

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1013 of 2019

Arising Out of PS. Case No.-477 Year-2018 Thana- TRIVENIGANJ District- Supaul

MD. MUSTAK AHAMAD @ MUSTAK AHAMAD Son of Abdul Rasid
Resident of Village-Hariharpur, Ward No.12, Police Station-Supaul, District-
Supaul, Presently Residing at village-Fatepur, Police Station-Narpatganj,
District-Araria.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Home Deptt., Patna
2. The Director General of Police, Bihar, Patna
3. The Inspector General of Police, Kosi Range, Saharsa
4. The Deputy Inspector General of Police, Kosi Range, Saharsa.
5. The Superintendent of Police, Supaul
6. The Sub-Divisional Police Officer, Triveniganj, District-Supaul.
7. The Station House Officer, Triveniganj, Police Station-Triveniganj, District-Supaul.
8. The Investigating Officer of Triveniganj P.S. Case No.-477 of 2018.
9. Ashok Mehta Son of Bhumi Mehta Resident of Village-Khoria Kathkholwa, ward no.1, Police Station-Triveniganj, District-Supaul.
10. Kundan Kumari Daughter of Bhumi Mehta Resident of Village-Khoria Kathkholwa, ward no.1, Police Station-Triveniganj, District-Supaul.

... .. Respondents

Appearance :

For the Petitioner : Mr.Ramesh Kumar Singh, Advocate
For the Respondent-State: Mr.Manish Kumar, GP-5

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 01-07-2019

In the instant application preferred under Article 226 of the Constitution of India, the petitioner has prayed for release of his daughter-in-law from the remand home.

2. It has been submitted by the learned counsel for the petitioner that a case under Section 366A read with 34 and



363 of the Indian Penal Code was registered by one Ashok Mehta, brother of the victim against the son of the petitioner and two others. In that case, the victim was recovered and was produced before a Magistrate for recording her statement under Section 164 of the Code of Criminal Procedure (for short 'CrPC'). In her statement made under Section 164 of the CrPC, the victim disclosed her age to be 18 years and stated that she had married the son of the petitioner, namely, Md. Sadam out of her own sweet will and was not abducted by anyone.

3. Subsequently, it is further submitted that an application was filed by the informant of the case for release of the victim in his favour. On 10.01.2019, the petitioner had also filed an application for release of the victim as per her own sweet will. While the applications were being considered by the court, the victim was sent for medical examination and the medical examination report would suggest that she was aged between 18-20 years. In spite of the receipt of the medical report, erroneously, the learned ACJM-1, Supaul vide order dated 15.05.2019 held the victim to be minor and sent her to aftercare/remand home.

4. Per contra, learned counsel appearing for the State submitted that when the victim was produced before the court for recording her statement under Section 164 of the CrPC,



the learned Magistrate had assessed her to be aged about 15 years. In the school register also, the date of birth of the victim was recorded as 08.02.2007. In order to assess the age of the victim, the learned Magistrate conducted an inquiry himself and examined certain witnesses including the Headmaster of the school and on the basis of the oral and documentary evidences, he has held the victim to be minor. Since the victim had refused to go back to her home, she was sent to aftercare/remand home. He contended that the order passed by the learned ACJM-1, Supaul whereby the informant has been kept in aftercare/remand home has not been challenged by the petitioner before any court. In absence of any challenge to the order passed by the court of Magistrate, the stay of the victim in the aftercare/remand home cannot be held to be illegal. In that view of the matter, the application itself is misconceived.

5. I have heard learned counsel for the parties.

6. I find substance in the submission made by the learned counsel for the State.

7. The victim of Triveniganj P. S. Case no. 477 of 2018 is being kept in aftercare/remand home pursuant to the order dated 15.05.2015 passed by learned ACJM-1, Supaul. The said order has not been assailed by the petitioner in revision. In absence



of any challenge to the said order, the lodgement of the victim in the home maintained for child in need of care and protection cannot be held to be bad.

8. Accordingly, the relief sought for by the petitioner cannot be allowed. The application is dismissed.

(Ashwani Kumar Singh, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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