

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**Criminal Writ Petition No.406 of 2018
Date of decision: 04.09.2018**

Kuldeep Singh

..Petitioner

Versus

State of Punjab and others

..Respondents

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Mr. Charanji Lal, Advocate for
Kanwar Satbir Singh, Advocate for the petitioner.

Mr. Amit Mehta, Sr. DAG, Punjab
for respondents No.1 to 3-State.

Mr. Surinder Gandhi, Advocate for respondents No.4 and 5.

Daya Chaudhary, J.

The present writ petition has been filed under Article 226 of the Constitution of India for issuance of a writ in the nature of habeas corpus directing the respondents to produce Kolan Kaur-the minor daughter of the petitioner and to hand over her custody to him by releasing her from illegal custody of respondents No.4 and 5.

As per case of the petitioner, detenue, namely, Kolan Kaur is a student of 8th standard and as per school record, her date of birth is 15.02.2004. The copy of elementary school passed out certificate issued by Guru Nanak Public School, Village Chak Dogra, Tehsil Ajnala, District Amritsar dated 04.04.2016 has also been placed on record as Annexure P-1. The minor daughter of the petitioner was abducted by respondent No.4 along with some unknown companion while going to attend her school. Thereafter, FIR No.58 dated 30.04.2018 was registered under Sections 363, 366-A read with Section 120-B of Indian Penal Code at Police Station

Ajnala against respondents No.4 and 5. No action was taken by the police authorities to recover the minor girl. During this period, respondent No.4 and minor daughter of the petitioner filed Criminal Misc. No. M-18725 of 2018 before this Court, which was dismissed as withdrawn vide order dated 03.05.2018. Thereafter, again Criminal Misc. No. M-25096 of 2018 was filed before this Court for protection on the ground that they had performed marriage contrary to the wishes of private respondents and they were apprehending threat and physical harm at their instance. Said petition was disposed of vide order dated 04.06.2018 with a direction to Senior Superintendent of Police, Amritsar Rural, District Amritsar to look into the matter and take appropriate action in accordance with law to ensure that no harm was caused to the lives and liberty of the petitioners at the instance of private respondents. However, it was clarified that the order shall not be treated as stamp of this Court about the marriage of the parties as no opinion with regard to the validity of the marriage was expressed.

Notice of motion was issued in the case on 04.05.2018 and in response to notice of motion, reply was filed.

On 01.06.2018, a direction was issued to respondent No.3-SHO, Police Station Ajnala, District Amritsar to ensure presence of respondents No.4 and 5 along with detinue before this Court. On 11.07.2018, neither respondents No.4 and 5 nor the detinue were present and respondent No.3 was directed to come present in the Court along with detinue and respondents No.4 and 5 on the next date of hearing. On 16.07.2018, respondent No.3 i.e., SHO, Police Station Ajnala, District Amritsar was present in the Court and submitted that the Sarpanch of the

village had come present in the Court and had given assurance for presence of detenue on the next date of hearing i.e., 03.08.2018. On 03.08.2018, notice of contempt was issued to respondent No.3 for non-compliance of orders passed by this Court and respondent No.2-Senior Superintendent of Police (Rural), Amritsar was also directed to ensure presence of the detenue before this Court on 13.08.2018.

On 13.08.2018, two different versions regarding date of birth of detenue came before this Court. As per statement of detenue, who was present in the Court, her date of birth was stated to be 01.07.1999 and she was alleged to be more than 18 years as reflected in Aadhar Card. She also submitted on that date that she had solemnized marriage with Lakha Singh. As per case of the petitioner, the Aadhar Card was forged one as date of birth as recorded in the school record is 15.02.2004 and she was less than 15 years of age. A photocopy of the receipt of the particulars given at the time of preparation of Aadhar Card was also brought to the notice of the Court wherein date of birth of detenue was mentioned as 15.02.2004. Meaning thereby, while filing protection petition, the date of birth of detenue was wrongly mentioned to obtain the orders.

By considering all the documents available on record, it was found that in the earlier petition filed by respondent No.4 and the detenue, there was no record to show that she was 18 years or more than 18 years of age and the petition was dismissed as withdrawn. Subsequently, after some time, the second petition was filed on the basis of forged Aadhar Card showing the detenue to be more than 18 years of age.

After hearing the arguments of learned counsel for the parties

and on perusal of documents available on the file, especially, the status report filed by the State and also by considering the age of the alleged detenue to be 14 years, the present petition is allowed and the custody of minor girl (detenue) is directed to be handed over to the petitioner, who is present in the Court as the marriage is not valid.

However, keeping in view the welfare of the minor, the petitioner shall submit an undertaking before the Magistrate to the effect that he shall take appropriate steps for welfare and well being of the minor girl. The Magistrate shall also call for a quarterly report regarding well being of the child in accordance with Juvenile Justice (Care and Protection of Children) Act, 2000 (here-in-after referred to as `the Act, 2000) through concerned Station House Officer. In case, the petitioner is found to be infringing any of the conditions of the Act, 2000, the learned Magistrate shall be entitled to take action against the petitioner in accordance with law for violation of the provisions of the Act, 2000.

The custody of the detenue is handed over to the parents, who are present in the Court.

Station House Officer-Paramvir Singh, who is also present in the Court, is directed to ensure the safety and security of the detenue till her reaching to the house of the petitioner.

04.09.2018	(DAYA CHAUDHARY)
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Whether speaking/reasoned	Yes
Whether Reportable	Yes

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for respondents No.1 to 3-State.

Mr. Surinder Gandhi, Advocate
for respondents No.4 and 5.

Daya Chaudhary, J.

Status report filed by learned State counsel in the Court today
is taken on record.

After hearing the arguments of learned counsel for the parties
and on perusal of documents available on the file, especially the status
report filed by the State and also by considering the age of the alleged
detenue, which is 14 years, the present petition is allowed and the custody
of minor girl (detenue) is directed to be handed over to the petitioner, who is
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The detailed order would follow.

04.09.2018
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(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned Yes

Whether Reportable No