

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.2081 OF 2018

Jane Aalam .. Petitioner
Versus
The State of Maharashtra
and others .. Respondents

...

Mr. Vinamra Kopariha for the petitioner.
Mrs.PP. Shinde, APP for the State.

**CORAM: S.C. DHARMADHIKARI &
SMT. BHARATI H.DANGRE, JJ.**

DATED : 11th JUNE 2018

P.C:-

1 The petitioner has filed this writ petition for release of Laxmi Vishwakarma who he claimed to be his legally wedded wife. At the relevant time, she was a minor and stated to have eloped with the petitioner from the State of Uttar Pradesh, particularly in Siddharth Nagar which place she had been located and searched out by the police party from Thane i.e. Kongaon Police Station, Bhiwandi District, Thane. All the facts

are set out in our earlier orders and the only circumstances post her running away with the petitioner are that because of the cohabitation with the petitioner, the said Laxmi delivered a male child. However, the petitioner having been booked for a criminal offence and which is investigated, a charge-sheet is filed in the Competent Criminal Court and a criminal case is pending which invokes the Protection of Children from Sexual Offences Act, 2012, now the petitioner desires that the custody of the said Laxmi and the minor son be handed over to him.

2 On account of the circumstances once again narrated by the petitioner himself, the said Laxmi has been lodged in the respondent no.4 Child Care Centre by the third respondent Committee pursuant to an order under the Juvenile Justice Act, 2015.

3 It is stated that having become a major and now the petitioner accepting her as his wife so also all his family members, having provided for her financial security as set out in the affidavit and her complete willingness, the petitioner

must be handed over the custody of the child and the mother and child be released from children home or care centre where they have been lodged by an NGO styled as 'Rescue Foundation'.

3 From our earlier order, it is apparent that the petitioner has no job or confirmed source of livelihood. His future is presently uncertain and not secured for he is stating that he will have to reside in a joint family if he continues to stay in the State of Uttar Pradesh and his only opportunity to learn and gain experience is if he migrates along with his brother who has set up a business in the State of Uttarakhand. All the more, when the brother who has set up a business in Uttarakhand is willing to employ the petitioner and was earlier paying and will continue to pay even now Rs.15,000/- per month. At the same time, petitioner notes that so long as there is a condition imposed on him, particularly of not leaving the limits of the concerned police station without the prior permission or sanction of the criminal court, he will not be able to leave the State of Maharashtra even if he is handed over

custody of the child and the wife joins him after her release. Presently, the petitioner has no source of livelihood in Maharashtra, no steady income and no residential premises. He is staying at the mercy of his maternal aunt and her sons who are residing in Nalla Sopara, District Thane. That is not even the address in the cause title of the petition but now third address has surfaced during the course of hearing.

4 With this background, not once but twice we directed the Kongaon police station to depute a senior official to visit the Rescue Foundation/NGO where the petitioner's wife and child are presently lodged only to ascertain from the said Laxmi whether she admits all the statements made in the writ petition and whether she is ready and willing to go and reside with the petitioner.

5 She has stated that she was born on 5th April 2000. By passage of time, she has become a major. There was a marriage solemnized between the petitioner and the said Laxmi in the State of Uttar Pradesh. She has confirmed that after

residing together with the petitioner, a male child was born. In the circumstances, she says that she is now capable of deciding for herself, her future. It is in these circumstances and when she is not willing to go and reside with her own parents and the relations between her parents and the said Laxmi are strained, but the petitioner's family having welcomed her and provided for her financially as also for her son, it is stated by her not once, but twice during this visit and in an interaction with the police official that she should be released from the Rescue Foundation and her child's custody be handed over to her and the petitioner.

6 The petitioner has stated and undertaken through his counsel, before us that so long as the custody is with the petitioner and the bail condition not being modified, he will not be in a position to leave the State of Maharashtra and will not leave the State of Maharashtra. He will leave only if an order is passed by the Competent Criminal Court relieving him from the condition imposed while releasing him on bail. He has to remain in the State of Maharashtra and that is the only reason

he cannot take the employment. In the mean while, he has deposited a sum of Rs.50,000/- in a bank account with IDBI Bank, the details of which are provided by him in his additional affidavit and that he will not withdraw that sum until further orders of a Competent Authority/Court. He will also continue to deposit a sum of Rs.5,000/- in a separate bank account opened in the name of the minor son by both the petitioner and the said Laxmi. He will not touch both amounts but continue to deposit these further sums in the minor son's account so that the minor son is provided for his medical care and education.

7 It is in the above circumstances that we dispose of this writ petition by accepting the statements of the petitioner as undertaking to this Court. We also accept his statement that so long as the petitioner and after obtaining custody of the child upon release of his wife from the Rescue Foundation, will reside in the State of Maharashtra, he will cause no inconvenience to them and make arrangements for their residence either at the house of the maternal aunt or her sons or will obtain a temporary rental accommodation in the State of

Maharashtra with the financial assistance and aid of his brother. One of the petitioner's brothers Iqbal has been attending this Court. Today also, he is present. He states that he shall render the financial assistance and aid to the petitioner in the event the other brother Badre Alam is unable to provide for him. Thus, together i.e. the petitioner and the brothers will ensure that the child and the said Laxmi are not abandoned and forced to lead the life of a destitute. She was forced to lead such life as her parents are against the relationship and not willing to accept the said Laxmi because of her choice. All this led to her being lodged with an NGO. The petitioner and his brother says that they will not allow the recurrence of such a situation in future.

8 It is upon their assurances as above that the writ petition stands disposed of, but we at once clarify that beyond relying on the affidavits and the developments post lodgement of the petitioner's wife Laxmi with an NGO called Rescue Foundation, the orders in this petition shall not influence the outcome of any criminal case. These orders shall not preclude

the criminal court from passing such orders as are permissible in law. In the event the petitioner approaches it with a written application for seeking modification or relaxation of a condition imposed on him particularly of not leaving the State of Maharashtra until the further orders of the criminal courts, the application shall be decided on its own merits and in accordance with law.

9 The statement of the petitioner's wife Laxmi as recorded and pursuant to our latest order is taken on record and marked "X" for identification.

10 All concerned to act on an authenticated copy of this order.

(SMT. BHARATI H. DANGRE, J.)

(S.C. DHARMADHIKARI, J.)