

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.305 of 2019

Arising Out of PS. Case No.-71 Year-2018 Thana- KARPI District- Jehanabad

=====

Jairam Sharma, aged about 67 years, son of Late Kapildeo Singh, Resident of
Village - Paharpura, P.S.- Karpi (Shahar Telpa- O.P.) District-Arwal.

... .. Petitioner/s

Versus

1. The State of Bihar, through the Secretary, Department of Home (Police), Old Secretariat, Bailey Road, Government of Bihar, Patna.
2. The Secretary, Department of Home (Police), Old Secretariat, Bailey Road, Government of Bihar Patna.
3. The District Magistrate, Arwal
4. The Superintendent of Police, Arwal
5. Investigating Officer of Karpi (Sahar Telpa) P.S. Case No.- 71/2018

.....Respondents

=====

Appearance :

For the Petitioner/s : Ms. Prakritita Sharma, Advocate

For the Respondent/s : Mr. Prabhu Narayan Sharma, AC to AG

=====

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 05-02-2019

Heard learned counsel for the petitioner.

Learned counsel for the petitioner prays that permission
be granted to strike off the name of respondents 6 to 8. The same
is permitted. The names of respondents 6 to 8 shall stand deleted
from the array of the parties.

The petitioner is the grand-father of one Sakshi Kumari.
It is not in dispute that the father of the said Sakshi Kumari is alive
and it is the grand-father who has filed this *habeas corpus* petition



praying therein that the corpus of Sakshi Kumari be produced as she is allegedly confined against her wishes.

In the background in which the *habeas corpus* petition has been filed appears to be that P.S. Case No. 71 of 2018, under Sections 366-A of the Indian Penal Code was lodged at Police Station Karpi (Shahar Telpa) alleging that the said victim has gone missing and the allegation was of kidnapping of a minor child in which one Rahul Sharma was accused with the assistance of his family members. The case was registered and proceeded and at the stage of investigation, the girl was produced and her statement under Section 164 of the Code of Criminal Procedure was recorded before the Magistrate. After recording her statement and assessing the age of the victim, the Court passed an order to the effect that the victim is free to go anywhere as per her choice in the background that her age was assessed to be about 19 years in the medical examination.

Learned counsel for the petitioner has vehemently urged that this was an inappropriate assessment not in accordance with law and bereft of the date of birth as recorded in the Secondary School Examination Certificate of the victim which is 14th January, 2001 and accordingly, as on the date of incident, which is 20th May, 2018, the victim was a minor.



The order passed by the Magistrate came to be challenged in Criminal Revision No. 62 of 2018 before the learned District and Sessions Judge, Jehanabad, who dismissed the same on 27th September, 2018. It is stated at the bar by the learned counsel for the petitioner that a petition has been filed for quashing of the said order before this Court in appropriate proceedings.

We have considered the submissions raised and we do not find this to be a case as on date to be a matter of unlawful detention inasmuch as even assuming for the sake of argument that the date of birth of the victim as recorded in the school certificate is 14th January, 2001, at the moment she is a major.

Learned counsel for the petitioner vehemently urged that it is only after having attained the age of majority that her statement would become relevant and, therefore, she should be summoned before this Court in order to ensure that she is willingly living with Rahul Sharma or his family members.

We are not inclined to undertake this exercise after the aforesaid entire judicial intervention has already taken place before the courts below and about which a grievance has already been raised in an appropriate petition said to have been filed before this Court. It will be open to the petitioner to raise any such grievance and any observation made by us will not be an impediment in the



aforesaid proceedings particularly with regard to the age of the victim.

The petition is consigned to records with liberty to the appropriate person or guardian to claim any such rights as raised herein accordingly.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

Sunil/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	06.02.2019
Transmission Date	06.02.2019

