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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(CRL) 3275/2017**

**RAJENDRA**

..... Petitioner

Through: Mr.R.K.Tarun, Advocate.

versus

**THE STATE GOVT OF NCT OF DELHI**

..... Respondent

Through: Mr.Rahul Mehra, Sr.Standing  
Counsel (Crl.) along with Insp. Sahi Ram, S.I.  
Dinesh, P.S. Ranhola; S.I. G.R. Meena, P.S.  
Nazafgarh (D-4119).

**CORAM: JUSTICE S. MURALIDHAR  
JUSTICE I.S. MEHTA**

**ORDER**

**22.11.2017**

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**Crl.M.A.No.19223/2017 (Exemption)**

1. Allowed, subject to all just exceptions

**W.P.(Crl) No.3275/2017**

2. The present petition has been filed as a habeas corpus petition where the prayer is that this Court should issue directions to the respondent-State to produce the Petitioner's minor daughter, Ms. Poonam, and immediately restore her custody to him.

3. The background to this the petition is that on 27<sup>th</sup> April 2017, Ms. Poonam, whose date of birth as per her school (matriculation) record is 11<sup>th</sup> August 2000, went missing. FIR No.234/17 under Section 363 IPC was registered at PS Ranhola.

4. Ms. Poonam was subsequently traced by the police of PS Ranhola on 3<sup>rd</sup> October 2017. Ms. Poonam disclosed that she had got married to one Upender @ Satender on 28<sup>th</sup> April 2017 at the Arya Samaj Marriage Mandal. A certificate to that effect was obtained by the police. They also obtained a certificate of registration of marriage dated 8<sup>th</sup> May 2017 issued by the Registrar of Hindu Marriages, Ghaziabad, Uttar Pradesh. In both certificates the date of birth given for Ms. Poonam was 28<sup>th</sup> October 1998.

5. Ms. Poonam was produced before the Child Welfare Committee ('CWC') and on its orders, was kept in Sweet Home, Najafgarh. It appears that her statement was also recorded on that date under Section 164 Cr PC before the Metropolitan Magistrate wherein *inter alia* she is stated to have stated as under:-

"I have come from my house at my own will. I have got married and got it registered in Ghaziabad. Our parents have inflicted lot of atrocities upon us by locking in room, beating and threatening. Therefore, I got married at my own will. There was no pressure upon me. According to Aadhar Card, my age is 19 years and on 28<sup>th</sup> October, 2018, I will be completing 20 years. In school my age was got reduced. My actual date of birth is 28.10.1998. I want to live with my husband. I am happy in my husband house. According to school date of birth also today I am adult. I do not want to go to Nari Niketan."

6. It is stated in the status report filed today that between 3<sup>rd</sup> October 2017 and 8<sup>th</sup> October 2017, she stayed at the Sweet Home, Najafgarh. On 8<sup>th</sup> October 2017, at around 9 pm, during the roll call of the children in Sweet Home, it was found that Ms. Poonam was missing. This led to the registration of the second FIR No.315/2017 at PS Najafgarh under

Section 363 IPC on the complaint lodged by an official of Sweet Home, Najafgarh on 9<sup>th</sup> October 2017 itself.

7. It is stated in the status report that immediately upon receipt of the above information several steps were taken and documents pertaining to the earlier FIR were recovered from PS Ranhola. Enclosed with the status report is a copy of the Arya Samaj Marriage Mandal certificate as well as the certificate of registration of marriage issued by the Registrar of Hindu Marriages, Ghaziabad, Uttar Pradesh.

8. The present petition was filed on 17<sup>th</sup> November 2017. Today, at the first hearing, Mr. Rahul Mehra, the learned Senior Standing counsel for the State, informed the Court that Ms. Poonam had appeared before the SHO of PS Nazafgarh on her own volition. Ms. Poonam is present in Court. Mr. Rahul Mehra, on interacting with her, has informed the Court that she stated that she wishes to go back to her husband and that she does not wish to stay in any shelter home.

9. The learned counsel for the Petitioner, on the other hand, insisted that since the matriculation certificate shows the date of birth as 11<sup>th</sup> August 2000, the custody of Ms. Poonam should be handed over to the father. He questioned the legality of the marriage performed and stated that at most, Ms. Poonam should be sent to a Nari Niketan till further verification of the particulars takes place.

10. The Court is not inclined to accept the prayer made before it for more than one reason.

11. The remedy of habeas corpus is invoked when there is a genuine apprehension about a person being illegally detained by anyone else against that person's wishes. The first endeavour of the Court in such proceedings is to ensure that no person is being kept detained illegally against that person's wishes. In the present case, Ms. Poonam has appeared before the police on her own and informed them that she is not under any illegal restraint of anyone and that she is living with her husband pursuant to a marriage that has taken place on 28<sup>th</sup> April 2017.

12. The second reason is that on an earlier occasion, when Ms. Poonam was traced out, she was categorical in her statement under Section 164 Cr.PC that she got married of her own free will. She further maintained that the date of birth as shown in her Aadhaar Card was the correct one and terms thereof she was above 18 years of age. She further stated that she wanted to live with her husband.

13. Given her stand today as well, it is clear that Ms. Poonam does not want wish to stay in a Nari Niketan which explains why she went away from Sweet Home, Najafgarh where she was kept from 3<sup>rd</sup> October 2017 to 8<sup>th</sup> October 2017.

14. The Court, in these proceedings, is not expected to give any opinion on the legality of the marriage of Ms. Poonam. In particular, since there is a certificate of registration of marriage issued by the Registrar of Hindu Marriages, Ghaziabad, Uttar Pradesh, the Court is not prepared to accept the plea of the Petitioner that it should, notwithstanding the certificate of registration of marriage, declare that Ms. Poonam is in illegal custody and

hand over her custody to him. The Petitioner may have other appropriate remedies available to him in law as regards the validity of the marriage of Ms. Poonam.

15. In the circumstances, the prayer made is declined. The petition is disposed of in the above terms.

**S. MURALIDHAR, J.**

**I.S. MEHTA, J.**

**NOVEMBER 22, 2017**  
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