

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

**C.M. No. 5116-LPA of 2016 and
L.P.A. No. 2450 of 2016 (O&M)
Date of Decision : 06.02.2019**

Vikas Kumar..... Appellant

VERSUS

State of Haryana & ors. Respondents

**CORAM : HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL**

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Present: Mr.Chanchal K. Singla, Advocate
for the applicant/appellant.

Mr. Randhir Singh, Addl. A.G. Haryana.

Mr. Gaurav Grover, Advocate
for respondents No. 4 to 8, 12, 13, 15, 17, 18 and 22.

Respondents No. 4 and 22 are present in person.

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MANJARI NEHRU KAUL, J.

C.M. No. 5116-LPA of 2016

This is an application for condonation of delay of 23 days in
filing the Letters Patent Appeal.

For the reasons mentioned in the application, the delay of 23
days in the filing the Letters Patent Appeal is condoned.

CM stands disposed of.

L.P.A. No. 2450 of 2016

1. In this intra-court appeal filed under Clause X of the Letters

Patent, the appellant assails the order dated 06.10.2016 passed in Cr.W.P. No. 1329 of 2016 vide which the learned Single Judge dismissed the habeas corpus petition for the release of detenue Sunita Kumari, which had been filed by the petitioner (appellant herein).

2. The brief facts of the case may be noticed. The appellant in the aforementioned criminal writ petition had sought a writ in the nature of habeas corpus to secure the release of detenue Sunita Kumari from the illegal detention of respondents No. 4 to 22. The appellant alleged that he had married Sunita Kumari on 17.08.2016 but respondents No. 4 to 22 had subjected her to physical as well as mental harassment consequent to which she had been forced to marry respondent No.22 i.e. Rajesh, who was much older than her. The appellant also averred that prior to the filing of the aforementioned criminal writ petition, CRM-M-29060 of 2016 for the protection of life and liberty had been filed by him along with Sunita Kumari, the alleged detenue before this Court, on 19.08.2016 which was subsequently disposed of on 22.08.2016 in which directions had been issued to the official respondents to the effect that the petitioners would not be forcibly taken into custody by any of the respondents on the ground that petitioner No.1 (alleged detenue Sunita Kumari herein) having been kidnapped, abducted or raped by petitioner No.2 (i.e. appellant herein).

3. The learned Single Judge however dismissed the aforementioned criminal writ petition by observing that a complaint was filed by respondent No.4-Bansi Lal, father of the alleged detenue Sunita Kumari, against the appellant and a FIR under Sections 363, 366-A and 346 IPC was registered at Police Station City Fatehabad on 18.08.2016 consequent to which the appellant was arrested and the alleged detenue

Sunita Kumari who was found with him was produced before the City Magistrate. The learned Single Judge observed that subsequent to her production before the City Magistrate, Sunita Kumari got recorded her statement under Section 161 Cr.P.C. in pursuance to which she was sent to Nari Niketan for her safe custody on 21.08.2016 and thereafter her custody was handed over to her father on 06.09.2016 in compliance to the orders passed by the Chief Judicial Magistrate, Fatehabad. The learned Single Judge observed that in this background the custody of Sunita Kumari being handed over to her father or any other person on his behalf could not be said to be illegal.

4. We have heard the learned counsel for the parties.

5. The learned counsel for the appellant vehemently urged that he had married alleged detainee Sunita Kumari on 17.08.2016 in a temple at Panchkula but still she had been pressurized into marrying respondent No.22 by the private respondents with the connivance of police officers which was in contravention to the orders passed by this Court in CRM-M-29060 of 2016. It would thus be relevant to reproduce the order dated 22.08.16 passed in CRM-M-29060 of 2016 which reads thus:-

“Petitioners claim that they having attained majority and have married against the wishes of their family members. Apprehending threat to their life and liberty, they have approached this Court for protection.

Notice to the respondents for 29.09.2016.

Meanwhile, in case no preliminary case has been registered till date, petitioners will not be forcibly taken in custody by any of the respondents on the allegation that petitioner No.1 has been

kidnapped, abducted or raped by petitioner No.2.”

6. A perusal of the above order clearly reveals that though this Court directed the respondent not to forcibly take petitioner-appellant into custody on the allegation of kidnapping, abduction or rape of alleged detainee Sunita Kumari but the same was with a proviso that there should not have been any preliminary case registered on 22.08.2016, i.e. on the date of the said order. However, FIR No.484 dated 18.08.2016 under Sections 363, 366-A and 346 IPC already stood registered at Police Station City Fatehabad against the appellant prior to the filing of CRM-M-29060 of 2016 and it was only in consequence to the aforesaid FIR that the appellant was arrested from a hotel in Mohali on 20.08.2016. In this background the action of the official respondents in arresting him and recovering the alleged detainee Sunita Kumari along with him could not be said to be in contravention of any provision of law.

7. Respondents No. 4 and 22, i.e. father and husband of the alleged detainee Sunita Kumari, are present in Court today.

8. It is not disputed by either of the parties that the alleged detainee Sunita Kumari has been married to respondent No.22 i.e. Rajesh for the last about three years. Besides this, another undisputed fact which has been brought to our notice is that the alleged detainee Sunita Kumari and respondent No.22-Rajesh have also been blessed with a daughter on 03.10.2018.

9. One fact which must also be taken note of is, that an organisation like Nari Niketan is an independent organisation and is charged with the responsibility of taking care of destitute/abducted women as also their welfare. After staying in Nari Niketan for about two weeks, the

alleged detainee Sunita Kumari decided to go and stay with her father, hence it cannot be inferred that she was pressurized into accompanying her father by way of any threat or pressure. The case of the appellant is that he and the alleged detainee got married on 17.08.2016 in a Mandir at Panchkula. It would be relevant to notice that except for this bald statement, there is nothing else to suggest by way of any authentic legal evidence that any such marriage ever took place between the alleged detainee and him. Moreover, it would also be relevant to notice that in the written statement filed on behalf of respondents No. 1 to 3 it has been submitted that the alleged detainee had married respondent No.22 with her own free will and was living happily. In this context a statement of the alleged detainee Sunita Kumari has also been annexed with the affidavit as Annexure R1 which is as under:-

“Statement of Sunita aged 20 years w/o Rajesh caste Jat r/o Dhani Bodiwali, District Fatehabad.

Stated that I am resident of above said address and do the domestic work. My marriage was got solemnized with Rajesh s/o Puran Singh caste Jat and my marriage was solemnized with my own accord and will and I am happy with this marriage and I am residing with my in laws happily. This marriage was got solemnized by my parents with my will. The statement was written, heard and correct.

Sd/- (Hindi) Sunita”

10. A perusal of the above affidavit leaves no manner of doubt that Sunita Kumari is residing happily with her husband-respondent No.22 and hence there is no question of the appointment of any Warrant Officer to get

her released from the custody of her husband-respondent No.22 or her father-respondent No.4.

11. In view of the above, the order of the learned Single Judge dated 06.10.2016 is affirmed and the present Letters Patent Appeal is dismissed.

(AJAY KUMAR MITTAL)
JUDGE

(MANJARI NEHRU KAUL)
JUDGE

06.02.2019

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Whether speaking/reasoned : Yes / No
Whether Reportable: Yes / No