

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRWP-5531-2020

Date of decision:-4.8.2020

Guarav

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Ravi Malhotra, Advocate
for the petitioner.

Mr.J.P. Ratra, DAG, Punjab.

H.S. MADAAN, J.

This criminal writ petition under Article 226/227 of the Constitution of India for issuance of a writ in the nature of habeas corpus has been filed by petitioner Guarav, aged about 22 years son of Gori, resident of House No.1716-A, Street No.9, Prempura, Phagwara, District Ludhiana impleading State of Punjab, Senior Superintendent of Police, Kapurthala and Superintendent/Incharge Gandhi Vanita Ashram, Kapurthala as respondents, craving for issuance of a direction to respondents to release Simran, who is wife of the petitioner and allegedly being wrongly and illegally confined in Gandhi Vanita Ashram/Children Home, Jalandhar vide order passed by Judicial Magistrate Ist Class,

Phagwara.

Inter alia, in the petition it is contended that petitioner had fallen in love with Simran and decided to get married, though parents of Simran were against the marriage; the marriage was performed on 22.6.2030 according to Sikh rites at Ludhiana; apprehending threat to their lives, petitioner and his wife Simran had approached the Court of Sessions seeking protection of their lives and liberty and learned Additional Sessions Judge (Duty), Ludhiana issued direction to Commissioner of Police, Ludhiana to look into the matter, assess threat perception and provide security tot he couple; the parents of the girl had appeared before learned Sessions Judge and made statement pleading no objection to the marriage though stating that they did not want to have any relation with their daughter but would not interfere in the matrimonial life of petitioner and their daughter; however, an FIR No.203 dated 13.7.2020 for the offences under Sections 363 and 366-A IPC, registered at Police Station City, Phagwara had been got registered by the parents of the girl; on 28.7.2020, the girl had been produced before learned Magistrate for the purpose of recording of statement under Section 164 Cr.P.C. and learned Magistrate sent her to Children Home, Gandhi Vanita Ashram, Jalandhar.

According to the petitioner, even though the girl may be minor but the marriage is neither void nor voidable. The girl is being illegally detained in Children Home, Gandhi Vanita Ashram, Jalandhar without her consent and she be released therefrom.

Learned counsel for the petitioner was asked to address the Court on the point of maintainability of the petition and he has

accordingly address arguments stating that the petitioner being husband of Simran is entitled to have her company and he has been wrongly deprived of the same. Therefore, he has got right to approach this Court by way of filing the present petition. In support of his contentions, he has referred to various judgments i.e. *Neetu Singh Versus State, 1999(3) RCR(Criminal)26, Balwinder Singh @ Binder Versus State of Punjab and others, 2008(3) RCR(Criminal)1* and a judgment passed by a Co-ordinate Bench of this Court in CRM-M-38667 of 2016 titled '*Baljeet Kaur and another Versus State of Punjab and others*', decided on 29.3.2017.

After hearing learned counsel for the petitioner and going through the record as well as judgments cited by him, I find that the petition in hand is not maintainable. The fact has to be taken into view that petitioner has been booked in FIR No.203 dated 13.7.2020 for the offences under Sections 363 and 366-A IPC, registered at Police Station City, Phagwara for kidnapping a minor girl and in the said case when she had been produced before a Magistrate for the purpose of getting her statement recorded under Section 164 Cr.P.C., she had stated that she did not want to go to her parental house, as such the Magistrate ordered that she be sent to Children Home, Gandhi Vanita Ashram, Jalandhar till she attains majority i.e. 18 years. The order cannot be faulted on any ground. Simran having been sent to Children Home, Gandhi Vanita Ashram, Jalandhar as per order of Magistrate passed in judicial proceedings, it cannot be said that she is in illegal custody of Children Home, Gandhi Vanita Ashram, Jalandhar against her wishes or she is being wrongly

confined there. Therefore, the habeas corpus petition directing her release from the said home is certainly not maintainable that too at the instance of a person, who is accused of kidnapping her. It may be mentioned here that consent of a minor is no consent in the eyes of law and petitioner cannot take advantage of any such consent of petitioner taking her along with him from her parental house and getting married with her and subsequently filing a petition for protection before the Court of Sessions etc.

As regards the authorities referred to by learned counsel for the petitioner, those do not find application to the present case due to different facts and circumstances and the context in which such observations have been made.

The petition is doomed for failure and is dismissed accordingly.

4.8.2020
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No