

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETITION NO. 944 OF 2016

(Padma Surajmal Karmawat vs. State of Maharashtra thr. PSO, PS Lakadganj, Nagpur)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's Orders.

Court's or Judge's orders.

**CORAM : B.P. DHARMADHIKARI &
V.M. DESHPANDE, JJ.
APRIL 25, 2017.**

We have heard Shri R.M. Patwardhan, learned counsel for the petitioner and Shri M.J. Khan, learned APP for the respondent.

2. In this petition under Article 226 of the Constitution of India, the petitioner challenges the order dated 21.06.2016 passed by the learned C.J.M., Nagpur in MCA No. 2142 of 2016 and the judgment dated 25.10.2016 passed by the Additional Sessions Judge - 3, Nagpur in Criminal Appeal No. 177 of 2016.

3. The short submission of Shri Patwardhan, learned counsel is, the petitioner – applicant before this Court is a victim and she was initially projected as accused but later on, has been placed in Government Observation Home. He invites attention to the facts of the matter and urge that this order directing the respondents to keep her in that home is nothing but illegal detention. The efforts were made by her guardian to get her custody but because of the

impugned orders, those efforts failed. The petitioner, therefore, has filed the present petition directly before this Court. Though, technically, it is not necessary to challenge those orders, however, by way of abundant precaution, those orders are also questioned.

4. Shri Patwardhan, learned counsel submits that the victim is aged about 25 years. He points out that even Police accepted her to be of that age. He has also invited our attention to an order passed by the very same Court in identical matter in the case of other victim. He points out that this Court in somewhat similar challenge granted that victim liberty to move an application before the trial Court. Accordingly, the application was moved by the victim and it has been rejected only on the ground that the orders earlier passed by that authority were not set aside by this Court. He contends that to avoid such technical approach in present matter, there is an express prayer to set aside those adverse orders.

5. The learned APP submits that having realized the fact that the victims are not accused persons, a report under Section 169 of the Code of Criminal Procedure has already been filed and in case of one more victim, third victim, an order has been passed by the very same Court in MCA No. 1164 of 2017 on 19.04.2017. The victim has been released in custody of her uncle. He, therefore, states that the present petitioner/ applicant can also move appropriate application before the trial Court and that Court then

consider it as per law.

6. In view of release of third victim in identical matter, the scope of controversy before us is extremely narrow. The order dated 19.04.2017 in MCA No. 1164 of 2017 is taken on record of present proceedings as Exh. 'X' for reference. As per observation therein, the victim girl is released in the custody of her uncle. In that portion, her age is mentioned as 35 years. In this situation, perhaps the order has been passed after due interrogation of that victim girl and at her request.

7. In these matters, relationship of victim with the persons seeking her custody assumes importance. That relationship needs to be verified independently by the Court. The relationship can be verified not only by obtaining affidavit but also by obtaining Police report and other documents like ration card, voters card etc. In MCA No. 1641 of 2017, while releasing that third victim, no such exercise of verification appears to have been taken. Even age does not appear to have been verified with reference to any birth certificate or School Leaving Certificate. No copy of any permanent identification or address document is taken on record.

8. The grievance of technical approach has been made by the learned counsel, in relation to MCA No. 1375 of 2017 where the order has been passed on 15.04.2017.

9. In present matter, the age of victim as per paragraph 3 of the order dated 21.06.2016 in MCA No. 2142 of 2016, appears to be between 17 and 19 years as per medical examination report. Therefore, that age will be required to be ascertained on the basis of some independent material and if the victim is found to be minor, or not in a position to take appropriate care of herself, suitable orders will be required to be passed.

10. The learned APP has pointed out that the victim herself has got a tender child. This fact also will be required to be verified. The education of victim, of her so-called guardian, place of their permanent address, proof thereof along with other material, mentioned supra, needs to be verified.

11. We find that not only the impugned order but the said orders to which our attention has been invited today, these factors are very vital.

12. Here, we grant the petitioner – victim liberty to move appropriate application afresh before the trial Court so that the trial Court can complete the necessary exercise in accordance with law in next three months. Only for that purpose and to avoid any technical objection, we quash and set aside the impugned orders. We make it clear that quashing of those orders was not necessary as present petitioner is not party to those orders. Even in other matters in which orders have been or need to be passed by

the learned trial Court, the above norms can be used. Trial Court to try to comply with it so that the error, if any, can be set right before anything becomes irreversible.

13. If the present petitioner moves an application for her release within a period of one week from today, the Court shall decide it as mentioned supra within next three months.

14. Accordingly, we partly allow the present Criminal Writ Petition and dispose it of. However, there shall be no order as to costs.

JUDGE

JUDGE

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