

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

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**CRWP-5644-2020
Decided on : 30.10.2020**

Shahrukh Khan

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Mr. Nafeesh Ahmed, Advocate
for the petitioner.

Mr. Anant Kataria, DAG, Haryana.

(The proceedings are being conducted through
video conferencing, as per instructions.)

G.S. Sandhawal, J. (Oral)

The petitioner in the present criminal writ petition filed under Articles 226/227 of the Constitution of India, seeks directions for issuance of a roving writ in the nature of habeas corpus for releasing detainee namely Rijwana, his wife aged 19 years, who was allegedly abducted by her relatives i.e. private respondents No.5 to 11.

It is the case of the petitioner that he and the detainee loved each other and performed Nikahnama on 20.06.2020 at Ambala Cantt. and started living as husband and wife. They had filed CRWP-4153-2020 before this Court, wherein directions had been issued on 03.07.2020 (Annexure P-4) to the Superintendent of Police, Nuh to look into the matter and take appropriate steps if there was danger to the life and liberty of the petitioners.

It is stated that respondent No.4, SHO of Police Station Punhana, District Nuh as such had taken the detainee for recording the statement under Section 164 Cr.P.C., as there was an FIR lodged by the family of the girl, against the petitioner. Even the statement was not incriminating the petitioner and resultantly she has been sent to the Child Welfare Committee, Mewat. The petitioner and his family went to the Child Welfare Committee, but could not find the detainee. In such circumstances, the present petition has been filed.

In the affidavit filed by the State, it has been submitted that FIR No.210 dated 19.06.2020 under Section 365 IPC was registered against the petitioner at Police Station Punhana, on the complaint made by Islam @ Bhuru son of Ishak resident of Singhalhedi, who is respondent No.5 herein, that his minor daughter had been kidnapped by the petitioner. It has been submitted that she was recovered on 06.07.2020 and her statement under Section 164 Cr.P.C., was recorded.

Since the girl was minor, as per her school leaving certificate, her counselling was conducted at CWC, Nuh. She had refused to go with her parents, therefore, her custody was handed over to the Center Shelter House Orphan, Pipaka (Tauru), as per the order of CWC (Annexure R-2). The marriage certificate (Annexure R-3) was to be verified from Ambala and investigation was to be carried out. The statement of the detainee recorded under Section 164 Cr.P.C., reads as under:-

“Stated that I went alongwith Shahrukh son of Jamshed r/o

Punhana. I got conducted Nikah (marriage) with my own consent, which was held at Ambala. Me and my husband are having danger from my parents. I want to live Shahrukh.”

Counsel for the petitioner has, thus, submitted that as per Annexure R-1, the date of birth of detainee is 16.06.2003 and, therefore, the detainee was more than 17 years old, when the FIR was lodged. He submits that the petitioner had been released on bail by the Additional Sessions Judge, vide order dated 29.07.2020 and, thereafter, had filed the present petition and, therefore, being the husband of the detainee as such he is entitled for the custody.

This Court had also issued notice to the private respondents, who are the relatives of the detainee, but in spite of service having been effected, none has put in appearance.

Accordingly, keeping in view the facts and circumstances and the fact that the girl has not implicated the petitioner as such in any manner and the marriage was conducted with her consent and she wants to live with the petitioner, it would be appropriate if the custody of detainee is handed over to the petitioner. As noticed, none has come forward on behalf of the relatives of the detainee to claim her custody and, therefore, the detainee continues to be in the custody of Center Shelter House Orphen, Pipaka (Tauru), which would not be in her interest.

Accordingly, the present petition is allowed and directions are issued to respondent No.4 to ensure that the custody of detainee Rijwana is given to the petitioner by the administration of Center Shelter

House Orphan, Pipaka (Tauru), immediately.

Needless to say that the above observations are only with regard to the present habeas corpus petition and will not prejudice the criminal proceedings pending before the trial Court.

OCTOBER 30, 2020
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No