

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Writ Jurisdiction Case No.95 of 2015**

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Bhawesh Kumar Pandit, son of Sri Arun Pandit, resident of vill-  
Chanderi, P.S-Sabaur, Distt.-Bhagalpur

.... .... Petitioner

Versus

1. The State of Bihar
2. The Home Secretary, Govt.of Bihar, Patna
3. The Director General of Police, Bihar, Patna
4. The District Magistrate, Bhagalpur
5. The District Magistrate, Gopalganj
6. The Superintendent of Police, Bhagalpur
7. The Superintendent of Police, Gopalganj
8. The SHO, Thawe, P.S+Distt.-Gopalganj
9. Pappu Tiwari son of not known Resident of vill-Bheriya, P.S-  
Thawe, Gopalganj
10. Nitesh Tiwari son of Bhupendra Tiwari Resident of vill-Binod  
Bhatihania, P.S-Bisambharpur, Distt.-Gopalganj
11. Krishna Tiwari, son of Late Satya Nr. Tiwari
12. Durgavati Devi, wife of Sri Krishna Tiwari, both r/o village Binod  
Motihaniya, P.S. Bishambharpur, Dist. Gopalganj

.... .... Respondents

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**Appearance :**

For the Petitioner/s : Mr. Indeshwari Prasad Mandal, Advocate  
For the State : Mr. Vikas Kumar, AC to A.G.  
For respondent Nos. 11 & 12: Mr. Ajay Kumar Sharma, Advocate

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**CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR  
DATTA**

**and**

**HONOURABLE JUSTICE SMT. ANJANA MISHRA**

**ORAL ORDER**

**(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)**

6      26-02-2015                      Heard learned counsel for the petitioner, learned counsel

for respondent Nos. 11 & 12 and learned counsel for the State.

Although notices had earlier been issued to respondent  
Nos. 9 and 10 in view of the allegations made against them in the  
writ petition and the same could not be served but considering the  
fact that in the meantime the girl has been brought before us from



the house of her parents and learned counsel for the petitioner submits that he is not pressing any allegation personally against respondent Nos. 9 and 10, we do not feel that they are necessary parties to the proceedings and with consent of the parties the matter is being disposed of at this stage itself.

The petitioner has filed the habeas corpus petition for a direction upon the official respondents to produce Nisha Kumari, who, he claims is his wife, from the forceful illegal custody of respondent Nos. 9 and 10, against whom he has made allegation that they have forcibly carried her away from the matrimonial home. The petitioner as also the said Nisha Kumari have given their respective dates of birth as 10.1.1991 and 6.10.1990 and both are about 24 years of age. The petitioner claims to be a final year student of Bachelor of Business Administration under Bhagalpur University, whereas the girl Nisha Kumari has completed her Home Science Honours course from Jai Prakash University, Chapra.

During the course of the present proceedings the Superintendent of Police, Gopalganj was directed to produce Nisha Kumari, daughter of Krishna Jee Tiwari of Gopalganj district in the Court and pursuant to the same she had been produced in Court on 23.2.2015 and the information given was



that the girl was brought here from the custody of her parents. The father and mother of the girl also appeared before us on that day and have been also impleaded as respondent Nos. 11 and 12. Subsequently the father and mother of the petitioner also appeared in Court along with the petitioner, who was all through personally present.

The girl Nisha Kumari has made an unequivocal statement that she had been married with the petitioner at a temple, namely, Maa Lila Sthan Dhamsai, in the district of Godda, in the State of Jharkhand on 12.11.2014. Reference is also made to an informatory petition filed by the said Nisha Kumari in the court of the Chief Judicial Magistrate, Bhagalpur on 14.11.2014 in which the fact of her love marriage with the petitioner was stated and it was also stated that they are residing as husband and wife but her brother and other family members were not agreeing to the same.

It is the case of the petitioner and also supported by Nisha Kumari that respondent No.12, mother of Nisha Kumari came to the matrimonial home on 16.11.2014 and giving an assurance that her Vidai would be made soon, took her to her parents place but when the petitioner went to bring his wife from her parent's home, respondent Nos. 9 and 10 assaulted him.



Respondent No.9 is stated to be the brother-in-law of the said Nisha Kumari and it is alleged that they took her to another place and made her captive. The petitioner was also threatened upon which he filed informatory petition in the court of the Chief Judicial Magistrate, Bhagalpur seeking action against the accused persons on 6.2.2015 and thereafter the present application has been filed.

Learned counsel for the petitioner submits that both the petitioner and the said Nisha Kumari being major and having married of their free will in accordance with Hindu customary rites in a Hindu temple and that the said Nisha Kumari has also admitted the said facts, she should be permitted to go with the petitioner and reside with him at their matrimonial home.

Support in this regard is also drawn by learned counsel for the petitioner on the statement made by the father and mother of the petitioner before this Court that they shall keep the said Nisha Kumari as their daughter-in-law with full love and affection as they do not have any objection to the said marriage. In the said circumstances, it is submitted by learned counsel for the petitioner that direction be issued that Nisha Kumari goes with the petitioner. He has expressed certain apprehensions even thereafter from the respondent Nos. 11 and 12 and their relations in the matter and has

prayed for police protection.

Learned counsel for the respondent Nos. 11 and 12, on the other hand, submits that there is nothing on the record to show that the marriage has been performed in accordance with the Hindu rites as per the provisions of the Hindu Marriage Act and unless a person can show a legal marriage and there is relationship of husband and wife he/she may not be allowed to maintain the writ petition.

Having considered the submissions of learned counsels for the parties, we do not find any force in the submission of learned counsel for respondent Nos. 11 and 12. The issue before this Court is not really of a valid marriage which has not been denied by controverting the facts stated in the writ petition. The main issue is whether the said Nisha Kumari, who is stated to have been forcibly kept in the custody of respondent Nos. 11 and 12 and their men respondent Nos. 9 and 10, being a major, can be permitted to be so confined by them. From the statement of the said Nisha Kumari it is evident that she does not want to stay with her parents or other private respondents and wants to go to her matrimonial home to live with her husband.

In a petition for habeas corpus the court has to see as to whether a person is confined contrary to his/her will or the will of

his/her guardian. The said Nisha Kumari being 24 years of age cannot be said to be any more under the guardianship of respondent Nos. 11 and 12 and she has the freedom to live and reside wherever she wishes. In the said circumstances, the writ for habeas corpus filed by the petitioner whom she admits to be her husband cannot be said to be not maintainable.

In the aforesaid view of the matter, the writ application is allowed and it is directed that Nisha Kumari shall be free to go from the Court itself with her husband, the petitioner. Respondent Nos. 11 and 12 are directed not to create any hindrance either directly and through their men in the marital life of the said Nisha Kumari nor interact with her except in accordance with the wishes of the petitioner and the said Nisha Kumari in case they feel inclined to accept the said marriage either now or at any time in the future.

The police officers of Gopalganj district are discharged from their responsibility in the matter.

**(Ramesh Kumar Datta, J)**

**(Anjana Mishra, J)**

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