

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.25577 of 2017

Arising Out of PS.Case No. -49 Year- 2017 Thana -HUSAINGANJ District- SIWAN

=====

Sandhya Kumari Daughter of Raj Kumar Parit @ Raj Kumar Pandit, Resident of
Village- Sareya, P.S.- Hussainganj, District- Siwan.

.... Petitioner/s

Versus

1. The State of Bihar.

2. The Superintendent of Nari Niketan, Gaighat, Patna City, District- Patna.

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Dineshwar Pandey

For the Opposite Party/s : Mr. Sri Rana Randhir Singh

=====

CORAM: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

C.A.V. JUDGMENT

Date: 18-07-2017

Heard learned counsel for the parties.

Petitioner, by means of this application under section 482 of the Code of Criminal Procedure, has invoked the inherent jurisdiction of this Court with prayer to quash the order dated 18.04.2017, passed by the Chief Judicial Magistrate, Siwan, in Hussainganj P.S. Case No. 49 of 2017, G.R.No. 930 of 2017, whereby the application filed by the petitioner for release from Nari Niketan, Gaighat, Patna and further for release of the petitioner.

The contention of the learned counsel for the petitioner is that petitioner married the husband with her consent and they have lived as husband and wife and she is consequently pregnant. Petitioner is fully capable both, physically and mentally to choose her future course of action and as such deserves to be given her right to exercise her free will.

There are two aspects of the matter that needs to be



considered. Firstly, whether the victim girl was a minor one when the kidnapping took place and secondly, whether at present stage she should continue to be lodged in the Care Home or she should be released to move freely wherever she wants because the difference of age is only marginal.

In regard to the first question, I may clarify that I am not concerned with this point in this application. It will be one of the subjects for consideration at the trial of the petitioner. My observations in this application should not be treated to the benefit or detriment to any party either the prosecution or the petitioner and others. Any finding I give is only for the purpose of the second point in the application.

Taking the second point, four sets of ages have been mentioned in the record. In the first information report, her age has been stated to be 13 years by her father. In her statement under section 164 Cr. P.C., the victim has given her age to be 19 years and the Magistrate has also assessed her age to be 19 years. On medical examination, her age has been assessed to be 18-19 years. As per School Leaving Certificate, her age is 15 years. I feel that if the age of a person is nebulous and is hovering between several sets of dates, in a case of this kind, for the limited purpose of her release and exercise of her own volition, it can be held that she has achieved the age of reasonings and is capable of taking her own decision. The victim is no doubt pregnant. Her only crime was that she fell in love



with the husband and married him, of course, within the bounds of law and social norms. The marriage was neither void nor illegal on account of the spouse being less than 18 years of age and being over 15 years of age. The victim has clearly shown her wish to be released and is desirous of going to her husband. In such circumstances, the victim girl cannot be directed to be detained in Nari Niketan against her wishes.

In view of the above, the order dated 18.04.2017, passed by the Chief Judicial Magistrate, Siwan, in Hussainganj P.S. Case No. 49 of 2017, G.R.No. 930 of 2017, whereby the application filed by the petitioner for release from Nari Niketan, Gaighat, Patna is, hereby quashed. Further, the petitioner is directed to be released from the Nari Niketan, Gai Ghat, Patna forthwith. It is needless to say that she will be free to go wherever she wishes. She is the mistress of her own discretion. The concerned authority of the Nari Niketan, Gaighat, Patna will ensure compliance of this order.

The application accordingly stands allowed.

(Arvind Srivastava, J)

Manish/-

AFR/NAFR	AFR
CAV DATE	23.06.2017
Uploading Date	19.07.2017
Transmission Date	19.07.2017

