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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(CRL) 2896/2018

SMT. PAYAL & ANR.

.. Petitioners

Represented by: Mr.Shamindra Kadian, Advocate with
petitioner No.2 in person

versus

STATE & ORS.

... Respondents

Represented by: Mr.Jamal Akhtar, proxy counsel for
Mr.Rahul Mehra, Standing counsel
for the State
SI Rajpal, PS Khayala

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

06.02.2019

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By this petition the petitioners claim that they are major and have married of their own free will and contrary to the wishes of respondents No.2, the uncle of petitioner No.1 and respondent No.3, the mother of petitioner No.1 and hence seek protection.

Plea taken by respondents No.2 and 3 was that the date of birth of the petitioner No.1 was 7th May, 2002 and thus as on date, she is a minor and hence not of marriageable age. In view of the claim of respondents No.2 and 3 in FIR No.92/2018 registered under Sections 363, Section 366 IPC and subsequently, Section 174-A IPC was also added. Petitioner No.2 was taken into custody, who has now been released on bail and petitioner No.1 was sent to Nirmal Chhaya.

W.P.(CRL) 2896/2018

page 1 of 3

When petitioners appeared before this Court on 25th October, 2018 petitioner No.1 claimed that her date of birth mentioned was incorrect because her younger sister's date of birth as per the school record, was also noted to be in the year 2002. On verification of the records, a Status Report was filed by the State indicating that in the school first attended, the date of birth of the petitioner No.1's younger sister was mentioned as 12th April, 2002 whereas that of petitioner No.1 was mentioned as 7th May, 2002. Thus, apparently the date of birth of the petitioner No.1 mentioned in the records of the school first attended was incorrect. Hence, this Court directed ossification test of petitioner No.1.

A Status Report has been filed and as per the ossification test, the age of petitioner No.1 has been opined to be 17-19 years. Even taking the admission of the parents of petitioner No.1 in case the date of birth of the younger sister as recorded in the record of school first attended was 12th April 2002 the petitioner No.1 has to be elder to her and in view thereof, would be nearly 18 years as on date which fact is also fortified by the ossification test. Petitioner No.1, who is present in Court, wishes to join the company of her husband i.e. petitioner No.2.

In view of the report of the ossification test, the attending circumstances and petitioner No.1 being apparently major, this Court directs Superintendent, Children Home, Nirmal Chhaya to release the petitioner No.1 in the company of petitioner No.2.

As the present petition relates to the protection of the petitioners in view of the apprehension of threat, this Court raised a query to the petitioners as to where they would be residing after petitioner No.1 is

released and the reply given by the petitioners is that both of them would reside at Ward No.5, New Vikas Nagar, Near Loni Railway Station, Ghaziabad, U.P. where the parents of petitioner No.2 are residing.

In view of the fact that the petitioners would be residing at a place beyond the territorial jurisdiction of this Court, no directions for grant of protection can be passed by this Court. However, the petitioners would be at liberty to approach the competent court for necessary directions.

Petition is disposed of. Order dasti under the signatures of Court Master.

MUKTA GUPTA, J.

FEBRUARY 06, 2019
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