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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(CRL) 1092/2018**

KUSUM @ SONIYA

..... Petitioner

Through: Ms. Nilofar Khan and Anjum Parvez,
Advocates.

versus

STATE (GOVT OF NCT) OF DELHI & ANR. Respondents

Through: Mr. Rahul Mehra, Standing counsel
(Crl.) with Mr. Chaitanya Gosain,
Advocate for State

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE I.S.MEHTA

ORDER

% **13.04.2018**

CRL.M.A. Nos. 6694/2018, 6695/2018, 6698/2018 (Exemption)

1. Allowed, subject to all just exceptions.

W.P.(CRL) 1092/2018 & CRL.M.A. 6696/2018, CRL.M.A. 6697/2018

2. Notice. Mr. Rahul Mehra, learned standing counsel appearing on behalf of the State accepts notice.

3. On receipt of advance notice a status report has been filed by Inspector C.R. Meena, Station House Officer ('SHO') Police Station ('PS') New Ashok Nagar dated 13th April 2018. In this report it is stated that one Mohd. Ramzan gave a complaint at PS New Ashok Nagar on 30th July 2017

alleging that his daughter Kusum @ Soniya i.e. the Petitioner herein who was aged 17 years at the time had been kidnapped on 28th July 2017 when she had gone out of her house for some work. The complainant suspected one Asif who was in contact with the Petitioner. Accordingly FIR No.397/2017 under Section 363 IPC was registered at PS New Ashok Nagar on the basis of the above complaint.

4. According to the SHO, during the course of investigation the age of the Petitioner was verified from her school where her date of birth was given as 5th March 2000.

5. On 5th August 2017 the Petitioner and Asif filed a writ petition in this Court seeking protection. In the petition they both claimed that they were major; that the Petitioner had left her house willingly and that both got married at Darul Quaza, 786 Madina Majid, Vijay Nagar, Ghaziabad, U.P. on 3rd August 2017. However, that petition appears to have been withdrawn subsequently.

6. The police thereafter received on 7th August 2017 a copy of the marriage certificate. On 12th September 2017 the police visited the aforementioned Masjid but found the marriage certificate to be fake. The *imam* of the Madina Masjid is supposed to have stated that no such marriage has been solemnized.

7. It is then stated in the status report that on “27th March 2018 the Petitioner was recovered from Tonk, Rajasthan (house of Asif) while Asif could not be

traced.” It is stated that counselling of the Petitioner was conducted by an NGO and her medical examination was also conducted in LBS hospital. It was confirmed that she was seven months pregnant.

8. On 2nd April 2018 the Petitioner’s statement was recorded under Section 164 Cr PC before the MM where she reiterated that she had married Asif of her own will and wanted to live with him. She categorically stated that she did not want to return to her parents. Since at the time of the incident the Petitioner was, according to the prosecution, below 18 years, Section 376 IPC and Section 6 of the POCSO Act were added to the FIR. The Petitioner was thereafter kept at the Snehalay, Karkardooma.

9. The status report confirms that as of date, the Petitioner has, even as per her date of birth in the school record, completed 18 years of age. When on 3rd April 2018 the Petitioner was produced before the Child Welfare Committee (‘CWC’), no directions were issued since she was by then a major. It is stated that applications were filed before the Court of the learned ACMM at Karkardooma by both the father of the Petitioner as well as her father-in-law seeking her custody. However the learned ACMM held the applications to be not maintainable and they were then withdrawn.

10. It is in these circumstances that the present petition has been filed by the Petitioner in this Court praying *inter alia* that now that she is a major she should be allowed to decide where she wants to reside. She is categorical that does not wish to continue residing at Snehalay and also does not want to be with her parents.

11. Mr. Rahul Mehra, learned senior Standing counsel for the State informs the Court that the Petitioner has been brought to the Court by the SHO from Snehalay. The Petitioner is present and reiterates that since she is now a major she should be allowed to decide where and with whom she wants to live.

12. The Court sees no difficulty in accepting the Petitioner's request. Counsel appearing on behalf of the Petitioner's father submitted that the Petitioner should not be permitted to go back to Asif who is an accused in the abovementioned FIR. The Court is unable to accept this submission for the simple reason that the Petitioner is a major even going by her date of birth in terms of the school record i.e. 5th March 2000. She is free to decide whom she wants to live with. Although Ms. Nilofar Khan, learned counsel for the Petitioner submits that the Petitioner was a major even at the time of her marriage to Asif, the Court does not find it necessary to examine that question at this stage.

13. Having heard learned counsel for the parties, the Court directs as under:

(i) The Petitioner stands released forthwith from Snehalay, Karkardooma.

(ii) The Petitioner is free to decide whom she wants to live with hereafter and she will take responsibility for her actions hereafter.

(iii) The Petitioner is free to leave from the Court itself of her own accord.

Security will be provided to her from the Court itself by the SHO PS New Ashok Nagar. Her further security will be provided by the SHO, PS New Ashok Nagar upon an assessment of the requirement. If the Petitioner decides to live with Asif's parents in Rajasthan she will be provided the necessary police protection by the said SHO for the duration of the journey. Thereafter the necessary security will be provided by the concerned local police upon request by the Petitioner/Asif's parents.

14. The Court has not expressed any opinion on any of the other contentions of the parties. The pending proceedings arising out of the FIR will be decided in accordance with law independent of what the Court has observed in this order. The petition and applications are disposed of.

15. Copy of this order be given *dasti* under signature of the Court Master.

S. MURALIDHAR, J.

I.S. MEHTA, J.

APRIL 13, 2018

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