

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.471 of 2017

Arising Out of PS. Case No. -104 Year- 2016 Thana – Piri Bazar District- LAKHISARAI

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Rabiya Khatoon, Wife of Babloo Kumar Das @ Abhijit Kumar and Daughter of
Md. Zabir Ansari, Resident of Village- Loshghani, P.S.- Piri Bazar, District-
Lakhisarai.

.... Petitioner

Versus

1. The State of Bihar.
2. The Principal Secretary, Home Police Department, Government of Bihar, Patna.
3. The Superintendent, Balika Grih Nishant, Gaighat, Patna.
4. The Superintendent of Police, Lakhisarai.
5. The S.H.O. Piri Bazar Police Station, District- Lakhisarai.
6. Md. Zabir Ansari, Son of Late Maniruddin Ansari, Resident of Village-
Loshghani, P.S.- Piri Bazar, District- Lakhisarai.

.... Respondents

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Appearance :

For the Petitioner : Mr. Sanjeev Kumar, Advocate
For the State : Mr. Krishna Chandra, AC to AG
For Respondent No. 6: Mr. Vinod Gautam, Advocate

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

And

HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE DR. JUSTICE RAVI RANJAN)

Date: 25-05-2017

Heard learned counsel for the petitioner, State and the
respondent no. 6.

Through this writ application, the petitioner seeks issuance
of writ in the nature of habeas corpus commanding the respondents to
release the petitioner forthwith who is confined in Balika Grih Nishant,
Gaighat, Patna since 03.02.2017.

It is contended on behalf of the petitioner that though she
has been declared major aged about 19-20 years by the Medical Board,



still the court below vide order dated 06.03.2017 has refused to release her from After Care Home.

Learned counsel for the petitioner has placed reliance upon the decision of the Division Bench of this Court rendered in the case of ***Nahida Parveen Vs. The State of Bihar & Ors. [2008(4) PLJR 147]***.

However, in our view, there is difference between the present case and the aforesaid decision. That decision would not fully cover the present case as would be evident from paragraphs 4 and 5 of the aforesaid decision that on repeated filing of the applications for release of the victim, the court below did not pass any order whereas in the present case an order has been passed by the court which is in seisin of the matter and the same has been appended as Annexure-6 refusing the petitioner to release. The petitioner has a remedy against that order in law. Therefore, the petitioner should have availed that remedy.

In such a situation, when a competent court has passed an order, in our view, it would not be proper to issue writ of habeas corpus. However, it also appears that while taking a decision vide Annexure-6 the decision of the Division Bench of this Court in the case of ***Nahida Parveen Vs. The State of Bihar & Ors. (supra)*** was neither placed nor considered by the court below.

In the above view of the matter, we would grant liberty to the petitioner once again to move before the competent court for her



release. While considering a fresh application, the competent court would be required to consider the aforesaid decision rendered by the Division Bench of this Court. Such decision should be taken by the concerned court in accordance with law within a fortnight of filing of the fresh application by the petitioner.

This disposes of this writ application.

(Dr. Ravi Ranjan, J)

B.T/-

(Vikash Jain, J)

AFR/NAFR	NAFR
CAV DATE	N.A.
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