

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

-.-

L.P.A No. 2146 of 2016 (O&M)

Date of Decision: 27.10.2016

Bhim Sain

..... Appellants

Vs.

State of Punjab & Ors.

.... Respondents

**CORAM: HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MR.JUSTICE DR. SHEKHER DHAWAN**

Present: - Mr. L.S.Mann, Advocate, for the appellant.

Mr. Suvir Sehgal, Sr. Standing counsel for U.T. Chandigarh.

MAHESH GROVER, J.(ORAL)

This appeal is directed against the order dated 22.10.2016 by which petitioner No.1 – Gurjeet Kaur was sent to Nari Niketan on the premise that she is minor, going to attain majority on 29.10.2016. The reason for sending the minor to the Nari Niketan was that she intended to perform marriage with the appellant without parental consent.

The appellant along with Gurjeet Kaur (petitioner No.1 in Crl. Misc. No. 38027 of 2016) had approached this Court by way of a petition under Section 482 Cr.P.C with a prayer that they be provided adequate security and protection since they apprehend danger on account of their desire to perform marriage without parental consent.

Learned Single Judge had directed the detention of Ms. Gurjeet Kaur in Nari Niketan till the next date of hearing before this Court i.e. 03.11.2016.

We are of the opinion that the learned Single Judge has committed an error in restricting the minor Ms. Gurjeet Kaur, to the confines of Nari Niketan against her wishes.

The Hon'ble Supreme Court has constantly deprecated the practice of confining an individual against his or her wishes even if he or she is minor. Apart from this the Hon'ble Supreme Court in ***Fiaz Ahmed Ahanger & Ors. v. State of J & K 2009(3) R.A.J.692***, has observed as follows:-

“In such cases of inter-caste or inter-religion marriage the Court has only to be satisfied about two things :

(1) that the girl is above 18 years of age, in which case, the law regards her as a major vide Section 3 of the Indian Majority Act, 1875. A major is deemed by the law to know what is in his or her welfare.

(2) The wish of the girl. In the circumstances, we direct that nobody will harass, threaten or commit any acts of violence or other unlawful act on the petitioner, Chanchali Devi/Mehvesh Anjum and the petitioner's family members and they shall not be arrested till further orders in connection with the case in question. If they feel insecure, they can apply to the police and, in such event, the police shall grant protection to them.”

In ***Neetu Singh Vs. State, 1999(3) R.C.R (Crl.) 26***, the Hon'ble Delhi High Court has held that even a minor girl cannot be kept in protective home against her wishes.

We are, thus, of the considered view that an individual even if minor would have a freedom to choose her movement and cannot be detained in the Nari Niketan against her wishes as this would clearly be a violative of fundamental rights.

We are not entering into controversy of the maintainability of the Latters Patent Appeal against the order passed by the learned Single judge in the exercise of its power under Section 482 of the Code of Criminal Procedure, particularly when we as constitutional Court when confronted with the violation of

fundamental rights of an individual are bound to exercise jurisdiction under Article 226 of the Constitution of India. Thus exercising our powers under Article 226, we grant interference in the impugned order.

The fact that her age of attainment of majority is just round the corner barely a week from the date, the impugned order was passed should have been sufficient reason for learned Single Judge to ascertain her wish to permit her to go with the present appellant, who intends to perform marriage with her. Evidently a girl or an individual barely a week from the date of attaining majority would be competent to express her wishes as she would after attaining the age of majority, thereby satisfying the parameters laid down in ***Fiaz Ahmed Ahanger's case (supra)***.

The impugned order is set aside and the minor, namely, Gurjeet Kaur, is liberated from the impact of the impugned order to set her free and thus enabled to accompany the present appellant who she intends marrying. Her, as also the appellant's wishes have been ascertained and both have categorically stated to remain in the company of each other.

Senior Superintendent of Police, Fatehgarh Sahib is directed to ascertain the threat perception of the appellant and Ms.Gurjeet Kaur and take necessary action, if the situation so warrants.

Disposed of.

Copy of this order be given dasti to learned counsel for the appellant under the signatures of Special Secretary of this Bench.

(MAHESH GROVER)
JUDGE

(SHEKHER DHAWAN)
JUDGE

October 27, 2016

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