

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No 1936 of 2018

Arising Out of PS.Case No. -null Year- null Thana -null District- EASTCHAMPARAN
(MOTIHARI)

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Om Prakash Mishra Son of Ramakant Mishra Resident of Village - Jogiyar, Police
Station - Govindganj, District - East Champaran.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Home Affairs,
Govt. of Bihar, Patna.
2. The Director General of Police, Bihar, Patna.
3. The Superintendent of Police, East Champaran at Motihari.
4. The S.H.O. Govindganj (Areraj) Police Station, District - East Champaran.
5. Akhilesh Tiwari Son of Kameshwar Tiwari Resident of Kanchhedwa, Police
Station - Harsidhi, District - East Champaran.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr Dhurendra Kumar, Advocate
For the Corpus : M/s Umesh Chandra Verma, Abhishek Kr,
Sharad Kr & Ms Rashmi Jha, Advocates
For the S t a t e : Mr Prabhu Narayan Sharma, AC to AG

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CORAM: HONOURABLE DR JUSTICE RAVI RANJAN

And

HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

(Per: HONOURABLE DR JUSTICE RAVI RANJAN)

Date: 13-09-2018

Heard learned counsel for the parties. The writ petitioner
(father) and daughter are also present in person.

This writ petition has been filed seeking writ of habeas
corpus for production of the corpus of the daughter of the writ
petitioner, namely, Shivani Kumari who has not been impleaded as a
party. However, this Court has directed the respondents to produce
the girl as it is stated that the girl has already married respondent No 5
and with respect to that, two cases are pending, one being Govindganj
(Areraj OP) Police Station Case No 89 of 2018 instituted under



Sections 363, 365, 366A of Indian Penal Code and Section 6 of the Prevention of Children from Sexual Offences (for brevity, *POCSO*) Act and another being Govindganj (Areraj) Police Station Case No 221 of 2018 instituted under Sections 363, 365, 366A of Indian Penal Code and Section 8 of POCSO Act. Girl was recovered on 25.05.2018. She was produced before the Judicial Magistrate, First Class by the police and her statement under Section 164 of Criminal Procedure Code was recorded. The Magistrate has assessed her age to be 19 years whereas the victim girl has stated her age to be 20 years. A copy of the statement recorded under Section 164 of Cr P C has been produced before us. The girl has stated that she has already married respondent No 5 on 24.04.2018 in Narsingh Baba Mandir, Motihari. After marriage, she went to her matrimonial house along with her husband and both of them lived there as husband and wife and, thereafter, they went to Nepal. It is also stated that the father instituted false case against them and she had gone along with Akhilesh Tiwari on her own volition. She has expressed her willingness to go with her husband. Further, it appears that the Court concerned, by order dated 26.05.2018, has directed her to go with the parents. The girl stated that when she went to her parents' house, she was treated with cruelty and, as such, she had to escape and after escaping, she again went to her Sasural. It appears that the Court below, after assessing her age on the basis of the school certificate



DOB having been entered as 25.08.2002, has discredited the entry made in the Aadhar Card with respect to the date of birth being 25.08.1998 and directed the girl to be handed over to the parents. It was done. Therefrom she had escaped and FIR was lodged. It is also contended that the girl was examined by the Medical Board (Annexure 2). It also stands recorded in the aforesaid order that Medical Board has assessed the age of the girl to be between 17 to 18 years.

Keeping everything in mind, it has to be understood that if not major then at least the girl is at the verge of attaining majority. However, since the order passed by the Court has been violated for whatsoever reason, this writ petition is being disposed of directing the girl to appear before the Court below and she would file a petition seeking her release in favour of husband which should be considered by the Court below in accordance with law and also taking into account the observation of this Court that she is at the verge of attaining majority.

It is made clear that since the girl has complained that she is being ill treated at her parents' house and due to which she has even attempted to kill herself, everything should be kept in mind before coming to a conclusion.

Let the girl appear before the concerned Court under police protection.



From here, she will be taken to After Care Home, Gaighat, Patna under police protection and therefrom, she would be produced before the concerned Court on 17.09.2018. She would be allowed to meet her counsel of her choice and any other person to whom she desires to meet, by the Authorities of After Care Home and she will be allowed to file a petition for her release on which proper order would be passed by the Court concerned taking into consideration all the circumstances including the observation made in the order.

While passing this order, this Court has also taken into account that two FIRs are pending against the husband, as stated above.

Superintendent, After Care Home is directed to keep her as per the direction of this Court and produce her before the Additional Sessions Judge I –cum- Special Judge, POCSO Act, East Champaran at Motihari on 17.09.2018. The Superintendent, After Care Home will also arrange her medical examination as it is submitted by her that she is pregnant.

(Dr Ravi Ranjan, J)

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.09.2018
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