

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

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**CRWP-5891-2020
Date of Decision : 14.10.2020**

Usman Khan

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mohd. Shamim, Advocate
for the petitioner.

Mr. Naveen Singh Panwar, DAG, Haryana
for respondents No.1 to 3.

Ms. Ashima Mor, Addl. Public Prosecutor
for U.T. Chandigarh with
the detenues in person with her.

Mr. Munfaid Khan, Advocate
for respondents No.4 to 9.

Mr. Amit Kumar Jain, Advocate
for the detenues-Suraiya and Monisha.

JUSTICE ARUN KUMAR TYAGI, J.

(The case has been taken up for hearing through video conferencing.)

The petitioner has filed the present petition under Article 226 of the Constitution of India for issuance of a writ in the nature of habeas corpus for directing respondents No.1 to 3 to search for detenues Suraiya and Monisha (who is stated to be minor) at the premises of respondents No.4 to 9 and get them released from their illegal custody.

Briefly stated the petition was filed on the averments that both the detenues Suraiya and Monisha are unmarried daughters of

petitioner-Usman Khan. The detenues, who had taken amount and jewelry mentioned in the petition with them, were kidnapped by respondents No.4 to 9 on the night of 26.06.2020 from his house and illegally detained by them. The petitioner made representation dated 13.07.2020 to the Superintendent of Police, Mewat but no action has been taken on the same.

Vide order dated 11.08.2020, the Coordinate Bench of this Court directed the Registry to appoint the Warrant Officer.

The Warrant Officer submitted report dated 21.08.2020 that both the detenues were not found either detained or otherwise at the places pointed out by the petitioner.

Subsequently, the detenues appeared before the Court on 25.09.2020 with their Counsel and claimed themselves to be major and denied allegations as to their abduction by anyone.

Vide order dated 25.09.2020 the detenues were ordered to be kept in Nari Niketan, Sector-26, Chandigarh till further orders and in view of conflicting statements regarding age of the detenues, their abduction and illegal detention, learned Judicial/Duty Magistrate, Chandigarh was directed to record statements of the detenues under Section 164 of the Code of Criminal Procedure, 1973 as to their age, whether they were abducted or illegally detained by anyone or left their home on their own as well as circumstances for the same and statement of petitioner-Usman Khan with regard to age of the alleged detenues on the documentary proof.

In compliance to the order dated 25.09.2020, learned Additional Chief Judicial Magistrate, Chandigarh has submitted report

dated 28.09.2020. The relevant part of the said report is reproduced as under:-

“...statements of detenues (victims) were recorded under Section 164 Cr.P.C. on 28.09.2020 by the undersigned. Both the detenues have unequivocally stated that they had left their home in village Pingwan, District Mewat (Hy.) because on 23.06.2020, both of them were raped by the sons of their maternal uncles namely Subin s/o Surfudeen and Ikram s/o Islam and they narrated the said incident to their father Usman Khan, but instead of listening to them, he reprimanded them. Thereafter, both of them were held captives by their family members namely Guldeen, Subin, Mubin, Anis, Rahis, Inus, Usman, Inam, Imran, Rani w/o Guldeen and Rehana w/o Mukin and were beaten up by them. Thereafter, their father tried to sell them off for money and tried to forcibly marry them off. Due to said circumstances, they somehow escaped from the clutches of the above said persons on 27.06.2020 and reached Mohali. They do not want to return to their home due to their exploitation and abuse. It is further pertinent to mention here that as per their version, they were not abducted and illegally detained and they had left their home at their own due to exploitation and abuse, inflicted upon them. (Kindly find enclosed therewith the original statements of both the detenues and their father Usman Khan).

As far as age of Suraiya is concerned, she has produced copy of aadhar card showing her date of birth as 2.3.2001, meaning thereby she is more than 19 years of age. As far as age of Monisha is concerned, she has no documentary proof regarding her age and stated that she never went to school and she is illiterate. Further, it is pertinent to mention here that their father Usman Khan had suffered statement before PS Pinangwa, District Nuh on 28.07.2020 in which he has mentioned the age of Monisha as 19 years (copy enclosed). Today he has suffered statement and produced copy of ration card issued on 24.11.2014 in which the age of Karina (which he said is other name of Suraiya) is mentioned as 12 years and age of Monisha is mentioned as 10 years. But it is pertinent to mention here that Ration Card cannot be taken as proof of date of birth because no date, month or year of birth has been mentioned in the same. So, there is no documentary proof of age of Monisha but Usman himself has mentioned her age as 19 years in his statement before the police on 28.07.2020.”

Vide order dated 01.10.2020 respondent No.2-Senior

Superintendent of Police, Mewat at Nuh and Director Social Welfare,

Haryana were directed to look into the matter and submit report in respect of the circumstances of the case and also as to any directions required to be given by this Court in the matter for protection of the life and liberty of the detenues against any physical harm/sexual exploitation/harassment.

In compliance with order dated 01.10.2020, reply by way of affidavit of Sh. Narendra Bijaraniya IPS, Superintendent of Police, Nuh was filed on behalf of respondent No.2. In the reply it was mentioned that the detenues refused to go with their parents and had expresses their willingness to stay in Sawera at Mohali and that in case the detenues approached respondent No.2, they will be provided protection at Safe House, Nuh.

Reply by way of affidavit of Deputy Director-III on behalf of Director General, Women and Child Development Department, Panchkula was also filed. In the said reply availability of Working Women Hostel, Sector -10, Panchkula with all basic amenities was mentioned where the detenues could live by paying nominal charges.

In the course of hearing of the present petition, I have also interacted with detenues who have reiterated that both of them are more than 18 years of age and are major and that they were not abducted by anyone and they left their home on their own and they want to live separately at Mohali and sustain themselves by carrying out the tailoring work.

In view of the report of learned Additional Chief Judicial Magistrate, Chandigarh and stand of the detenues before this Court and non-production of any cogent and reliable documentary evidence by the

petitioner, anyone of the detenues cannot be said to be minor. In view of statements of the detenues, who are major, the detenues cannot be said to have been abducted or illegally detained by anyone including respondents No.4 to 9.

In *Soni Gerry Vs. Gerry Douglas : 2018(1) RCR (Civil) 650*, where the daughter, who was major, expressed a desire to reside with her father in Kuwait, where she was pursuing her education. Hon'ble Supreme Court dismissed the habeas corpus petition filed by her mother on the ground that the daughter being major was entitled to exercise her choice. In that case Hon'ble Supreme Court observed as under:-

"10. It needs no special emphasis to state that attaining the age of majority in an individual's life has its own significance. She/He is entitled to make her/his choice. The courts cannot, as long as the choice remains, assume the role of parens patriae. The daughter is entitled to enjoy her freedom as the law permits and the court should not assume the role of a super guardian being moved by any kind of sentiment of the mother or the egotism of the father. We say so without any reservation."

The detenues being major are entitled to make their choice and to live wherever they want and the Court cannot assume the role of super guardian and impose any restriction. Accordingly, the detenues are ordered to be released from Nari Niketan, Sector-26, Chandigarh and the detenues shall be at liberty to go to any place whatsoever as desired by them.

Since the detenues have not been abducted and illegally detained by anyone and do not want to go with their father-the petitioner, no action is required to be taken on the present habeas corpus petition and petition being devoid of any merit is dismissed.

However, the petitioner shall be at liberty to avail his appropriate remedy for redressal of his grievances, if any, in accordance with law.

14.10.2020
Kothiyal

(ARUN KUMAR TYAGI)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No