

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.12322 of 2019

Arising Out of PS. Case No.-63 Year-2017 Thana- BAUNSI District- Banka

NUJAHAT PRAVEEN D/o Israfil Ansari. Resident of Village- Bena
Mohanpur, P.O.- Dahua, P.S.- Bounsi, District- Banka.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Pranav Kumar Jha

For the Opposite Party/s : Mr.Aditya Narayan Singh.1

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 24-09-2019

Heard the parties.

2. This application, under Section 482 of the Code of Criminal Procedure, is for quashment of order dated 07.01.2019 passed by the learned Additional Sessions Judge-II, Banka in connection with Sessions Trial No.427 of 2017, arising out of Bounsi Police Station Case No.63 of 2017.

3. The petitioner is said to be victim of kidnapping in connection with Bounsi Police Station Case No.63 of 2017 registered under Sections 366 (A), 504, 506/34 of the Indian Penal Code. During investigation, the petitioner got her statement under Section 164 of the Code of Criminal Procedure recorded, wherein she stated that she had love affairs with Aftab Ansari and she has already married with Aftab Ansari and she wants to go to



her matrimonial house. She further stated that on 14.04.2017 she had left her house to go with Aftab and on the very next day she married with Aftab. She further stated that her family members are not accepting the marriage. However, she expressed her desire to live with her husband. The victim disclosed her age as 19 years and the learned Magistrate assessed her age as 16 years. The school document discloses the date of birth of the victim as 30.08.2002, whereas according to Adhaar Card, her date of birth is recorded as 01.01.1998.

4. Under the Mahomedan Law, a girl having attained puberty (presumed at the age of 15 years) could marry without the consent of her parents and enter into a contract of marriage. Article 251 of Mulla's Mahomedan Law contains statement of law on the point which is being reproduced below:-

“251. Capacity for marriage.-(1) Every Mahomedan of sound mind, who has attained puberty, may enter into a contract of marriage.

(2) Lunatics and minors who have not attained puberty may be validly contracted in marriage by their respective guardians.



(3) A marriage of a Mahomedan who is of sound mind and has attained puberty, is void, if it is brought about without his consent”.

5. A Division Bench of this Court had occasioned to consider identical prayer in ***Nahida Parveen versus the State of Bihar and Others***, reported in **2008 (4) PLJR 147** and this Court held that under the Mahomedan Law marriage is a civil contract and once the petitioner has entered into contract of marriage after attaining puberty there is no justification to keep her at after care home.

6. In the present case, the petitioner has unequivocally stated that she wants to be in her matrimonial house along with her husband. Hence, there is no justification for refusal of her prayer for release.

7. The impugned order reveals that on the date of occurrence i.e. 14.04.2017 and on the date of marriage i.e. on 15.04.2017, the petitioner had not attained the age of puberty, as such she did not deserve release. However, it is evident that when the impugned order was passed on 07.01.2019, the petitioner was competent to enter into a contract of marriage in all respect.



Hence, the impugned order if allowed to stand would cause failure of justice.

8. Accordingly, the same is, hereby, *quashed* and this application is *allowed* with direction that petitioner be released at once from the remand home to go wherever she desires.

(Birendra Kumar, J)

abhishek/-

AFR/NAFR	NAFR
CAV DATE	N.A.
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