

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1131 of 2014

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Shobha Kumari Wife of Sujeet Kumar Yadav and Daughter of Shiv Prasad Das, Resident of Mohalla-Telia Chhapra, P.S.-Sahebganj, District-Muzaffarpur.

.... Petitioner

Versus

1. The State of Bihar
2. The District Magistrate-Cum-Collector, District-Muzaffarpur.
3. The District Superintendent of Police, District-Muzaffarpur.
4. The Office in Charge, Sahebganj, P.S.-Muzaffarpur, District-Muzaffarpur.
5. Sujeet Kumar Yadav Son of Raj Kishore Rai Resident of Village-Telia Chhapra, P.S.-Sahebganj, P.O.-Kurnowl, District-Muzaffarpur.
6. Raj Kishore Rai Son of Munshi Rai Resident of Telia Chhapra, P.S.-Sahebganj, P.O.-Kurnowl, District-Muzaffarpur.
7. Shiv Prasad Das Son of Mahangu Das Resident of Village-Telia Chhapra, P.S.-Sahebganj, P.O.-Kurnowl, District-Muzaffarpur.
8. The Superintendent, Women Remand Home, Gaighat, District-Patna.

.... Respondents

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Appearance :

For the Petitioner : Shri Suraj Narain Yadav & Sri Upendra Kumar Chaubey, Advocates.

For the Respondents : Shri Devendra Kumar Sinha, Senior Advocate, AAG-2
Sri Pramod Kumar Sinha, J.C to AAG-2.

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CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA

and

HONOURABLE SHRI JUSTICE AMARESH KUMAR LAL

ORAL ORDER

(Per: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA)

4 06-01-2015

Heard.

2. The present petition has been filed by Shobha Kumari who was put into the custody of the Superintendent of After Care Home, Gaighat, Patna by the Sub Divisional Judicial Magistrate(West), Muzaffarpur by his order dated 14.06.2013 passed in Sahebganj P.S.Case No.116 of 2013. The petitioner has

sought a relief of not only being released from the After Care Home, Gaighat, Patna but has further sought a direction that she be handed over to her husband, namely, Sujeet Kumar Yadav whom she married out of her own free will.

3. Prelude to the present petition was the lodging of the first information report by Shiv Prasad Das, the father of the present petitioner, alleging that she had been taken or enticed away for the purposes of being married to any man by the accused persons named in the written report dated 02.06.2013. The above noted Sahebganj P.S.Case No.116 of 2013 was registered under Sections 366 and 366A IPC and the investigation was taken up. It appears that the investigating officer of the case produced the petitioner before the Sub Divisional Judicial Magistrate(West), Muzaffarpur (in short 'SDJM') on 13.06.2013 for the purposes of recording her statement under Section 164 Cr.P.C and further made a prayer that she may be directed to be medically examined. It appears from the order passed on 13.06.2013 in the above noted case by the SDJM that her statement was recorded and a petition was filed by the aunt of Sujeet Kumar Yadav on 14.06.2013 before the SDJM, for handing over the custody of the lady to her. Another petition was filed by the informant of the case, i.e., the father of the present petitioner for obtaining the custody of the



petitioner in his favour. The learned SDJM heard both the sides and passed the order impugned on 14.06.2013 directing that it was not conducive and justified to release the lady as per her own sweet-will rather it was necessary that she be confined in the After Care Home, Gaighat, Patna.

4. The contention on behalf of the petitioner was that the medical examination report of the petitioner which has been extracted by the learned Magistrate in his order indicated that the petitioner was aged in between 15-16 years. The age of the petitioner was stated by her father as 14 years. However, the lady while making her statement under Section 164 Cr.P.C. on the 13th day of June, 2013 claimed herself to be aged about 18 years. Submission was that the preponderance of probability was that the lady was aged somewhere around 18 years and as may appear from her statement recorded under Section 164 Cr.P.C she had friendly relationship with Sujeet Kumar Yadav and she left her parents' house out of her own free-will on 29.05.2013 to go with the said Sujeet Kumar Yadav to Motihari where she got herself married to him in a Durga temple situated near the Bus stand, Motihari. The lady stated that she had not been kidnapped or abducted by anyone. Submission was that the age of the petitioner was assessed by the Board of doctors on 13.06.2013, i.e., more



than one and half years ago and that particular circumstance may also probalilize that the petitioner may be aged about 18 years if two years have to be added to the medically determined age as per the judgment of the Supreme Court in the case of *Jaymala v. Home Commissioner, State of Jammu and Kashmir* reported in *AIR 1982 SC 1297*. By placing the decision of this Court in *Rukhsar Khatoon v. State of Bihar & Ors* reported in *2011(3) PLJR 388*, it has been contended that while delivering that particular order, the Division Bench of this Court had taken notice of the prevailing deplorable conditions in the After Care Homes or Remand Homes of Bihar as regards the custody of young ladies and had held that those were never safe places to authorize the custody of girls. Submission was that considering all these circumstances and further considering that the lady could be aged 18 years or could be capable of taking her own decision, it was necessary that she be set at liberty.

5. Sri Devendra Kumar Sinha, learned Additional Advocate General has placed before us a Full Bench decision of Madras High Court rendered in the case of **T..Sivakumar v. Inspector of Police passed in HCP No.907 2011** in which the Full Bench had decided that till the young lady had attained the age of majority it was always desirable that her confinement be



continued in some safe custody. However, Sri Sinha was very fair in submitting that the law was very trifling that if the lady was at the verge of majority and if it appeared that she was capable of taking her own decision, then it may not be an offence that she had gone with a person and in such cases her custody could not be authorized in any place.

6. Before we take up the submissions, we want to point out that the State has filed a counter affidavit on 05.01.2015 and through it has brought on record a photo copy of the transfer certificate of the petitioner Sobha Kumari from the State High School, Tailiya, Chapra. The certificate mentions 25.11.1998 as the date of birth of the lady as per the admission register. Thus, what appears from the annexed copy of the transfer certificate was that the lady was aged 16 years, 1 month and 10 days on 05.01.2015 as per the school leaving certificate. But, we again have a contradictory statement coming from the very father of the petitioner who was the informant of Sahebganj P.S. Case No.116 of 2013 that the lady was only 14 years of age and thus, the father who is supposed to have given the date of birth of the lady at the time of her admission, contradicted the very date which was entered in the record of the school at the time of her admission. This makes over task a little difficult to accept the date of birth

which appears in the transfer certificate as per Annexure-A to the counter affidavit filed by the State.

The medical evidence may not be a conclusive nature of evidence as regards the age of the girl, but approximation was very much there on account of the data which were collected by carrying out ossification tests of different joints of different limbs. There is general acceptance of the proximate age which is suggested by such evidence and the Courts find it very convenient to place reliance on such opinions in order to forming an opinion as regards the question of the age of a person, especially the victim of an offence of the present nature. The medical report, copy of which has been annexed with the present petition and which appears at page-21 thereof as Annexure-4, has mentioned the different medical data upon which the final opinion as regards the age of the petitioner was expressed. It has been mentioned very categorically that on consideration of the reports on A.P. in lateral view of X-ray of the wrist and elbow joint and according to the clinical and radiological opinion of the Medical Board, the lady could be aged in between 15-16 years. This opinion was rendered by the Medical Board on 13.06.2013, i.e., more than one and half years earlier which brings the age of the lady almost to 18 years approximately. We have already noted the submission of the



learned Additional Advocate General. It trifle position of law that the lady who is at the verge of majority and who is capable of taking her own decisions, if voluntarily leaves her parents' house to go to any other place, even to marry a man without any blandishment having been given by the accused, it may not be a case of abduction or kidnapping rather it could be a simple case of elopement. We may refer to the case of *S.Varadarajan v. State of Madras* (supra) in the above behalf. Even if we had added two years to the medically determined age of the victim, we do not have any hesitation in holding that she was very much at the threshold of attending the majority and may be that she had attained majority and as may appear from her statement recorded by the Magistrate under Section 164 Cr.P.C (Annexure-3), she appears to have taken her own decision to leave her parents' house to go to Motihari to get herself married to Sujeet Kumar Yadav. The lady stated very categorically in her statement under Section 164 Cr.P.C. that she had not been kidnapped or abducted. If this is the statement of the petitioner, who happened to be the victim of the offence as per the FIR, then there may not be any hesitation in us to hold that the offence under Sections 366 or 366A IPC may not appear to be constituted by the facts and, thus, committed by any one. The lady was 18 years of age approximately and her

confinement, in our opinion, could not be continued in the light of the decision of this Court in the case of ***Rukhsar Khatoon*** (supra) which inter-alia also pointed out that the conditions prevailing in the Remand Homes in Bihar were so deplorable that it cannot be considered safe and secure for a girl to be put into custody thereof.

7. Considering over all facts of the case, the law on the point including the Division Bench decision of this Court in the case of *Rukhsar Khatoon* (supra), we direct that the petitioner be set at liberty forthwith by the Superintendent of After Care Home, Gaighat, Patna so that she could take her own decision further in her life. As regards her prayer for handing her custody to Sujeet Kumar Yadav, we are not inclined to do that as we must not direct the handing over of any adult person to any other person.

8. The petition is allowed in the above terms.

(Dharnidhar Jha, J)

Brajesh Kr./-Abhay/-AFR

(Amaresh Kumar Lal, J)

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