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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRW-971-2018

Date of Decision : December 13, 2018

Irfan

.... Petitioner

Versus

State of Haryana

.... Respondent

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

Argued by Mr. Jangvir Singh Hooda, Advocate,
for the petitioner.

Mr. D.K. Mittal, DAG, Haryana,
for respondent-State.

SHEKHER DHAWAN, J.

Irfan, present petitioner has filed this Habeas Corpus petition under Articles 226/227 of the Constitution of India seeking directions to the respondents to produce his wife Shahina and to hand over her custody to him.

Learned counsel for the petitioner contended that the petitioner and detinue, Shahina are major. In support of this, copies of Aadhaar Cards of the petitioner and Shahina have been placed on record today. It is further contended that out of their sweet free will, they got married each other against the wishes of parents of Shahina. Apprehending threat to their life and liberty, they approached this Court by way of filing CRM-M-50224 of 2018 seeking protection. Vide order dated 15.11.2018 (Annexure P/1), the said petition was disposed of with a

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direction to Superintendent of Police, Mewat to consider their representation dated 12.11.2018 and to take appropriate steps to ensure that no harm is caused to the life and liberty of the petitioners therein.

Learned counsel for the petitioner further contended that on the pretext of providing protection, his wife Shahina has been illegally and forcibly detained by respondents No. 1 to 3 at Protection Home, Police Line, Mewat.

Upon notice of motion having been issued on 3.12.2018, Shahina has been produced from "Safe House", Nuh in Court today by the respondents and she has made the following statement :-

"I am 19 years old. At present I am staying in Safe House, Nuh. I do not want to reside in Safe House, Nuh. I also do not want to go to the house of my parents. I have solemnized marriage with Irfan with my own free will. I want to go in the company of petitioner-Irfan, who is present in the Court out of my own free will."

Aadhaar Cards of Irfan and Shahina perused by this Court. As per the statement of Shahina, she is 19 years of age and has performed marriage with Irfan and she does not want to live in Safe House. The matter regarding providing protection where validity of marriage is in dispute, in LPA No. 1678 of 2014, **Rajwinder Kaur and another Vs. State of Punjab and others**, decided on 09.10.2014, Hon`ble Division Bench of this Court observed as under:-

" From the certificates/documents appended by the appellants with the writ petition, it appears that both of them are major, born in the years 1993 and 1994, respectively. Even if the appellants did not perform valid marriage, the question that arises for consideration is whether they can be deprived of the protection of their life and liberty guaranteed under Article 21 of the Constitution?

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We have no reason to doubt that the fundamental right to life and liberty is so sacrosanct and stands at such a high pedestal that it must be protected even in the absence of an incident like solemnization of a valid marriage between the parties.”

Since vide order dated 15.11.2018 (Annexure P/1) passed by this Court in CRM-M-50224 of 2018, directions have already been issued to the Superintendent of Police, Mewat to consider the threat perceptions, the present petition is disposed of with the directions to respondent No.1, i.e., Superintendent of Police, Mewat to look into the threat perceptions to the petitioner and detenue Shahina and provide adequate protection to them.

As regard to stay of Shahina in the “Safe House”, Nuh, Superintendent of Police, Nuh shall decide the same keeping in view the threat perceptions and the statement made by Shahina before this Court (extracted above).

It is, however, made clear that this would not *ipso facto* amount to granting approval on the legality of their marriage. As already ordered by this Court in CRM-M-50224-2018, this would not entitle for any protection against their arrest or continuance of any criminal proceedings, if otherwise, found to be involved in commission of any cognizable offence.

The present petition stands disposed of in the above terms.

(SHEKHER DHAWAN)
JUDGE

December 13, 2018

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Whether speaking/reasoned? :	Yes
Whether reportable? :	Yes