

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No. 1152 of 2017

Arising Out of PS.Case No. -null Year- null Thana -null District- VAISHALI(HAJIPUR)

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Babita Kumari, D/o Ram Chandra Rai, R/o Village - Mirampur, P.S. - Raghapur,
District - Vaishali

.... Petitioner

Versus

1. The State of Bihar through the Superintendent of Police, Vaishali at Hajipur
2. Deputy Superintendent of Police, Vaishali at Hajipur
3. The Officer Incharge, Raghapur Police Station, Vaishali.
4. Nitish Kumar, S/o Ram Chandra Rai, Resident of Village - Mirampur, P.S. -
Raghapur, District - Vaishali

.... Respondents

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Appearance :

For the Petitioner : Mr. Sunil Kumar Singh, Advocate

For the Respondents : Mr. Md. Nadeem Seraj, G.P. 5

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date: 30-11-2017

Heard learned counsel for the parties.

2. Respondent No. 4 lodged Raghapur P.S. Case No. 41 of 2016 under Sections 363 and 366(A)/34 of the Indian Penal Code against the named accused alleging therein that they eloped with the sister of the informant who is petitioner herein.

3. The petitioner appeared before the Magistrate and her statement under Section 164 Cr.P.C. was recorded on 12th May, 2016 wherein the learned Magistrate assessed the age of the victim as 18 years and she herself stated her age as 19 years. She further stated that she had voluntarily married with accused Vidyanand Kumar and she wants to go with him.

4. The Medical Board assessed the age of the petitioner in between 18 to 19 years vide annexure attached with the counter



affidavit. The learned Magistrate remanded the petitioner to Remand Home for the reason that a certificate issued by the school headmaster (produced before the Court and enclosed with the counter affidavit) revealed that the date of birth of the petitioner is entered as 03.01.2002, as such, she was a minor on the date of alleged occurrence. Cr. Revision No. 25 of 2017 was filed against the order of the learned Magistrate dated 18.11.2016 before the learned Sessions Judge, Hajipur who dismissed the criminal revision on 27.02.2017.

5. Both the aforesaid orders are under challenged in this writ application on the ground that the welfare and desire of the petitioner was not considered and both the courts below have swayed away by emotional and social pressure.

6. Learned counsel for the petitioner submits that a similar situation was there before a Division Bench of this Court in **Rukhasar Khatoon Versus State of Bihar** reported in **2011(3) PLJR 388** wherein this Court held that the error of assessment of age by the Medical Board of two years should be allowed in favour of the petitioner who is not an accused and was not required for the purpose of trial in the case.

7. Considering the ratio decided in the aforesaid case and the material available on the record, especially, the statement of the petitioner who is victim of the crime that she was not kidnapped by anyone and she was a major. The mere technicalities should not be allowed to prevail over the constitutional right of the petitioner of liberty



and freedom to go wherever she desires. The school paper is not with respect to the entry in the school register and a certificate granted by the headmaster is uncalled for. Either the school register should have been produced or the school leaving certificate or other school document incorporating the date of birth should have been there.

8. Learned counsel for the respondents submits that the rules of determination of age of the juvenile is incorporated in the Juvenile Justice (Care and Protection) of Children Rules, 2015 which provides that preference should be given to the date of birth in school record where the petitioner last studied.

9. Since no such paper was there on the record to show that the same is entry in the school certificate and medical evidence as well as the disclosure of the petitioner of her age reveals that she was major. Hence, the petitioner is directed to be released, forthwith.

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

(Birendra Kumar, J)

Kundan/-

AFR/NAFR	N.A.
CAV DATE	N.A.
Uploading Date	04.12.2017
Transmission Date	04.12.2017

