

**IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM RESIDENTIAL OFFICE VIA VIDEO APPLICATION)
Criminal Writ Jurisdiction Case No.370 of 2020**

Arising Out of PS. Case No.-10 Year-2020 Thana- LALGANJ District- Vaishali

Lakshmi Kumari @ Laxmi Kumari Daughter of Umesh Ram Village - Itwarpur Shishawla, Police Station- Lalganj, District - Vaishali at Hajipur. At present Lakshmi Kumari Wife of Rajiv Kumar, Village - Itwarpur Shishawla, Police Station - Lalganj, District - Vaishali at Hajipur.

... .. Petitioner

Versus

1. The State of Bihar, through Principal Secretary, Home Deptt., Govt. of Bihar, Patna.
2. The Director General of Police Bihar, Patna.
3. The Superintendent of Police, Vaishali at Hajipur.
4. The Dy. SP Sadar, Hajipur, Vaishali.
5. The Station House officer, Lalganj, Vaishali, at Hajipur.
6. The Chairman, (member) Child Welfare Committee, Vaishali, at Hajipur.
7. The Superintendent, Remand Home Gaighat at Patna.
8. Indu Devi W/o Umesh Ram Resident of Village-Itwarpur, P.S.-Lalganj, District-Vaishali at Hajipur.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr.Shivendra Kumar Sinha,Advocate
For the Respondent/s	:	Mr.Prabhu Narayan Sharma, AC to AG
For the Respondent No. 8:	:	Ms. Keertika Sakshi, Advocate

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER**

4 21-10-2020 Heard learned counsel for the petitioner, Mr. Prabhu Narayan Sharma, learned AC to AG for the State and Ms. Keertika Sakshi, learned counsel representing respondent no. 8.

The petitioner in the present case is seeking to challenge the order dated 24.02.2020 passed by learned Additional Chief Judicial Magistrate, XIV court Vaishali at Hajipur in Lalganj P.S. Case No. 10 of 2020 by which the learned court below has directed to produce the petitioner before



the Child Welfare Committee, Hajipur.

Presently, the petitioner is living in the After Care Home, Gayaghat at Patna. Learned counsel submits that the petitioner has given birth to a baby and considering that the petitioner has voluntarily married and is not supporting the prosecution case she may be allowed to go with her husband.

On the point of the age of the petitioner, learned counsel submits that although she declared her age as 19 years, the medical board found her age about 17 years. Before the learned A.C.J.M., XIV court Vaishali at Hajipur the informant had produced a school certificate showing date of birth of the petitioner as 28.05.2005. The petitioner disputes that date of birth. Learned counsel for the petitioner has relied upon the judgment of the Hon'ble Division Bench of this Court in the case of **Sahebi Khatoon @ Sahibi vs. State of Bihar and Ors.** (in Cr.W.J.C. No. 991 of 2010).

Learned counsel for the State as well as learned counsel representing the private respondent no. 8 have opposed the prayer for setting aside of the impugned order and release of the petitioner.

It is submitted that the reliance placed by learned counsel for the petitioner on the judgment of the Hon'ble



Division Bench of this Court in the case of **Sahebi Khatoon @ Sahibi** (Supra) would not help the petitioner at this stage because the said judgment has been specifically overruled by Hon'ble Full Bench of this Court in the case of **Shikha Kumari versus State of Bihar** reported in **2020 (2) PLJR page 15 (HC)**. It is their submission that unless the petitioner attains majority i.e. 18 years of age she may not be allowed to leave the After Care Home on her own will and in such circumstance her interest would be of paramount importance.

Having heard learned counsel for the parties and on perusal of the records, this Court is of the considered opinion that no illegality or infirmity may be found with the order passed by learned A.C.J.M. , XIV court, Vaishali at Hajipur. The school education certificate of the petitioner is showing her date of birth as 28.05.2005 whereas the medical examination report has shown her age about 17 years. Unless the school education certificate is declared wrong and false, the same is to be taken as a proof of the age of the petitioner. This would, however, not to be taken as any finding with respect to date of birth recorded in the said certificate and it is open for the petitioner to seek her remedy if she is disputing the correctness of the said certificate or the date of birth mentioned therein.



To this Court, it is crystal clear that the petitioner has not attained majority i.e. 18 years of age. Therefore, following the ratio of the judgment of the Hon'ble Full Bench in the case of **Shikha Kumari** (Supra) it would not be just and proper to interfere with the impugned order. Once the petitioner attains majority i.e. 18 years of age, she may apply in the court below for her release from the remand home.

At this stage, learned counsel for the petitioner submits that this Court must apply the principle of *parens patriae* and acts as a guardian of the petitioner to take care of her interest and that of the interest of the newly born baby.

This Court agrees that in the case like the present one the Court steps into the shoes of a guardian and the principle of *parens patriae* would be applicable. The principle has now shifted to a right approach, taking note of the directive principles of the State in the Constitution of India, this Court would direct the Child Welfare Committee Vaishali at Hajipur as also the Superintendent, Remand Home, Gayaghat at Patna, (Respondent no. 6 and 7) as also the Principal Secretary Department of Home, Government of Bihar to ensure that the petitioner as well as her newly born baby be granted all such facilities which are under the scheme of the Government meant



for the children having been a victim of crime, as the State is presently treating the petitioner a victim, it is the duty of the State to take care of the petitioner and her newly born baby by providing adequate nutritional foods and cloths as also whenever necessary the medical examination and vaccinations of the petitioner and the baby must be done so that the newly born baby may grow in a healthy condition.

Apart from above, to take care of the personal needs of the petitioner and her newly born baby this Court directs the Bihar State Legal Services Authority, Patna to pay a sum of Rs.50,000/- (fifty thousand only) to the petitioner which she may spend on her own will towards taking care of herself and her baby immediately.

This application stands disposed of accordingly.

The Secretary District Level Legal Services Authority, Vaishali shall visit the After Care Home, Gayaghat, Patna from time to time and at least once in a month to ensure that the petitioner and her newly born baby are living a healthy life in the After Care Home. He will be competent to issue such directions to the authority concerned which may be required in the interest of the petitioner and the child.

Let this order be communicated to the respondents as



well as to the Secretary, Bihar State Legal Services Authority,
Patna and the Secretary District Level Legal Services Authority,
Vaishali, Hajipur immediately.

(Rajeev Ranjan Prasad, J)

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Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.

