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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(CRL).2519/2014**

Date of decision: 24.03.2015

AKASH

..... Petitioner

Through Mr. Narendra Sharma, Advocate along
with Petitioner in person.

versus

THE STATE (GOVT. OF N.C.T OF DELHI)

& ANR.

..... Respondents

Through Mr. Sanjeev Bhandari, Addl. Standing
Counsel for the State.
Mr. Bahar U. Barqi, Advocate for
respondent No.3, Hashim Khan.
Insp. Ajay Pratap and SI Amit
Chaudhary, P.S. Fatehpur Beri.
Ms. Aishwarya Rao, Advocate for
DHCLSC.
Girl Aaysha @ Sahiba in person.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

SANJIV KHANNA, J. (ORAL)

1. In terms of the last order, status report dated 21.03.2015 was filed in the morning. Copy of the said status report was made available to the counsel for Hashim Khan, father of Aaysha @ Sahiba. The writ petition has been taken up for hearing at 4 o'clock.

2. The petitioner has invoked and filed this petition under Article 226 of the Constitution of India for issuance of a writ of *habeas corpus* and *mandamus* claiming that he is 21 years of age and is married to Aaysha @ Sahiba. It is claimed that this is a case of inter-religious marriage. The petitioner relies upon the marriage certificate which is enclosed with the

writ petition as Annexure C-1. The petitioner has also enclosed a report dated 03.12.2014 made by him to the Station House Officer, PS Fatehpur Beri.

3. The writ petition had come up for hearing on 19.12.2014 and Notice was issued. Aaysha @ Sahiba was directed to be produced. As the petitioner apprehended that Aaysha @ Sahiba might be married, the State and the private respondents were directed to ensure that she does not undergo any marriage ceremony till the next date of hearing, which was fixed on 22.12.2014. Order dated 19.12.2014 mentions that Aaysha @ Sahiba's statement was recorded by the Magistrate on 30.10.2014. The Court observed that the Magistrate should have sought for self-reliant affirmations and taken precautions and safeguards to ensure that Aaysha @ Sahiba was not under any threat, force or coercion. Copy of the said statement is available on record and mentions that Aaysha @ Sahiba had stated that she had gone from Delhi to Noida as per her wishes and, thereafter, had come back on her own will. Earlier, she had fought with her mother.

4. Aaysha @ Sahiba was produced and appeared in the Court on 22.12.2014. The said order passed by S. Ravindra Bhat and Vipin Sanghi, JJ., records that they had interacted with her as well as the petitioner. The parents of the petitioner and Aaysha @ Sahiba were also present. The order further records that bone-age test stands conducted and the report opines that Aaysha @ Sahiba was between 17 to 18 years of age. The said order, thereafter, records that Aaysha @ Sahiba had expressed that she had willingly gone with the petitioner and she was never detained against her wishes. She admitted that she was married to the petitioner. She had not decided further course of action and wished to reside with her parents. She had also expressed desire not to lead a married life for next

three years. The order dated 22.12.2014 observed that as per the wishes of Aaysha @ Sahiba, she could remain with her parents and stay with them in Delhi. The parents of Aaysha @ Sahiba were directed not to get her married and the police was directed to ensure compliance. Aaysha @ Sahiba was directed to be produced before the Crime Against Women Cell, Lajpat Nagar, New Delhi on 04.03.2014. They were asked to elicit her willingness and take action as required including ascertaining her wishes.

5. The matter was thereafter listed on 09.01.2015 on an application filed by the petitioner, alleging that Aaysha @ Sahiba had informed him on telephone that she has been taken to Meerut, Uttar Pradesh. The petitioner apprehended that Aaysha @ Sahiba was being married to some third person. In view of the assertions, a lady advocate associated with the Delhi High Court Legal Services Committee along with some police officers, on Court directions, were asked to pay a visit to 216, Badi Masjid, Aman Vihar, New Delhi, where Aaysha @ Sahiba was stated to be residing, and speak to her and report. The matter was again taken up for hearing at 3.30 pm when Ms. Alpna Pandey, Advocate associated with the Delhi High Court Legal Services Committee appeared and informed that she had proceeded with the police officers to the aforesaid address but the property or address could not be located. She had then spoken to Hashim Khan on his mobile phone but the reply given by Hashim Khan was evasive and contradictory. Hashim Khan had alleged that Aaysha @ Sahiba was under threat from Akash. The standing counsel appearing for the State had, on instructions, informed the Court that they were unable to ascertain the whereabouts of Aaysha @ Sahiba. In view of the aforesaid position, the writ petition was adjourned for 12.01.2015. In the meanwhile, notice was directed to be issued to Hashim

Khan to produce Aaysha @ Sahiba in the Court on the next date of hearing.

6. On 12.01.2015, Aaysha @ Sahiba appeared before us and had interacted with Ms. Alpna Pandey, Advocate of the Delhi High Court Legal Services Committee. She had alleged that she was beaten by her family members who wanted her to get married to another person. She reiterated that she liked Akash. In the order dated 12.01.2015, we had referred to order dated 22.12.2014. We had also spoken to Hashim Khan in the chamber. Hashim Khan was not ready and willing to accept the petitioner as his son-in-law. Aaysha @ Sahiba in categorical terms expressed her desire not to reside with her parents for the time being. Aaysha @ Sahiba was directed to be taken to *Prayas* from the Court. Family members of Aaysha @ Sahiba were permitted to speak to her for one hour each day. The petitioner was also permitted to speak to her for 30 minutes on alternate days. The meetings were directed to be in the presence of officers of *Prayas*. Hashim Khan and his wife, Nasima were asked to visit the Family Court at Saket for counselling. In the meanwhile, the police was asked to carry out investigation and verify the age of Aaysha @ Sahiba as there was considerable age difference in the ossification test report and the date of birth mentioned in the school records, i.e. 04.07.2000.

7. The writ petition was thereafter taken up for hearing on 22.01.2015 and 11.02.2015. The said orders make reference to copy of Aadhaar card which had been furnished to the Investigating Officer. The year of birth of Aaysha @ Sahiba as recorded therein was 1997. The State was asked to verify and ascertain whether the Aadhaar card was genuine and on what basis the year of birth was entered in the said Aadhaar card.

8. The order dated 11.02.2015 records that the Aadhaar card was ascertained and found to be genuine but the police could not confirm the basis or papers, for recording the year of birth of Aaysha @ Sahiba as 1997. Aaysha @ Sahiba's date of birth as recorded in Baba Neem Karauli Sarvodaya Kanya Vidyalaya, Jonapur, New Delhi was 04.07.2000. In the photocopy of the admission's register of Nagar Nigam Pratibha Vidyalaya Sarvodaya Kanya Vidyalaya, Jonapur, New Delhi where Aaysha @ Sahiba had studied till class V, her date of birth was illegible. Aaysha @ Sahiba had presented a letter written by her to the Court. After going through the said letter and in view the contents thereof, the letter was directed to be kept in a sealed cover in the Court file. Liberty was granted to Hashim Khan to file his response to the writ petition. The State was asked to ascertain and find out the basis on which the year of birth of Aaysha @ Sahiba was recorded in the Aadhaar card. The interim directions permitting visitation rights to family members of Aaysha @ Sahiba and the petitioner were directed to continue.

9. On 26.02.2015, further time was granted to the State to file status report as it was stated that more time was required to ascertain and collect documents to establish the age of Aaysha @ Sahiba.

10. Thereafter, substantive hearing in the writ petition was held on 12.03.2015. The said order records that the Aadhaar card of Aaysha @ Sahiba was issued on 17.01.2012, i.e. about three years before the present controversy had arisen. Thus, the assertion of Hashim Khan that this Aadhaar card had been procured by the petitioner and Aaysha @ Sahiba was incorrect and wrong. This order directs the police to investigate and ascertain the date of birth of brothers and sisters of Aaysha @ Sahiba. The date of birth of Aaysha @ Sahiba as recorded in the ration card and other documents should be ascertained.

11. On 12.03.2015, the Court had interacted with Hashim Khan and the order records that Hashim Khan was unable to recollect the date of birth of his five children. Hashim Khan had submitted that the date of birth of elder brother of Aaysha @ Sahiba was 23.10.1996. Hashim Khan had also stated that his eldest child, a daughter, was married and had a child. She was stated to be about 22 years old. The youngest child was born in the year 2007 or 2008 and was studying in Class III. The Deputy Commissioner of Police (South) was directed to appoint an officer of his choice to carry out investigation and submit a report after ascertaining full facts including date of birth of Aaysha @ Sahiba as recorded in the ration card and other documents as well as date of birth of brothers and sisters of Aaysha @ Sahiba in the school records and other documents. The status report mentioned in the first paragraph has been filed pursuant to the said order.

12. As per the status report, the year of birth mentioned in the Aadhaar card of Aaysha @ Sahiba is on the basis of self-declaration made by her. No date of birth certificate or other document was submitted. As per the said status report, date of birth of Aaysha @ Sahiba and her siblings in records/documents is as under:-

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Name	Relationship with Sahiba	DOB as per school record	DOB as per UIDAI	DOB as per Ration card
Munir Khan	Brother	03.07.2005	26.01.2003	Name not mentioned in Ration Card
Sameer Khan	Brother	03.07.2005	03.07.2004	Name not mentioned in Ration Card
Sahbaj Khan @ Sonu	Brother	27.04.1994	Year 1996	Year 1996
Rukhsar Khan	Sister	27.12.1994	21.12.1992	Year 1991
Sahiba Khan	Self	04.07.2000	18 years	Name not mentioned in Ration Card

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13. It is clear from the aforesaid table that there is variation in the date of birth as recorded in the school records, the Aadhaar documents, and in some cases, the ration card. The date of birth of Munir Khan and Sameer Khan as recorded in the school records is the same, i.e. 03.07.2005, whereas the date of birth mentioned in the Aadhaar card is 26.01.2003 and 03.07.2004, respectively. The date of birth of Rukhsar Khan as mentioned in the Aadhaar Card is 21.12.1992, and in the ration card the year of birth as mentioned is 1991. The date of birth of elder brother of Aaysha @ Sahiba, namely Sahbaj Khan @ Sonu as recorded in the Aadhaar card and the ration card is 1996. But his date of birth as mentioned in one of the school records is 27.04.1994. The status report has enclosures, including photocopy of ration card as well as acknowledgement or resident copy of the Aadhaar cards. It also has a certificate issued by Gyan Kunj Public School acknowledging that the date of birth of Rukhsar Khan and Sahbaj Khan @ Sonu as per their records is 27.12.1994 and 27.04.1994, respectively. It is apparent that at the time of their admission, Hashim Khan had sworn affidavits to certify their date of birth. It is an accepted position that Hashim Khan had not got the birth of the children registered.

14. Learned counsel appearing for Hashim Khan has drawn our attention to the certificate issued by Central Board of Secondary Education (CBSE) mentioning the date of birth of Sahiba Khan as 23.10.1996. He also submits that as per the Juvenile Justice (Care and Protection of Children) Act, 2002, the date of birth mentioned in the school first attended should be treated as the actual date of birth and the Court could rely upon the ossification test report or other material, in the absence of school certificate.

15. We have considered the submissions made by the learned counsel

but are unable to accept the same. We are not to strictly apply the Juvenile Justice (Care and Protection of Children) Act, 2002, in the present case. It is noticeable that in the present case, the date of birth as recorded in the school records is only an assumption, and is not based upon any cogent material or document. This is apparent from our findings recorded in the order dated 12.03.2015. The said findings were recorded after interacting with Hashim Khan to verify and ascertain the date of birth of his five children. He was unable to recollect their date of births. Even in respect of the youngest child, he was confused and had stated that he was born either in the year 2007 or 2008. The dates of birth mentioned in the school records are apparently based upon affidavits given by Hashim Khan. The year of birth mentioned in the ration card, Aadhaar card and dates of birth mentioned in the school records in most of the cases are divergent and differ. In these circumstances, we feel that it would not be correct to rely on the date of birth of Aaysha @ Sahiba as recorded in the school records. We, therefore, would prefer to rely on the ossification report and age determination report dated 17.11.2014, wherein the age of Aaysha @ Sahiba has been mentioned to be between 17 to 18 years. The said report relies upon physical, dental and radiological examination. Nearly four months have elapsed since the report. In these circumstances, we feel that it will be proper and appropriate to hold that Aaysha @ Sahiba is today more than 18 years of age.

16. We have spoken to Aaysha @ Sahiba in Court and she has stated that she would like to go and live with the petitioner, who is her husband. The petitioner who is present in person with his mother states that they will make an FDR of Rs.35,000/- in the name of Aaysha @ Sahiba as the sole depositor. The said FDR will be for a period of two years and will be

prepared within 10 days. A copy of the same will be filed in the Court. The said FDR shall not be encashed without the prior permission of the Court.

17. Aaysha @ Sahiba has been asked to spend the night in *Prayas* and copy of this order will be made available to her at *Prayas*. Mobile telephone numbers of two police officers will be made available to the petitioner and Aaysha @ Sahiba and they will be at liberty to call on the said number, if need arises.

18. With the aforesaid directions and observations, the writ petition is disposed of.

Dasti.

(SANJIV KHANNA)
Judge

(ASHUTOSH KUMAR)
Judge

MARCH 24, 2015

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