

**IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM RESIDENTIAL OFFICE VIA VIDEO APPLICATION)
Criminal Writ Jurisdiction Case No.1362 of 2018**

Arising Out of PS. Case No.-160 Year-2017 Thana- SRINAGAR District- West Champaran

Nisha Kumari D/o Chhote Lal Mahto, W/o Chhabila Mukhiya @ Chhabila Kumar , R/o Vill.- Pujahan Patjirwa, P.S.- Shrinagar Pujahan, District- West Champaran, at present Confined in After Care Home, Gaighat, Patna.

... .. Petitioner

Versus

1. The State Of Bihar Through The Principal Secretary, Home Police Department, Government Of Bihar,
2. The Superintendent of Police, West Champaran at Bettiah.
3. The Deputy Superintendent , After Care Home, Gaighat, District- Patna.
4. The S.H.O. Srinagar Pujahan P.S., District- West Champaran.
5. Chhotelal Mahto S/o Late Ganesh Mahto, R/o Vill.- Pujahan Tand, Panchayat Uttari Patjirwa Ward No.3, P.S.- Shrinagar Pujahan, District- West Champaran.
6. Chhabila Mukhiya S/o Pyarelal Mukhiya, R/o Vill.- Pujahan Tand, Panchayat Uttari Ward No.3, P.S.- Srinagar Pujahan, District- West Champaran.
7. The Superintendent, After Care Home, Gayghat, Patna.

... .. Respondents

Appearance :

<i>Amicus curiae</i>	:	Mr.Bashisth Narayan Mishra,Advocate
For the State	:	Mr.Anil Kumar, AC to SC 8
For the Respondent no.6 :	:	Mr.Binod Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

4 19-10-2020 In order to grant appropriate relief to the petitioner, let Superintendent, After Care Home, Gayghat, Patna be added as respondent no. 7.

This writ application has been preferred seeking a writ in the nature of a mandamus or any other appropriate writ



directing the learned court below to release the petitioner in favour of respondent no. 6 who is husband of the petitioner.

The petitioner has been confined in After Care Home, Gayghat, Patna in connection with S.G.R. No. 91/2017 arising out of Shrinagar (Pujahan) P.S. Case No. 160/2017 registered for the offences alleged under Section 366, 366(A)/34 of the Indian Penal Code and Section 8 of the Protection of Children from Sexual Offences Act (hereinafter referred to as “POCSO Act”) pending before the court of learned Additional District & Sessions Judge - 1st – cum – Special Judge, Bettiah, District – West Champaran.

It appears that the petitioner is not supporting the prosecution case lodged by her father. In the writ application she has made statement that she had gone with respondent no. 6 on her own sweet-will as she was in love affair with him and both were liking each other. In her statement under Section 164 Cr.P.C. recorded on 13.12.2017 she gave her age as 19 years. On that date she was also pregnant because of her cohabitation with respondent no. 6. She expressed her desire to go with respondent no. 6 but upon finding that the medical report of the petitioner assessed her age in between 17 – 18 years (as per MJK Hospital) while as per the medical board her age was



found 16 – 17 years, the learned court below sent her to the After Care Home, Gayghat, Patna.

When this writ application came for consideration before this court on 02.07.2018 the following order was passed:-

“This Court has been informed that the petitioner has given birth to a baby child on 27.06.2018. She claims herself to be a major as, according to her, the Medical Board has assessed her age in between 16-17 years and in terms of the Division Bench judgment of this Court in the case of Sahibi Khatoon Vs. State of Bihar (Cr.W.J.C. No. 991 of 2010) a benefit of two years over and above her radiological age may be given to her and she may be allowed to live with the respondent no. 6 with whom she has married.

In the nature of the submissions made at the Bar, let notice be issued to the respondents no. 5 & 6 under ordinary process as well as registered cover with A/d, requisites for which must be filed within one week from today failing which this application as against the concerned respondents shall stand dismissed without further reference to the Bench.

List this matter immediately on receipt of notice.”

Unfortunately thereafter the writ application seems to have remained unlisted and not taken up. In the meantime, in the case of Shikha Kumari Vs. State of Bihar and others, the Hon’ble Division Bench of this Court doubted the correctness of the earlier judgment of the Division Bench in **Sahebi Khatoon @ Sahebi Vs. State of Bihar and others (Cr.W.J.C. No. 991 of 2010)**. The matter was referred to Full Bench and the Full Bench judgment has been delivered on 05.03.2020 which is



reported in **2020 (2) PLJR 15.**

In this case the notice sent to respondent no. 5 & 6 have been served. Notice of respondent no. 5 was received by his wife which this Court treats as a valid service of notice. Respondent no. 6 has appeared through Vakalatnama and is also present with his learned Advocate in course of virtual mode of hearing of this matter. Pursuant to the order passed by this Court on 16.10.2020, the Superintendent, After Care Home, Gayghat, Patna is present online in virtual hearing and with her this petitioner together with a two years four months old baby is present.

This Court has interacted briefly with the petitioner as well as respondent no. 6 in presence of the Superintendent, After Care Home, Gayghat as well as Mr. Binod Kumar Singh, learned Advocate representing respondent no. 6. Both of them have categorically stated that they want to live together and the admitted position as on today is that after a lapse of two years seven months from the date of the medical report (17.03.2018) now there is no dispute at all that the petitioner has attained majority and she has crossed 18 years of age. Being major she is capable of taking her own decisions. In this regard the judgment Hon'ble Division Bench of this Court in the case of **Based on the News Item Uploaded on the Website of News App Bar and Bench Vs. The State of Bihar and Ors.** reported in **2018 SCC**



OnLine Pat 1179 and the judgment of this Court in the case of **Shikha Kumari Vs. State of Bihar and others (Full Bench)** reported in **2020 (2) PLJR 15** may be referred to. Even going by the judgment of the Hon'ble Full Bench in the case of **Shikha Kumari (supra)** this Court finds that the Hon'ble Full Bench has categorically opined that if the age of the girl is assessed as 19 years old then “ The Court has no option but to release her and let her go wherever she wants, be it with her husband or with her family or with none of them. ”

Respondent no. 6 has categorically submitted that he along with his parents are voluntarily accepting the petitioner as a member of their family and respondent no. 6 undertakes to live with the petitioner taking full care of her dignity. The petitioner has also stated that she wants to live with respondent no. 6. Since respondent no. 5 has not entered appearance, there is no opposition to the writ application.

Mr. Bashisth Narayan Mishra, learned Advocate who was earlier engaged by the petitioner has though given a no objection during pendency of the writ application but he has been present online and this Court has requested him to act as an *amicus curiae* in this case which he has fairly done.

Learned counsel for respondent no. 6 as well as Mr. Anil Kumar, AC to SC-8 learned counsel for the State are



present and learned counsel for the State also agrees that in the given facts and circumstances today the petitioner has to be released and no formality is required to be done at this stage by asking her to go to the court below and pray for such release as that would be a mere hardship to the petitioner and respondent no. 6.

Considering the aforesaid aspects of the matter and the admitted position appearing from the materials on the record and the legal position well settled in the judicial pronouncements of this court as noticed hereinabove, this court hereby directs the Superintendent, After Care Home, Gayghat, Patna to release the petitioner with her minor child and allow her to go with respondent no. 6. Respondent no. 6 undertakes to visit the office of the Superintendent, After Care Home, Gayghat, Patna tomorrow.

This Writ Application stands disposed off accordingly.

(Rajeev Ranjan Prasad, J)

Rajeev/-

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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'.

