

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1308 of 2019

Arising Out of PS. Case No.-143 Year-2019 Thana- HARNAUT District- Nalanda

=====

GORE LAL YADAV @ GORE LAL KUMAR, Son of Late Dinesh Yadav,
Resident of Village - Nijay, Police Station - Rahui, District - Nalanda

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Home, Bihar, Patna
2. The Director General of Police, Bihar, Patna
3. The District Magistrate, Nalanda
4. The Superintendent of Police, Nalanda
5. The Superintendent of Womens Remand Home, Patna (Nari Suraksha Niketan, Patna)
6. The Dy. S. P. Sadar Bihar Sharif, District - Nalanda
7. The Officer Incharge of Harnaut (Gokulpur) Police Station District - Nalanda
8. The Investigating Officer of Harnaut (Gokulpur) P.S. Case No.143 of 2019 Harnaut, Bihar

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Anil Kumar Singh, Advocate Mr. Satyendra Prasad Singh, Advocate
For the Respondent/s	:	Mr. Lalit Kishore, A.G.

=====

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL ORDER

3 29-09-2020 This application under Article 226 of the Constitution of India has been heard through virtual Court proceeding.

2. Initially, a writ in the nature of habeas corpus was sought for, however, the same was converted into the present writ application for issuance of certiorari quashing the order dated 13.04.2019 passed in Harnaut (Gokulpur) P.S. Case No. 143 of 2019 by the learned Chief Judicial Magistrate, Nalanda at Bihar Sharif whereby the minor victim-girl has been ordered



to be kept in the Remand Home.

3. The FIR was lodged by the father of the victim-girl alleging therein that one Subodh Kumar with intent to marry with the victim-girl, who was aged about fourteen years, had kidnapped her. During investigation, on the basis of mobile location, involvement of the petitioner surfaced and the petitioner was remanded to judicial custody. The statement of the victim-girl was recorded, under Section 164 Cr.P.C., wherein she disclosed her age as eighteen years and the learned Magistrate assessed her age as seventeen years. The victim specifically stated that she had voluntarily gone with the petitioner and has married with the petitioner in the Mahavir Temple at Patna. Thereafter, she travelled along with the petitioner to different places. She is specific that she was not kidnapped and she wants to go with the petitioner.

4. It appears that on 13.04.2019 different orders were passed by the learned court below including recording of statement under Section 164 Cr.P.C. of the victim-girl. This Court is not concerned with those portions of the order, rather the last order was passed sending the victim-girl to Remand Home considering the age of the victim below eighteen years. Besides, statement of the victim recorded under Section 164



Cr.P.C., the learned court below had considered the opinion of the medical expert which revealed that the victim was of the age between fifteen to sixteen years. The Court considered that the victim does not want to go with the parents, who are natural guardian, rather state her desire to go with the petitioner. However, since she was a minor, for better interest of the victim, she was ordered to be kept in the Remand Home.

5. Learned counsel for the petitioner submits that for the larger interest of the victim, she should be released on the prayer of the petitioner in favour of the petitioner because condition of the Remand Home is very pathetic. Though, the victim is not a party to this writ petition, however, her statement, under Section 164 Cr.P.C., is enough for her release in favour of the petitioner.

6. The law is well settled that while exercising power of judicial review, under Article 226 of the Constitution of India, the Court cannot act as an Appellate Authority, rather the jurisdiction is confined to correct the error of law or procedural errors defeating the course of justice.

7. In the present case, a minor has been sent to Remand Home keeping into consideration the larger interest of the minor and the learned court below had jurisdiction to sent



her to Remand Home, hence, the impugned order cannot be faulted with as suffering from illegality or otherwise any error of law. Therefore, certiorari cannot be issued to quash the impugned order.

8. Moreover, in **Suchita Srivastava & Anr. vs. Chandigarh Administration** reported in [(2009 (9) SCC 1], the Hon'ble Supreme Court considered doctrine of "parens patriae" in the following words:-

"The doctrine of "parens patriae" has been evolved in common law and is applied in situations where the State must make decisions in order to protect the interests of those persons who are unable to take care of themselves. Traditionally this doctrine has been applied in cases involving the rights of minors and those persons who have been found to be mentally incapable of making informed decisions for themselves."

9. Following the aforesaid principle, a Full Bench of this Court in similar factual situation in **Shikha Kumari Versus The State of Bihar & Ors.** reported in **2020(2)PLJR 15**, observed in para 117 and 118 of the judgment as follows:-

"117. There are two tests in relation to this doctrine. These tests help the court to



ascertain the course of action that it can adopt depending upon the situation. It is important to remember that these tests are merely guiding principles so as to help the court to reach a logical conclusion.

1. **'Best Interests Test'** - The 'Best Interests Test' requires the Court to ascertain the course of action which would serve the **best interests** of the person in question. It is important to note that the Court's decision should be guided by the **interests of the victim alone** and not those of other stakeholders such as guardians or society in general.

2. **'Substituted Judgment Test'**- The application of the **'Substituted Judgment'** test requires the court to step into the shoes of a person who is considered to be mentally incapable and attempt to make the decision which the said person would have made, if he/she was competent to do so.

118. Conceptually, the Parens Patriae theory is the obligation of the State to protect and take into charge the rights and privileges of its citizens for



discharging its obligations.”

10. Evidently, the learned court below has acted as guardian of the minor girl and has passed the impugned order in the best interest of the minor. Hence, no interference with the impugned order is required by this Court.

11. Accordingly, this application stands dismissed with liberty to the victim-girl herself to renew her prayer for release before the learned court below itself after attaining the age of majority and the learned court below shall pass order according to law.

(Birendra Kumar, J)

Kundan/-

U		T	
---	--	---	--

