

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.1198 of 2017

Arising Out of PS.Case No. -null Year- null Thana -null District- ARRARIA

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1. Rubeda Khatoon wife of Shamshad Alam Resident of Village - Barahat, Ward No. 02, Chahatpur, Police Station - Palasi, District - Araria.

.... Petitioner/s

Versus

1. The State of Bihar through D. G. P., Bihar Patna.
2. The Superintendent of Police, District - Araria.
3. The Station House Officer, Araria, P.S. District - Araria.
4. The Superintendent, Girls (Balika) Remand Home, Gaighat, Patna.
5. Dharma Nand Mistri Son of Late Jangli Mistri Resident of Village - Kankhudia Ward No. 1, Police Station - Palasi, District - Araria.
6. Santosh Kumari daughter of Dharma Nand Mistri Resident of Village - Kankhudia Ward No. 1, Police Station - Palasi, District - Araria.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sandeep Kumar, Advocate
Mr. Ram Pravesh Nath Tiwari, Advocate
For the Respondent/s : Mr. Ajay Kumar Sharma, AC to AG
For Respondent No.4 : Mr. Ansul, Advocate
For Respondent No.5 : Mr. Kumar Uday Bhanu Roy, Advocate
Mr. Sunil Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date: 11-12-2017

Heard learned counsel for the parties.

2. Respondent No.5 Dharma Nand Mistri lodged Palasi P.S. Case No.111 of 2017 under Sections 366/120B Of the Indian Penal Code alleging therein that on 16.05.2017 the named accused persons forcefully abducted Santoshi Kumari on a four-wheeler and fled away. A copy of the F.I.R. is Annexure-1. On recovery statement of Santoshi Kumari was recorded under Section 164 Cr.P.C. on 31.05.2017 wherein she disclosed her age as 17 years and the



learned Magistrate assessed her age as 16 years. The victim stated that her parents had married her with one Upendra Sharma on 7th May, 2017. She went to her sasural and returned back. However, on 14th May, 2017 she left her house and called accused Sakib on mobile phone. Sakib said that he would commit suicide. Thereafter, she left for Delhi along with Sakib and solemnized marriage with Sakib and both are living as husband and wife.

3. The petitioner claims to be the mother-in-law (Mother of Sakib) of the victim girl and has filed this writ application for issuance of mandamus to the respondents especially respondent No.4, the Superintendent, Girls Remand Home, Gaighat, Patna, for release of the victim in favour of the petitioner.

4. The writ application was filed after refusal of the prayer for release by the learned Additional Chief Judicial Magistrate, Araria, vide order dated 01.06.2017 (Annexure-3) on the prayer of the father of the victim girl. The learned Additional Chief Judicial Magistrate, refused the prayer for the reason that in School Leaving Certificate the date of birth is mentioned as 16.09.2001 and the medical opinion revealed that she was in between 17-18 years. She herself stated in her statement under Section 164 Cr.P.C. that she is aged about 17 years. The learned Magistrate relied on the entry made in the school paper regarding date of birth of the victim and also desire expressed by the victim that she does not want to go along with



her parents. Hence, on considering the minority of the victim as well as her welfare she was sent to remand home.

5. Learned counsel for the petitioner submits that the matter is of love affairs and love marriage which is not approved by the family members of the girl and in similar circumstances a Division Bench of this Court in **Sahebi Khatoon @ Sahebi V. State of Bihar and others (Cr.W.J.C. No.991 of 2010)** by order dated 23.09.2010 allowed the release of the victim giving benefit of error of two years in medical assessment of the age.

6. In my view, **Sahebi Khatoon's case** is not helpful in the present facts and circumstances of this case for the reason that in **Sahebi Khatoon's case** there was no school paper in support of the date of birth of the victim. Only material was opinion of the Medical Board regarding date of birth. In the present case there is school certificate in support of the age of the victim.

7. Learned counsel for the respondent No.5 submits that since the victim was already a married girl as per her statement under Section 164 Cr.P.C. Hence, second marriage without dissolution of first marriage is itself void and punishable. Therefore, she cannot be released in favour of the petitioner. Moreover, the Juvenile Justice (Care and Protection of Children) Rules, 2007 (Rule 12) provides the mode and preference, for consideration of evidence to decide juvenility of juvenile in conflict with law. There is no reason that the



same rule should not be followed in the matter of a victim juvenile.

8. Learned counsel for respondent No.5 has placed reliance on the case of **Ashwani Kumar Saxena Vs. State of Madhya Pradesh** reported in (2012) 9 SCC 750. The Hon'ble Apex Court considered the procedure prescribed under the rules to be followed for determination of age in para-24 of the judgment and in paragraphs 32 to 34 observed as follows:

“32. "Age determination inquiry" contemplated under section 7-A of the Act r/w Rule 12 of the 2007 Rules enables the court to seek evidence and in that process, the court can obtain the matriculation or equivalent certificates, if available. Only in the absence of any matriculation or equivalent certificates, the court needs to obtain the date of birth certificate from the school first attended other than a play school. Only in the absence of matriculation or equivalent certificate or the date of birth certificate from the school first attended, the court needs to obtain the birth certificate given by a corporation or a municipal authority or a panchayat (not an affidavit but certificates or documents). The question of obtaining medical opinion from a duly constituted Medical Board arises only if the above mentioned documents are unavailable. In case exact assessment of the age cannot be done, then the court, for reasons to be recorded, may, if considered necessary, give the



benefit to the child or juvenile by considering his or her age on lower side within the margin of one year.

33. Once the court, following the above mentioned procedures, passes an order, that order shall be the conclusive proof of the age as regards such child or juvenile in conflict with law. It has been made clear in sub-rule (5) of Rule 12 that no further inquiry shall be conducted by the court or the Board after examining and obtaining the certificate or any other documentary proof after referring to sub-rule (3) of Rule 12. Further, Section 49 of the J.J. Act also draws a presumption of the age of the Juvenility on its determination.

34. Age determination inquiry contemplated under the JJ Act and the 2007 Rules has nothing to do with an enquiry under other legislations, like entry in service, retirement, promotion etc. There may be situations where the entry made in the matriculation or equivalent certificates, date of birth certificate from the school first attended and even the birth certificate given by a Corporation or a Municipal Authority or a Panchayat may not be correct. But Court, J.J. Board or a Committee functioning under the J.J. Act is not expected to conduct such a roving enquiry and to go behind those certificates to examine the correctness of those documents, kept



during the normal course of business. Only in cases where those documents or certificates are found to be fabricated or manipulated, the Court, the J.J. Board or the Committee need to go for medical report for age determination.”

9. In the present case the petitioner has no locus to get release of the victim in her favour. However, the victim is at liberty on attaining majority, as per school certificate to make prayer for her release to go wherever she wants. The learned Court-below shall pass appropriate order for her release in the event of such prayer. Till the victim is in the remand home, the competent authority shall take appropriate step so that her study/vocational study may not discontinue.

10. With the aforesaid observation, this application stands disposed of.

(Birendra Kumar, J)

Mkr./-

AFR/NAFR	AFR
CAV DATE	NA
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