

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRWP-834-2018

Date of Decision:-11.1.2019

Mehar Ali

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. P.K.S. Phoolka, Advocate
for the petitioner.

Ms. Ruchika Sabherwal, AAG, Punjab
for respondents No.1 to 5.

Mr. Daman Dhir, Advocate and
Ms. Kiranjeet Kaur, Advocate
for respondents No.6 and 7.

GURVINDER SINGH GILL, J. (Oral)

1. Petitioner-Mehar Ali approached this Court seeking writ in the nature of Habeas Corpus for release of detenu-Sahej Preet Kaur, aged 19 years stated to be wife of the petitioner.
2. It is the case of the petitioner that the petitioner and Sahej Preet Kaur (detenu) were in love and since both are majors they decided to marry

each other. It is further stated that the parents of the petitioner as well as of detenu were against the marriage as while the petitioner is a Muslim, the detenu is a Sikh.

3. It is further stated that the petitioner married Sahej Preet Kaur at Gurudwara Sahib on 20.09.2018 and thereafter filed a petition seeking protection in the Court of learned District & Sessions Judge, Bathinda whereby Senior Superintendent of Police, Bathinda was directed to assess threat perception and to take suitable action in accordance with law. Pursuant to the said order dated 21.09.2018, Sahej Preet Kaur was taken to State protection Home, Jalandhar, where she is presently confined.
4. Notice of this petition was issued to the respondents. The State as well as the private respondents have filed separate replies.
5. The reply filed by the State is accompanied by statement of Sahej Preet Kaur wherein she has specifically stated to the following effect:-

It is requested that I Sehajpreet Kaur daughter of Harmahinder Singh resident of Hamirgarh, District Bathinda is living at State Protective Home Basti, Gujjan, Jalandhar as per your orders. My date of Birth is 26.11.1999 and I am major and I understand my bad and good. I want to marry with Mehar Ali son of Rafiq Mohd. resident of Buraj Harike, District Faridkot with my own free will and I want to settle my life with him. Therefore, I may kindly be released from this institution, as I do not want to live in this Institution. I do not feel like this institution. Therefore, I may be released immediately from this institution. I shall be highly obliged.”

6. Respondents No.6 and 7 i.e. father and grandfather of Sahej Preet Kaur in their reply have taken a stand that they being the natural guardian are entitled to custody of Sahej Preet Kaur more particularly when the marriage between the petitioner and Sahej Preet Kaur is not a valid marriage.
7. Having heard learned counsel for the petitioner as well as learned State counsel and also learned counsel representing respondents No.6 and 7, this Court finds that it is not in dispute that the petitioner as well as Sahej Preet Kaur are major. It is also not in dispute that while the petitioner is a Muslim by religion, Sahej Preet Kaur is a Sikh by religion. It is not within the scope of this Court to comment upon validity of the marriage. However, in case, the petitioner or the detenu have any threat perception, it is the duty of the State to ensure that no harm be caused to them. Article 21 of the Constitution of India provides that every citizen of the country has right to live safely and securely. Sahej Preet Kaur in her statement (Annexure R5/2/T) has specifically stated that she wishes to reside with the petitioner. Under these circumstance, even if it is assumed that the marriage between the petitioner and Sahej Preet Kaur is not a valid marriage, still Sahej Preet Kaur being a major is well within her rights to take a decision as to with whom she wishes to reside. Consequently, in view of the statement of Sahej Preet Kaur and the fact that she is major, it is directed that Sahej Preet Kaur be set free and be permitted to accompany petitioner-Mehar Ali.
8. Needless to mention that it is expected that the private respondents would not cause any harm to the petitioner or to Sahej Preet Kaur. It is further

ordered that in case the petitioner and Sahej Preet Kaur nurse any apprehension to their security, it shall be open to them to approach this Court again seeking appropriate orders.

9. The petition stands disposed of in the aforementioned terms.

11.1.2019
Gaurav Sorot

(GURVINDER SINGH GILL)
JUDGE

Whether reasoned / speaking? Yes / No

Whether reportable? Yes / No