

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.496 of 2015

=====

Raushan Kumar

.... Petitioner/s

Versus

The State of Bihar & Ors

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Rajesh Kumar Sinha

For the State : Mr. Ranjeet Kumar Pandey, J.C. to G.P.23

For respondent No.9 : Mr. Ashhar Mustafa

=====

CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

3 09-07-2015

A vakalatnama is filed for respondent No.9 by Mr.

Ashhar Mustafa, Advocate. Let the same be kept on the record.

The writ application has been filed for issuance of a writ of habeas corpus for commanding the respondent authorities to produce the girl, Mamta Kumari, whom the petitioner claims to be his legally married wife.

By order dated 2.7.2015, the Superintendent of Police, Sitamarhi was directed to produce the girl, Mamta Kumari, daughter of Shambhu Rai, respondent No.9 before this Court today. It is reported by the Police that the girl could not be found in the house of respondent No.9, who is her father. Respondent No.9, however, is personally present. The girl, Mamta Kumari, has come along with the petitioner. We have interacted individually with the parties and also together with them.

So far as respondent No.9 is concerned, it is stated



that after the girl was handed over to him by the Court on 21.4.2015 finding that she is a minor, although she stated in her statement under Section 164 of the Cr. P.C. that she had willingly left her house and gone with the petitioner after performing marriage at various places including outside the State. It is, however, stated that on account of her minority and her statement that she was willing to go with her father she was sent to her father's place.

The respondent No.9 reports that within 15 days on 4.5.2015, the girl again left the house and despite report being made of the same to the local police, no action was taken for recovery and, on the other hand, the present criminal writ petition in the nature of habeas corpus has been filed suppressing the aforesaid facts. He, however, submits that in view of the conduct of the girl repeatedly running away from the house with the petitioner he does not wish to keep her at his own house, particularly because he has been harassed on account of filing of this petition by the petitioner and apprehends further such harassment by filing false cases.

The girl, Mamta Kumari, states that she on her own wish had gone with the petitioner on 25.12.2014 and thereafter they got married and are living as husband and wife and she is at present about five months pregnant. In support of the same, a



diagnostic report dated 29.6.2015 from Angel Diagnostic Centre, Guwahati, in the State of Assam has been produced before us, in which it is stated that the girl is pregnant for 20 weeks 2 days. The said fact is also stated in the writ petition where the report from the same Diagnostic Centre dated 28.3.2015 has been filed and it is stated in paragraph No.9 of the writ petition that she was pregnant for more than three months. The said fact is also admitted in paragraph No.12 of the counter affidavit filed on behalf of the Superintendent of Police, Sitamarhi, respondent No.6, in which it is stated that upon medical examination by the Medical Board, it was found that she was carrying pregnancy of 2 ½ months on the date of examination. On account of pregnancy, her age could not be determined.

It is further stated by the girl, Mamta Kumari that as a matter of fact she is already major because her age was shown as less at the time of matriculation examination, wherein her date of birth has been given as 13.12.1997. She further asserts that her younger sister is also studying in Intermediate, which fact is admitted by respondent No.9 also.

We have interacted with the petitioner, who is also personally present, and the girl Mamta Kumari. It is evident that the statement of respondent No.9 that she had again left her house on 4.5.2015 itself and gone with the petitioner appears to be

admitted specially when they have stated the fact that the girl was medically examined on 29.6.2015 at Guwahati and there was another prescription of Eve Care Clinic, Guwahati showing that the girl was examined on 29.5.2015 by the Doctor and subsequently on 29.6.2015.

Be that as it may, considering the reluctance of the father, respondent No.9 to take back the girl and the fact of her advanced stage of pregnancy, for which she would require regular medical attention as also care at home and considering the wishes of all the parties, we are of the view that in the interest of the girl and the child in the womb that she is carrying, she should be allowed to go and live with her husband and in-laws, as it is assured by the petitioner that proper care would be taken of her at her sasural.

The writ application is, accordingly, disposed of with the direction that the girl, Mamta Kumari, will go from the court itself along with her husband and stay with him or in her in-laws' place, which is located at Manihari near Muzaffarpur town.

The police, who have come from Sitamarhi, are absolved of their responsibility in the matter.

V.P.Sinha/-

(Ramesh Kumar Datta, J)

(Anjana Mishra, J)

U			
---	--	--	--