

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.92 of 2016

Arising Out of PS.Case No. 52 Year- 2015 Thana -Deoriya District- MUZAFFARPUR

=====

Rima Kumari, Wife of Chandan Kumar, resident of Village Bajipur P.S Parsoo ,
Distt Muzaffarpur.

.... Petitioner

Versus

1. The State of Bihar Through The Secretary, Home Department Govt. of Bihar, Patna
2. The Training and Rehabilitation Officer, Alpawaa , Grih Muzaffarpur.
3. The S.H.O. Deoriya ,Police Station Muzaffarpur.
4. Sheshnath Sah, Son of late Panalal Sah resident of Bishunpur Saraiya Police Station Deoria Distt Muzaffarpur.
5. Chandan Kumar, son of Shashi Chaudhary resident of Village Bajitpur, Police Station Paroo, District Muzaffarpur.

.... Respondents

=====

Appearance :

For the Petitioner :	Dr. Alok Kumar Alok, Advocate
	Mr. Santosh Kumar, Advocate
For the State :	Mr. Bhubhneshsar Pandey, AC to SC 31

=====

CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

CAV JUDGMENT

Date: 02-03-2016

The petitioner has invoked writ jurisdiction of this Court for her release from illegal confinement in Women Protection Home sent by the learned Judicial Magistrate, 1st Class, Muzaffarpur, vide order dated 04.12.2015 in pursuance to an order dated 09.10.2015 passed by the 14th Additional Sessions Judge, Muzaffarpur, in Cr. Revision No. 108 of 2015.

2. FIR in Deoriya PS Case No. 52 of 2015 has been registered under Sections 363/366A of the Indian Penal Code on a complaint by father of the petitioner. The petitioner claims that she is major and be allowed to live with her husband. It is the



case of the petitioner that on 16th June, 2015, her father lodged a complaint that the petitioner had gone for purchase of detergent at about 11 A.M. but did not return. He expressed apprehension that the petitioner has been abducted by respondent no. 5 and his brother. The police of Deoriya Police Station started investigation in the case and recovered the petitioner. She stated before the police that she was in love with respondent no. 5 for the last one year and that both of them had married at Delhi and are leading a happy conjugal life. The petitioner made statement under Section 164 CrPC on 3rd July, 2015, wherein she stated that she had gone with Chandan as per sweet will and that their family members were not ready for marriage. She stated that she has solemnized the marriage on 24th June, 2015 at Arya Samaj Temple, Delhi and both of them are living as husband and wife.

3. It is also pleaded by the petitioner that the petitioner was examined by Medical Board and as per report dated 05.07.2015 her age has been ascertained between 19-20 years. On the basis of the report of the Medical Board, an order was passed by the learned Magistrate for setting her free being major. The father of the petitioner filed Criminal Revision against the order passed by the learned trial court which stands allowed on 09.10.2015 and the order passed by the Magistrate, dated 03.07.2015, was set aside. The matter was remitted back to the

trial court to pass fresh order after considering the documents filed by her father.

4. On the basis of the documents filed including Aadhar Card, wherein the date of birth of the petitioner is mentioned as 08.09.1999, the petitioner was treated to be juvenile and since none of the natural guardian appeared to take over her custody, the Station House Officer, Deoriya Police Station, was directed to take the girl to Short Stay Home. It is that order which is being challenged in the present writ application by the petitioner.

5. In an order passed by a Division Bench of this Court on 23rd September, 2010, in Cr.WJC No. 996 of 2010 (Rukhasar Khatoon vs. State of Bihar & Ors.), wherein relying upon an order of the Hon'ble Supreme Court in the case of **Jaya Mala vs. Home Secretary, Govt. of J & K & Ors. (AIR 1982 SCC 1297(1))**, the girl was treated to be major on the basis of medical report assessing her age between 16 to 17 years. Before this Court, the petitioner has referred to another order of a Division Bench of this Court in the case of Sahebi Khatoon @ Sahebi vs. State of Bihar & Ors. (Cr.WJC No. 991 of 2010) and the Supreme Court order in the case of **Jaya Mala** (supra) in support of her contention that she is major and competent to take decision of her own including marriage and of stay.

6. Jaya Mala's case (supra), was a case of



preventive detention of a person who was found to be 17 years of age in radiological examination. Giving the benefit of age, the Court treated the detenu as minor and set aside his detention order. In Sahebi Khatoon's case (supra), the girl was found to be 16-17 years age as per medical report and was also expectant mother of 8 months. In view of the medical report, the girl was treated as major and ordered to be released from the Remand Home. In Rukhasar Khatoon's case (supra), though there was school leaving certificate produced by the father but the Court proceeded on the basis of medical report to order her release from Remand Home.

7. In the present case, the learned trial court after setting aside of the earlier order, considered the birth certificate of the petitioner showing her date of birth as 08.09.1999. The Aadhar Card shows her date of birth 08.09.1999. It is thus established that the girl was not major and was ordered to be sent to Short Remand Home. It may be stated that Aadhar Card is issued after taking bio-metric data including photograph and the signature of the person. Thus, Aadhar Card showing her date of birth 08.09.1999 has the endorsement of the petitioner. Thus, the petitioner was a minor on the basis of documentary evidence which cannot be rebutted on the basis of opinion of the Medical Board.

8. In view of the documentary evidence on record

regarding the age of the petitioner, she cannot be ordered to be possessed of age of discretion and competent to take decision for herself including marriage. Therefore, I do not find any error in the order passed by the learned Magistrate sending the petitioner to Short Stay Home.

9. The writ petition is accordingly dismissed.

(Hemant Gupta, J)

mrl

U		T	
---	--	---	--