

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRWP No.94 of 2018

Date of Decision: 05.02.2018

Saurabh @ Shubham

.....Petitioner

Vs

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. J.S. Lalli, Advocate
for the petitioner.

Mr. Munish Dev Sharma, AAG, Haryana.

RAJ MOHAN SINGH, J.(Oral)

In compliance of the order dated 23.01.2018, the alleged detainee Ekta daughter of Ramesh Kumar has been produced by ASI Smt. Mukesh, Police Station Pehowa, District Kurukshetra.

Learned counsel for the petitioner submits that since the detainee was married with the petitioner, therefore, custody of the detainee be handed over to him.

Concededly, the date of birth of Ekta is 10.01.2001. FIR No.448 dated 20.08.2017 under Section 346 IPC was registered at the instance of Ramesh Kumar.

In view of ratio laid down in **Smt. Lila Gupta Vs. Laxmi**

Narain and others, AIR 1978 Supreme Court 1351, Neetu Singh Vs. State, 1999(3) RCR (Criminal) 26 and Seema Devi @ Simaran Kaur Vs. State of H.P., 1998(2) Crimes 168, the minor cannot be kept in Nari Niketan against her wishes and the marriage of the minor girl is neither void nor voidable unless it is so declared by the competent Court. Only the welfare of the minor has to be seen at this stage.

In **Rukshana and another Vs. Govt. of NCT of Delhi and others, 2007(3) RCR (Criminal) 542, Lalla @ Ranjeet Vs. State of UP and others, 2013(96) ALR 568, Santosh Vs. State of Rajasthan, 2004(2) Crl. L.R. 1394, Shamsheer Vs. UT, Chandigarh and another, 2011(5) RCR (Criminal) 677, Balwinder Singh @ Binder Vs. State of Punjab and others, 2008(3) RCR (Criminal) 1 and Court of its Own Motion (Lajja Devi) Vs. State, 2012 (4) RCR (Civil) 821,** it was observed that the relief cannot be denied merely because of girl is found to be minor. If the corpus has given birth to a child in Nari Niketan, then keeping the corpus in Nari Niketan is not proper and she may be released from Nari Niketan. Firstly, offer should be made to her for living with her natural guardian. In the event of refusal, she may be allowed to go according to her Will.

Marriage of a minor in contravention of Section 5 of the Hindu Marriage Act, has to be tested by the competent Court on

the basis of alleged clauses. In the absence of any such declaration, such marriage cannot be held to be void or voidable. The apprehension shown by the learned counsel for the complainant that the consent of the minor is inconsequential has to be seen in the context of ratio laid down in **Court of its Own Motion (Lajja Devi) case (supra)**.

Taking into entirety of facts and circumstances of the case, I deem it appropriate to allow the detinue Ekta to go as per her wishes without making any provision for sending her to Nari Niketan against her wishes. Both the parties would be at liberty to avail their legal remedies in accordance with law.

Petition stands disposed of accordingly.

February 05, 2018

Prince

**(RAJ MOHAN SINGH)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No