

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.782 of 2017

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Mamta Misra @ Amna Khatoon, wife of Mukesh Misra, resident of Village-Shepur, Post Office and Police Station- Karpi, District- Arwal.

... .. Petitioner

Versus

1. The State of Bihar through Principal Secretary, Department of Home, Bihar, Patna.
2. The Director General of Police, Bihar, Patna.
3. The District Magistrate, Patna.
4. The District Magistrate, Aurangabad.
5. The Superintendent of Police, Patna.
6. The Superintendent of Police, Aurangabad.
7. The Superintendent , Government Remand Home, Gaighat, Patna.

... .. Respondents

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Appearance :

For the Petitioner/s	:	Sri Syed Alamdar Hussain, Sr. Advocate Mr. Shashi Bhushan Kumar, Advocate Ms. Minu Kumari, Advocate
For the Respondent/s	:	Mr. P.N. Sharma, AC to A.G.
For the Intervenors	:	Mr. Dineshwar Tiwary, Advocate Mr. Kali Prasanna Dubey, Advocate

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE DR. JUSTICE RAVI RANJAN)

Date : 24-07-2017

We have heard parties including the intervenors and have perused the records of this case.

This writ application has been filed on behalf of the petitioner for her release from the After Care Home, Gaighat, Patna as her confinement is illegal.

Counter affidavits have been filed on behalf of different



State authorities including the Superintendent of Government Remand Home, Gaighat. It emerges out from the pleadings of the respective parties that the petitioner, while staying at Daudnagar, Aurangabad, developed interest in Islam and, thereafter, embraced Islam. It is claimed by the petitioner that, thereafter, her family members including the husband and her father started putting difficulties in her life and they tried to depict her as mentally ill. For that purpose false certificates were prepared. However, she requested the District Magistrate to provide her safety and protection. On such application having been filed, she was initially kept at Remand Home, Arwal and therefrom she was shifted to Aurangabad and from Aurangabad, she was shifted to After Care Home, Gaighat, Patna. It also appears that a Medical Board was constituted which opined that though the girl is physically fit, however, for her mental condition, she should be referred to some superior institution and should also be provided counseling. It is surprising as to why such statement was made in the Medical Report as there is no final finding that she was either mentally ill or suffering from depression. Be that as it may, the petitioner was sent to After Care Home, Gaighat on 13.09.2014 and since then, she is staying there. In the meantime, a Medical Report has come that



she is physically and mentally fit and, hence, she has filed this writ application for her release.

The husband as well as her father have filed intervention applications. The case of the husband is that he does not have any objection even if she embraces Islam and in spite of that, she can stay with him. Father has also stated the same. However, at the same time, learned counsel appearing for the father has raised the maintainability of this writ application stating that in view of the fact that the petitioner had willingly gone to After Care Home as she herself has asked the authorities to provide shelter. Thus, after about three years, she cannot claim that she is illegally kept there and, on that account, she should be released. We are afraid this view of the learned counsel has no legs to stand. Even assuming that a person, who is not an accused, has been given shelter at After Care Home and if he/she is major and one fine morning, he/she decides not to live there, the subsequent days of her stay against her will would amount to illegal confinement. A letter of District Magistrate, Aurangabad written to the Public Prosecutor, Aurangabad (Annexure-J to the counter affidavit filed by him) clearly shows that the petitioner has requested for her release from the After Care Home and for that purpose, he was seeking



legal opinion of the Public Prosecutor. Subsequently, it appears that the District Magistrate, Aurangabad vide order dated 18.05.2017 (Annexure-D to the counter affidavit filed on earlier occasion) has directed for her immediate release from the Remand Home. However, vide order dated 28.06.2017, this Court, in view of the stand of the petitioner, directed to allow her stay at Gaighat Remand Home till further orders.

In above view of the matter and in the peculiar facts and circumstances of this case and after considering the pleadings on behalf of all parties including the intervenors, this Court is of the opinion that faith is a personal matter and every citizen has a right to embrace religion of his/her choice. No authority can put a restriction upon such right. Similarly, a person who is major would have a right to lead a peaceful life as per his/her own will. No materials are there showing that she is being forced to change her religion. In our view, nobody can be confined to any After Care Home etc. against his/her own will or without adopting due process of law. The case of an accused and the present case cannot be considered together because that would only lead to confusion. It is not a case that a person is an accused and, therefore, under the orders of court, she has been sent to Remand Home. She asked for shelter and, therefore, she



was sent to the shelter Home. She now wants to be released, hence, she has to be released and, in fact, an order to that effect has already been passed by the District Magistrate, Aurangabad.

Accordingly, this Court would direct the respondent no.7 to allow her to go from the After Care Home to a place of her choice. However, whenever and wherever she goes and stay, if she feels any threat upon her life, she would have a right to approach the Superintendent of Police concerned or the Officer-in-charge of concerned police station along with a copy of this order. On such step taken by her, such authority would be obliged to take remedial action. She would have a visiting right up-to a maximum once in a month to visit her children under protection of police.

That apart, the petitioner had admittedly worked in the After Care Home at the instance of some N.G.O. and the Superintendent of the After Care Home, Gaighat is present here and admits that and further submits that she is entitled to get Rs.5500/-per month and altogether she has worked for about 11 months. However, the payment could not be made as her Aadhar Card was not prepared, which now has been prepared, and also because no account was opened by the petitioner.

Accordingly, let all the formalities be done so that the



petitioner could get the emoluments for which she is entitled.

This order would not preclude any of the parties from seeking appropriate remedy before the family court or any other competent forum for the relevant purpose.

This disposes of the writ application.

(Dr. Ravi Ranjan, J)

(S. Kumar, J)

V.K.Pandey/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
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