

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1451 of 2019

Arising Out of PS. Case No.-148 Year-2018 Thana- NAGARNAUSA District- Nalanda

Md. Arif Miya @ Arif Hussain Son of Late Md. Balul Hak @ Late Md. Waliul Haque Resident of Village- Badiha, P.S.- Nagarnausa, District- Nalanda.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Department of Home, Govt. of Bihar, Patna. Bihar, Patna.
3. The Director General of Police, Govt. of Bihar, Patna. Bihar, Patna.
4. The Inspector General of Police, Patna. Patna.
5. The Deputy Inspector General of Police, Patna. Patna.
6. The District Magistrate Nalanda, District- Nalanda. Nalanda.
7. The Superintendent of Police Nalanda, District- Nalanda. Nalanda.
8. The Deputy Superintendent of Police Hilsa, District- Nalanda. Nalanda.
9. The Station House Officer (S.H.O.) Nagarnausa, District- Nalanda. Nalanda.
10. Munarik Paswan Son of Nathun Paswan Resident of Village- Sulaiman Chak, P.O. and P.S.- Nagarnausa, District- Nalanda.
11. Manju Devi Wife of Nathun Paswan Resident of Village- Sulaiman Chak, P.O. and P.S.- Nagarnausa, District- Nalanda.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Md. Anis Akhtar, Adv.
For the Respondent/s : Mr. Prabhu Narayan Sharma, AC to AG

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 21-10-2019

Heard learned counsel for the petitioner and the
learned counsel for the State.

The informant is before us contending that his



daughter is in unlawful detention of respondent Nos.10 and 11.

The background of the litigation with regard to this claim of unlawful detention is already in detail narrated in the facts stated in C.W.J.C. No.583 of 2019, decided on 25th of June, 2019. We may, however, briefly summarize that the alleged detainee, who is the daughter of the petitioner, is stated to have eloped with one Dilraj Kumar @ Bhupendra Paswan and it is alleged that in spite of the fact that she is a minor, her detention which was necessary in the remand home was interfered with by the learned Judicial Magistrate 1st Class vide order dated 7.12.2018 whereunder he had released the detainee. The said order came to be challenged by the present petitioner before the learned Additional Sessions Judge in a revision which was allowed and the order of release was set aside. The detainee filed C.W.J.C. No.583 of 2019 that was dismissed holding that her date of birth as mentioned in the educational certificates produced indicated that she was born on 15th February, 2002 and, therefore, she was a minor.

The medical report was somewhat otherwise indicating that she was 18 to 19 years of age and this was the stand taken by the detainee in her statement under Section-164



Cr.P.C.

The Writ Court having assessed the entire facts finally put a rest to the said proceedings by the judgement dated 25th June, 2019.

The petitioner has now come up contending that the detenue is still under the unlawful custody of respondent Nos.10 and 11 and she has not been sent back to the remand home nor any effort has been made in this regard and, therefore, a writ of *habeas corpus* should be issued.

Having considered the aforesaid submissions and having heard Shri Sharma, learned counsel for the State, we find that the adjudication with regard to the status of detention has attained a finality with the judgement dated 25th June, 2019. There cannot be any further adjudication on the said issue unless the said judgement of the High Court is challenged before the appropriate forum. A Division Bench in a *habeas corpus* petition cannot, therefore, arrive at a different conclusion with regard to the age of the detenue. It may not be possible for us to exercise the *habeas corpus* writ jurisdiction, inasmuch as this would amount to sitting in appeal over the decision already arrived at with regard to the status of detention of the detenue.



In this view of the matter, the present writ petition, in our opinion, cannot be entertained as it would not be maintainable for the purpose for which it has been instituted. The breach of any final adjudication under a judicial intervention may be a matter of contempt in the event the same is made out and, therefore, the remedy of the petitioner, in any way, does not lie in instituting a *habeas corpus* petition, inasmuch as, as observed above, any adjudication on this issue in this petition is not at all necessary as it will be a futile exercise.

Accordingly, the petition is consigned to records without prejudice to the rights of the petitioner to approach the appropriate forum for redressal of grievances.

(Amreshwar Pratap Sahi, CJ)

(Ashutosh Kumar, J)

K.C.Jha/-

AFR/NAFR	NAFR
CAV DATE	N/A
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