

**THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO**

WRIT PETITION No.7741 OF 2017

ORDER: (Oral)

(Per the Hon'ble Sri Justice Suresh Kumar Kait)

Vide the present petition, the petitioner seeks direction thereby directing the respondent No.2 to produce the detenu, namely, Mamatha Kanwar Rathode, who is in custody of respondent No.3.

2. It is stated in the affidavit filed in support of the present petition that the marriage of the petitioner was performed with the above named girl on 09.06.2016 in Arya Samaj as per rituals. To this effect, the marriage certificate was issued by the Arya Samaj on the said day itself. After knowing about their marriage, the family members of wife of the petitioner immediately rushed to the police station-respondent No.2, and lodged a complaint against the petitioner and the same was registered in Crime No.308 of 2016 under Section Girl Missing case.

3. It is further stated that his wife is a major and aged about more than 18 years, and to that effect, age certificate has been issued by the competent authority of department of Forensic Medicine and Toxicology, Osmania Medical College/General Hospital, Hyderabad vide proceedings A.D. No.285/FM/OMC-OGH/2016, dated 10.06.2016.

4. It is further stated that respondent No.3-the father of the wife of the petitioner along with his family members have forcibly taken the petitioner's wife on the same day from his house with the help of police people. Thereafter, the petitioner went to police station to report about the detention of his wife by respondent No.3. But the respondent No.2 high handedly arrested the petitioner without taking into consideration the documents, marriage certificate, photographs and affidavits pertaining to the petitioner and his wife showing that they attained majority. The Court remanded him into judicial custody on 16.06.2016 in connection with the above crime for the offence punishable under Section 366 (a) read with 34 of IPC. Subsequently, the petitioner was released on bail.

5. Vide order dated 06.03.2017, this Court directed respondent No.2 to serve notice upon respondent No.3 to ensure his presence and the detenu, namely, Mamatha Kanwar Rathode, in the Court on the next date of hearing i.e., on 13.03.2017. However, on the said date, learned counsel appeared on behalf of respondents No.1 and 2 informed this Court that respondent No.3 did not cooperate to receive the summons, and on the very next day, after locking the house, he went to Rajasthan.

6. It is pertinent to mention here that on the said date, Sri Mohan Singh, advocate appeared on behalf of respondent No.3, on instructions of an advocate from Rajasthan, who

informed him that there was function in the family, therefore he had to leave Hyderabad for Rajasthan. Accordingly, the matter was listed on 21.03.2017.

7. On the said date, Sri Mohan Singh, advocate informed this Court that the local advocate at Rajasthan of respondent No.3 intimated him that he conveyed the order passed by this Court to respondent No.3, however he refused to attend the Court.

8. Having no option, vide order dated 21.03.2017, this Court has issued bailable warrant against respondent No.3 to be executed by the Superintendent of Police, Barmeer district, Rajasthan, to ensure his presence today.

9. Pursuant to the said bailable warrant, respondent No.3 is personally present in the Court along with his daughter Mamatha Kanwar Rathode.

10. We have interacted with the above named girl and shown marriage certificate, Ex.P1 at page No.10. She submits that her date of birth is 28th May 1998, and she is a major and she married the petitioner at her own wish and choice in Arya Samaj, Hyderabad.

11. The petitioner has filed date of birth certificate of above named girl issued by the Government Area Hospital, Nampally, Hyderabad (T.S.Vaidya Vidha Parishad), as she was born on 28th May 1998. In addition to above, she admitted marriage photographs with the petitioner i.e., Ex.P6, which are at page Nos.18 to 20.

12. Learned counsel for the petitioner handed over the Ration card of the year 2001 to 2010 issued in the name of the father of the above named girl by the State of Rajasthan, Jalore District, wherein, her age is written as 3 years, and her father age is written as 38 years. On a perusal of the said card, we can make out from the entries mentioned therein that the ration card has been used often. In addition to above, another ration card of the year 2012-2013 to 2017-2018 has been produced, wherein the age of the father of the girl is shown as 42 years and her age as 24 years.

13. During the investigation, the police found different dates of birth of the said Mamatha Kanwar. As per Birth certificate issued by the Government of Rajasthan, her date of birth is 12.10.2003. In identity card issued by the Election commission of India, the date of birth of the above named girl is mentioned as 28.05.1997. As per another certificate, which is noted above, issued by the Government Area Hospital, Nampally, Hyderabad (TS Vaidya Vidhan Parishad), her date of birth is 18th May 1998.

14. Learned counsel for respondent No.3 has produced one progress record issued by the Senior Secondary School, Siwana District, Rajasthan State. As per the certificate, the said Mamatha Kanwar Rathod's date of birth is 12th October 2003.

15. When we interacted with the above named girl, she states that after coming to know about their marriage, her

father had taken her forcibly to Rajasthan, from there she was taken to a hospital and tried to kill her. Thereafter, her father has beat and insisted her to marry another person, but not to continue with the petitioner. She paid gratitude to the present judicial system, by which, she has come out from the clutches of the parents and present before the Court, where she can freely express her words. She states that if the Court compel her to go with her parents, she will commit suicide.

16. It is important to note that the documents produced by the petitioner establish that his wife is a major. If we look into the other documents, it establishes that she is just 13 years old and running 14th year. It is not in dispute that respondent No.3 belongs to backward community from the poor family. As per age certificate issued by Forensic Medicine and Toxicology, Osmania Medical College/General Hospital, Hyderabad, dated 10.06.2016 her weight is 38kgs, height is 157 cm and abdominal Girth is 60 cm. In the said certificate, her age is described as 18 +/- one year as on 10.06.2016. From the above certificate, it is established that the above named girl is very lean. If we see from the body structure as described in the age certificate noted above, she looks 16 to 17 years.

17. It is no doubt, she has already married the petitioner and she has shown her desire to stay with him only. During the investigation, different certificates have come on the surface. It is very difficult for us to believe which

certificate is reliable. But the only scientific certificate, which we have, that is issued by the Osmania General Hospital, as per which, her age is 18+/- one year as on 16.06.2016. Thus, we can safely say that she is more than 18 years. In addition, during interaction, we could make out that she is matured, enough to understand what is wrong and what is right.

18. As she desired to go with the petitioner and stay with him and also lead her life with petitioner, we have no option, but to leave the said girl to her wish.

19. We have interacted with the father of Mamatha, who clearly stated that he is not going to accept their marriage at any rate, and if they insist for marriage, he will disown his daughter, and severed his relation with her.

20. In view of the above facts, before parting with this order, we hereby make it clear that respondent No.3, his relations, near and dear, either directly or indirectly shall not interfere in the matrimonial life of the petitioner and Mamatha. As the petitioner and the said girl would like to stay in their residence at D.No.5-1-290/A Jambagh, Gowliguda, Hyderabad, the concerned Station House Officer is directed to give them security at least for a week. In addition, the cell numbers of the beat constable and the Station House Officer concerned, be provided to the petitioner and the said girl today itself.

21. We further make it clear that if any untoward incident is apprehended, the petitioner and his wife are at

liberty to contact directly the Station House Officer concerned or the beat constable concerned or they may convey to police control room. The respondents, including respondent No.3 are directed not to interfere with the family life of the petitioner in any manner.

22. Since pursuant to the complaint made by respondent No.3, a case was registered against the petitioner vide FIR No.308 of 2016, initially as a Girl Missing case and later altered as an offence under Section 366 (a) read with 34 IPC, we hereby exercise the powers under Article 226 of Constitution of India and 482 Cr.P.C. and hereby quash the FIR No.308 of 2016.

23. In view of the above, this Writ Petition is disposed of. There shall be no order as to costs.

Miscellaneous petitions, if any pending, shall stand closed.

JUSTICE SURESH KUMAR KAIT.

JUSTICE U. DURGA PRASAD RAO.

Date : 27-03-2017
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