner from NARI NIKETAN, Patna is, hereby, quashed and accordingly, it is ordered that petitioner be released from NARI NIKETAN, Patna forthwith.

12. Let a copy of this order be sent to the court of learned Ad hoc Additional Sessions Judge-I, Aurangabad in connection with Sessions Trial No. 92 of 2012 arising out of Kasma P.S. Case No. 31 of 2012 through fax either at the cost of the State or petitioner without any delay with direction to learned Ad hoc Additional Sessions Judge-I, Aurangabad to pass release order of petitioner from NARI NIKETAN, Patna immediately in the light of this order.

(Hemant Kumar Srivastava, J)

SHAHZAD/-