

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

Sr. No.267

CRWP-2024-2019 (O&M)

DECIDED ON: December 16, 2019

PRABHJOT KAUR AND OTHERS

..PETITIONERS

VERSUS

STATE OF PUNJAB AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. G.S. Nanda, Advocate, for the petitioners.

Mr. P.S. Walia, AAG, Punjab.

SUDHIR MITTAL, J. (ORAL)

The present petition was filed for directions to respondents no.2 to 4 to protect the lives and liberty of the petitioners which was allegedly threatened by the private respondents.

2. Petitioner No.1 has got married with petitioner No.2 on 27.10.2018 and a male child namely Gurveer Singh has been born out of the wedlock on 01.07.2019. The present petition was filed as an FIR dated 03.11.2018 had been registered against petitioner No.2 and he apprehended that he may be arrested by the police and that he may be separated from his wife and child.

3. The apprehension proved to be correct as on 23.10.2019, the police picked up petitioner No.1 and the minor son and produced them before a Magistrate in Amritsar who remanded them to a Nari Niketan. At the request of the Nari Niketan, an ossification test was conducted on petitioner No.1, according to which, her age is 17-18 years.

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4. Learned counsel for the petitioners submits that the ossification test is not a very accurate test and a margin of 02 years has to be given on either side. Petitioner No.1 is the lawfully wedded wife of petitioner No.2 and the police has no authority to split up the family.

5. Learned State counsel submits that according to birth certificate of petitioner No.1, she will attain the age of majority on 07.01.2020. Till she is a minor, her custody cannot be handed over to anybody else except the parents. He, however, does not deny the fact that the petitioner Nos.1 & 2 solemnized their marriage on 27.10.2018 and that a male child has been born out of the wedlock.

6. A marriage of a minor is not void ab initio unless it is voided by a Court of competent jurisdiction. In *Jagdeep Singh and another vs. State of Punjab and others, 2017(3) HLR 293*, this Court has held that the marriage of a minor is not void per se and such a minor cannot be separated from her lawfully wedded husband.

7. The petition is accordingly allowed and it is directed that the petitioners No.2 & 3 be released from the Nari Niketan so that they are able to join petitioner No.1 in the matrimonial house. Respondents No.2 & 3 are further directed that the lives and liberty of the petitioners be protected in case a threat thereto is existent. However, this order does not restrain any other legal proceedings which are pending consideration.

December 16, 2019

Ankur

(SUDHIR MITTAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No