

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.2315 of 2017

Arising Out of PS.Case No. 111 Year- 2017 Thana -Rajaon District- BANKA

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Shreya Suman @ Rambha Kumari, D/o Siya Ram Yadav, R/o Village- Jhitka, P.S.-
Rajoan, District- Banka, At present in Remand Home Gai Ghat, Patna, and District-
Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar Patna.
2. The Home Secretary, Govt. of Bihar Patna.
3. The District General of Police, Govt. of Bihar Patna.
4. The Superintendent of Police Banka , District- Banka.
5. The Police Inspector/Officer-In Charge, Banka P.S., District- Banka.
6. The In Charge Remand Home Gai Ghat Patna City, District- Patna.
7. Sant Lal Yadav, son of Siyaram Yadav, resident of village-Jhikta, P.S.-Rajoun,
P.O.-Lakra, District-Banka.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dhirendra Kumar, Adv.
For the State : Mr. Partha Sarthy, G.A.-4
Mr. Apurva Kumar, AC to GA-4
For the Respondent No.7: Mr. Ajay Mukherjee, Adv.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

Date: 09-03-2018

Heard learned counsel for the petitioner and learned
counsel representing the respondent no.7 as well as learned counsel
representing the State.

Petitioner, in the present case, has prayed for her
release from the remand home claiming that she is a major and being
a major she cannot be kept in the remand home against her wishes.
She has challenged the order dated 13.09.2017 passed by the learned
C.J.M., Banka who refused to release her while rejecting her petition.



The petitioner has also prayed for quashing the FIR i.e. Rajaon P.s. Case No.111/17 dated 4.4.2017 in which the petitioner has been shown as victim. The claim of the petitioner is that she was not kidnapped by Sudarsan Kumar @ Soni Kumar who has been made accused in the said case.

Learned counsel for the petitioner submits that the medical board constituted for the purpose of assessing the age of the petitioner has found her age in between 17-18 years and on the face of the medical report the age entered in the registration card of the Bihar School Examination Bord, Patna is fit to be rejected. He submits that the petitioner is a major and sometimes even customarily the age of the students are concealed and recorded by the parents giving younger age. Learned counsel for the petitioner has heavily relied upon a judgment of a coordinate bench of this Court in the case of **Madhumala Kumari @ Madhu Mala Kumar Vs. the State of Bihar reported in 2018(1) PLJR 284** and submits that in the said case the coordinate bench of this Court had refused to rely upon the age recorded in the school certificate and had released the petitioner in the said case taking into consideration the age recorded in the Adhar card and another school certificate.

On the other hand learned counsel representing the respondent no.7 submits that in the present case the medical board has



not come out with a clinching report stating that the petitioner has attained majority. The assessment of the medical board is only tentative that too being 17-18 years. The registration card of the Bihar School Examination Board also reveals that the date of birth of the petitioner is 17.12.2001 and therefore as on today she has just crossed the 17 years of age and her age is in between 17-18 years, therefore it is evident from the medical report as well as the school certificate that there is no concealment of age of the petitioner and the petitioner has still not attained the majority. In these circumstances, learned counsel submits that it would not be safe for this Court to direct release of the petitioner or handing over her to her so-called husband as the petitioner is not in a matured state of mind and her release at this stage may in endanger her safety and security.

Learned counsel representing the State supports the contention of the private respondent and submits that in this case the petitioner has to be treated as minor and in fact treating her minor the police has already submitted a charge-sheet under Section 366A I.P.C. against the accused.

Learned counsel for the private respondent submits that after submission of the charge-sheet cognizance has been taken by the learned Magistrate and therefore after passing of the order taking cognizance the prayer made for quashing of the F.I.R. has become



infructuous.

Having heard learned counsel for the parties and upon perusal of the records, this Court comes to a conclusion that the submission made by learned counsel representing the private respondent is correct. There is no material at all available on the record to show that this petitioner has attained the age of majority and the Court can take a view that she can understand well about her own safety and security while taking a decision to go with her so-called husband. The report of the medical board as also the entry of the date of birth in the registration card of the Bihar School Examination Board are in fact supporting each other to the effect that the petitioner's age is in between 17-18 years as on today. The judgment placed by learned counsel for the petitioner is in fact against his own argument made before this Court. It seems that in the said case, the Court was convinced with the material in form of Adhar card showing that date of birth of the petitioner was 27.05.1999 there were conflicting date of birth in two different school certificates and therefore on the date of occurrence on 1.7.2017 she had more than 18 years of age. In the said case the medical board had assessed the age of the victim in between 16-17 years and there was a submission that there may be a chance of error of the assessment in both ways and that a Division Bench of this Court in Sahebi Khatoon @ Sahebi Vs. the



State of Bihar and Ors. took a view allowing the two years in favor of the petitioner for considering her release. A submission to this effect on behalf of the petitioner in the said case was accepted by the coordinate Bench taking note of the submissions that if there is no unimpeachable evidence of the school certificate for definite conclusion that the petitioner is a minor, the desire of the petitioner should have been honoured. On going through the said judgment, this Court finds that the facts of this case is wholly distinguishable from the facts of the case cited on behalf of the petitioner.

In the present case, no evidence at all has been placed before this Court to controvert the age entered in the registration card issued by the Bihar School Examination Board. The age recorded in registration card of B.S.E.B. is further getting support from the opinion of the Medical Board that the petitioner is between 17-18 years of age. The safety and security of the petitioner has to be taken care of at this stage because she is still not major. The contention of the learned counsel for the petitioner to that effect is only misconceived and misplaced and this Court would outrightly reject this submission. This Court is, therefore, not willing to exercise its power under Article 226 of the Constitution of India to allow the petitioner to go with any person of her choice at this stage. Since the Court has been informed that the cognizance has already been taken



and charge-sheet has been submitted against the accused, the relief prayed for on behalf of the petitioner for quashing the F.I.R. against the accused that too at the instance of the petitioner has no significance and has become infructuous.

The petitioner is at liberty to file an appropriate application for her release as per her own desire after attaining the age of 18 years from the date indicated in the registration card of the Bihar School Examination Board.

The writ application is dismissed.

(Rajeev Ranjan Prasad, J)

Arvind/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	13.03.2018
Transmission Date	13.03.2018

