

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.644 of 2019

Arising Out of PS. Case No.-61 Year-2018 Thana- NAUHATTA District- Saharsa

Neha Kumari, Daughter of Sri Ashok Yadav, Wife of Sumit Kumar, Resident
of Village- Kadlipatti, Ward No. 22, P.S.- Nauhatta and District- Saharsa.

... .. Petitioner/s

Versus

1. The State of Bihar Through Director General Of Police, Bihar, Patna
2. Superintendent of Police ,Saharsa.
3. Officer in- charge, Nauhatta Police Station and District- Saharsa.
4. Superintendent, Mahila Alpawas Madehpura PS and District- Madehpura. .
5. Mr. Bikash Kumar, Son of Ramchandra Prasad Yadav, Resident of Diari, P.S.
and District- Araria.
6. Superintendent, Nari Gunjan Short Stay Home at Purnea PS and District -
Purnea.

... .. Respondent/s

Appearance :

For the Petitioner : Mr.Diwakar Prasad Singh, Advocate
For the S t a t e : Mr.Prabhu Narayan Sharma, A.C. to A.G.

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

2 11-04-2019 Heard learned counsel for the petitioner and the

learned counsel for the State.

The contention is that the petitioner has been
unlawfully detained in Women's Short Stay Home at Purnea,
against her wishes in spite of the fact that she had attained the
age of majority and consequently, the petition deserves to be
allowed.

The writ petition discloses that an FIR was lodged



implicating several persons, including one Sumit Kumar with whom the petitioner is stated to have entered into a marriage. Upon the lodging of the F.I.R., it appears that the petitioner was produced before the court below and her statement under Section 164 Cr.P.C. was recorded, copy whereof has been filed as Annexure 2 to the writ petition. In her statement, she has admitted her relationship with Sumit Kumar and at the time of her deposition has disclosed her age to be 19 years.

The court below in the order dated 21.05.2018 has recorded that her age was assessed to be 19 years but on account of a doubt in the absence of any certificate of age, a report was to be called for from the Medical Board to the Civil Surgeon, Saharsa. The medical examination dated 4th of June, 2018 records the age of the applicant-petitioner between 15 to 17 years. The matter was again taken up before the court on 25th of July, 2018 and the court below has passed an order that in the absence of any certificate pertaining to her date of birth, the court found her to be aged about 17 years keeping in view the medical examination of the victim.

This *habeas corpus* petition has been filed with the aid of School Certificate, which is a Transfer Certificate issued on 27th August, 2018 much after the order passed by the court



below wherein the admission register is stated to mention the date of birth of the petitioner as 10th of May, 2000. It is on the strength of this document which appears to have been obtained after passing of the order by the court below that the petitioner contends that she was aged about 19 years.

Having considered the submissions raised, we do not find any such averment about either the status of her education or of her date of birth in the statement under Section 164 Cr.P.C. and such a document having been procured on 27th of August, 2018 was not there before the court below when the order was passed on 21st of May, 2018 and again on 25th of July, 2018. It is thus evident that a document that was obtained long after the aforesaid proceedings has now been made the basis for questioning the detention of the petitioner.

We are unable to accept the same inasmuch as the veracity and probity of such a document ought to have been tested before the court below by its production before the concerned court and the same cannot be entertained for the first time before this Court once the report of the Medical Board has been accepted and formed part of the judicial order of the court below.

The averment made in paragraph 9 of the writ petition



that the certificate was produced is absolutely false and against the record keeping in view the aforesaid fact.

If the petitioner chooses to question the correctness or otherwise of the order passed by the court below, it is open to the petitioner to challenge before the appropriate forum but this is not a case which can be said to be based on any prefect evidence so as to assume unlawful detention of the petitioner.

The writ petition lacks merit. It is, accordingly, dismissed.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

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