

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CRM M-25369 of 2015

Date of Decision: October 14, 2015

Manpreet Kaur and another

.....Petitioners

Vs.

State of Punjab and ors.

.....Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

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Present:- Mr.I.P. Singh, Advocate
for the petitioners.

Mr. Gazi Mohammad, DAG, Punjab.

Mr. Vivek Goel, Advocate for respondents No.4 and 5.

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M.M.S. BEDI, J. (ORAL)

Petitioners claiming that they have got intention to marry against the wishes of their family members, have filed a petition under Section 482 Cr.P.C. before this Court for a direction to official respondents No.2 and 3 not to harass and interfere in their life at the instance of respondents No.4 to 11 who are the parents of petitioner No.1 and her relations. The petition was filed on July 30, 2015 admitting that petitioner No.1 would complete the age of majority on September 29, 2015 whereas

petitioner No.2 was admittedly an accused in a case FIR No. 103 dated July 9, 2015 under Sections 363, 366 IPC registered at Police Station Kulgari, District Ferozepur. Petitioner No.2 is aged about 35 years and belongs to Raja Sikh Community whereas petitioner No.1 belongs to Jat Sikh community. Petitioners claimed that they intend to marry each other but on account of petitioner No.1 having not attained the age of majority and their being imminent threat to the life and liberty of the petitioners, the need has arisen for filing the petition for protection. Petitioners have also filed a representation to SSP, Tarn Taran and SSP, Ferozepur, annexure P-2 for their protection.

When the petition came up for preliminary hearing, taking into consideration the circumstances, the coordinate Bench of this Court observed that the Court cannot perpetuate the illegal relationship. However, being conscious of the life and liberty of the petitioners, petitioner No.1 was ordered to be kept in Nari Niketan, Sector 26, Chandigarh through Incharge of the Police Post, High Court on August 3, 2015.

The private respondents have opposed the petition taking up the plea that petitioner No.2 and his sister had enticed petitioner No.1 to get her married to petitioner No.2. FIR No. 103 of 2015 stands already registered, as mentioned hereinabove, against petitioner No.2 on the basis of the inquiry conducted. Petitioner No.2 has allegedly been disowned by his father from moveable and immoveable property.

Counsel for petitioner No.1 has submitted that since she has attained majority during the pendency of the petition, she may be permitted to leave Nari Niketan and to join the company of petitioner No.2.

The said contention has been vehemently opposed by counsel for the private respondents on the ground that the petitioners are not husband and wife and that petitioner No.1 being minor having recently acquired majority cannot be abruptly snatched from the custody of her natural guardians and that direction should be issued that petitioner No.1 should join her parents.

I have considered the facts and circumstances of this case and I am of the opinion that the right of personal liberty enshrined under Article 21 of the Constitution of India is not confined only to the couples but it is a fundamental right granted to all the citizens of India. In case the petitioners are not married couple still they cannot be left to be harmed or injured by the relations of petitioners No.1 and 2 in the name of honour of the families. No doubt the social norms in the society are required to be followed but the basic principle of social justice can also not be ignored.

Without expression of any opinion whether petitioner No.1 has voluntarily joined the company of petitioner No.2 or that any offence of kidnapping could be said to have been made out against petitioner No.2, and leaving the said matter to be adjudicated by the appropriate forum, the only relief which can be granted to petitioners No.1 and 2 separately in their individual capacity is that they cannot be humiliated or tortured except by

due process of law. Petitioner No.2 being an accused in a case of kidnapping has got his independent remedy to protect his life and liberty by moving appropriate petition under Section 438 Cr.P.C. but a direction can be issued that he cannot be physically harmed by any of the respondents only on the allegation that he has forcibly kidnapped the minor girl from the custody of her parents. In case, petitioner No.1 during the course of investigation gives a statement to the effect that she voluntarily accompanied petitioner No.2, it will always be open to the prosecution agency to conclude the investigation by inquiring the matter to a logical end.

In order to avoid perpetuation of relationship which is apparently not legal and moral and is contrary to the social norms, petitioner No.1 had been ordered to stay in Nari Niketan. The said interim order had been passed not only to protect the life and limb of petitioner No.1 but was aimed to provide interim security to her. It cannot be legally believed that a minor who attains majority also achieves wisdom over-night, sufficient enough for his or her welfare. It is also pertinent to observe here that legally a person cannot be forced to stay at a particular place against his or her wishes, unless and until there are extraordinary exceptional circumstances involving his / her security.

In view of the said circumstances, petitioner No.1 had been directed to stay in Nari Niketan vide order dated October 5, 2015. Petitioner No.1, however, for all times to come cannot be forced to stay in Nari Niketan. Striking a balance between her right of liberty under Articles 21 of

the Constitution of India and the social norms and the parameters of social discipline, this petition is disposed of with following directions:-

- i) No force will be used on petitioner No.1 curtailing her right of life and liberty to marry against her wishes, by the private respondents;
- ii) No physical or mental harm will be caused to her by the private respondents;
- iii) She will not be forcibly taken in custody by any of the respondents. In case of any imminent threat to her life and liberty, it will be open to her to approach the SSP of the area in which she is residing for evading the physical harm at the hands of any of the respondents and it is directed that the protection will be granted to her as and when any such request is made in writing or orally by her to the SSP concerned or any other police officer subordinate to him in District Ferozepur or any other District as the case may be;
- iv) The authorities of Nari Niketan will handover the custody of petitioner No.1 to her parents, however, the liberty, as granted hereinabove, would be available to her after her release;

- v) So far as petitioner No.2 is concerned, it is directed that petitioner No.2 in his individual capacity will not be physically harmed by any of the respondents. In case of any threat to his life and liberty, it will be open to him to approach SSP, Ferozepur or Tarn Taran for his protection. It is expected that his request would be looked into to ensure that his life and limb is saved from any coercive attacks from any quarter. He will not be taken in custody except by due process of law.

It is clarified that this order will not be operative in FIR No. 103 dated July 9, 2015 under Sections 363, 366 IPC registered at Police Station Kulgari, District Ferozepur, registered against petitioner No.2 in which he will have independent right to seek concession of bail under Section 438 or 439 Cr.P.C.

October 14, 2015
sanjay

(M.M.S.BEDI)
JUDGE