

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.373 of 2020

Arising Out of PS. Case No.-37 Year-2019 Thana- UJIYARPUR District- Samastipur

ANURADHA KUMARI Daughter of Shri Anil Prasad Singh Wife of Prabhash Kumar, Resident of Village - Janakpur Ward No. -9, P.S. - Ujijarpur, District - Samastipur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Home (Police), Patna, Bihar. Bihar
2. The Superintendent of Police, Samastipur. Bihar
3. The Sub- Divisional Police officer, Dalsighsarai, Samastipur.
4. The Superintendent of Girls Remand Home, Gaighat, Patna City, Patna. Bihar
5. The Officer -In-Charge, Ujijarpur, District - Samastipur. Bihar
6. Anil Prasad Singh S/O Late Tejnarain Singh Village - Janakpur Ward No. -9, P.S. - Ujijarpur, District - Samastipur.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Upendra Kumar Singh
For the Respondent/s : Mr. Pawan Kumar, A.C. to A.G.

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE S. KUMAR)

(The proceedings of the Court are being conducted through Video Conferencing and the Advocates joined the proceedings through Video Conferencing from their residence.)

Date : 16-10-2020

Heard learned counsel for the petitioner and learned
counsel for the State.

Petitioner has prayed for following relief:-

“In the instant writ application the petitioner inter-alia prays for releasing the petitioner (victim girl) from remand home who is languishing in remand home since 05.04.2019. Her detention in



remand home is illegal and against constitution as well as bad in the eye of law, because now the petitioner is major and still she is regarded as minor. So, now she may be released from remand home.”

Briefly stated the facts of the case is that an FIR was lodged on 13.3.2019 by father of the petitioner Anil Prasad Singh (informant) giving rise to Ujiyarpur P.S. Case No.17/19 instituted under Sections 366, 366A read with 34 of IPC in which it was alleged that minor girl of informant aged about 16 years Anuradha Kumari had gone to coaching institute in the morning on 7.3.2019 and was kidnapped by Prabhas Kumar and other accused as named in FIR.

The victim girl, daughter of informant was recovered by the police on 5.4.2019 and her statement was recorded before the Magistrate under Section 164 of Cr.P.C. in which she disclosed her age as 19 years and also stated that she has solemnized marriage with Prabhash Kumar on 13.3.2019 in Radha Krishna Temple at Sonpur on her own volition and she has neither been kidnapped nor she has been abducted. She wants to reside in her matrimonial home.

The court has assessed the age of victim girl to be 16 years, however, she has stated herself to be of 19 years. A photocopy of certificate issued by Bihar School Examination



Board, enclosed as Annexure to this petition, her date of birth has been recorded as 9.3.2003 which is authentic and admitted document as far as age is concerned. According to which, she has completed 17 years and is on verge of attaining majority.

Although petitioner has challenged the order passed by Judicial Magistrate, by which she was sent to Remand Home and has assailed her detention in Remand Home but no order has been enclosed passed by the ACJM by which, she has been sent to Remand Home, as such, this Court is not in a position to know the reasons which prevailed upon the ACJM, recording her statement, to sent petitioner to Remand Home.

This Court in several cases of similar nature has held that if by a judicial order, a girl has been sent to Remand Home treating her to be minor, then her stay in Remand Home cannot be said to be unlawful confinement/detention and as such, habeas corpus petition is not maintainable and petitioner can approach this Court challenging the order passed by the Judicial Magistrate by filing criminal writ petition or quashing / revision petition impugning order passed by the Judicial Magistrate.

As such, present habeas corpus petition is dismissed as being not maintainable with liberty to petitioner to challenge the order passed by the Judicial Magistrate by which, she has



been sent to Remand Home treating her to be minor and also permit her to go as per her choice and wish as major.

With aforesaid observation and liberty, writ petition is disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	17.10.2020
Transmission Date	NA

