

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

**CRWP No.6314 of 2020
Reserved on : 08.10.2020
Pronounced on : 13.10.2020**

Rajmal and another

... Petitioners

Versus

State of Haryana and others

... Respondents

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

Present: Mr. T.S. Dhull, Advocate for the petitioners.

Mr. Anant Kataria, DAG, Haryana.

Mr. R.P. Rana, Advocate for respondent No.6.

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

G.S. Sandhawalia, J.

In the present criminal writ petition filed under Articles 226/227 of the Constitution of India, the direction is sought for issuance of a writ in the nature of habeas corpus directing respondents No.1 to 5 to release the detenue Ajay Kumar son of the petitioners and Pinki Pundir daughter-in-law from the illegal custody of respondents No.6 & 7 (father and brother of the girl) and their associates. The prayer is made as they are alleged to be confined in the custody of the said respondents. The prayer has also been made for appointment of a Warrant Officer to search the premises of respondents No.6 and 7 and their associates to get the detenues released with their belongings from the illegal custody.

2. The case of the petitioners is that couple Ajay Kumar and

Pinki Pundir had solemnized the love marriage without any pressure at village Firozpur, Sector 19, Panchkula on 29.07.2020 and got directions from this Court in CRWP No.5491 of 2020 on 31.07.2020 (Annexure P-1) for protection of life and liberty from the hands of the said private respondents. The said couple had been living happily as husband and wife at their matrimonial home at village Batwala, Police Station Narwana, District Jind. On 09.08.2020 when the couple went to the house of the maternal uncle, respondent No.6, the father of the girl alongwith 4 persons had come to the house of the petitioners and asked them about the whereabouts and requested them to call the detenues, since he was ready to accept the marriage.

3. The petitioners had accepted the said request and made a phone call to their son Ajay Kumar and respondent No.6 had talked to him and his daughter. It was agreed that they would meet with the said respondents. Ajay Kumar had made a call to the police authorities by dialing no.100 and informed them about the fact that the order had been passed by this Court to grant them protection and concerned officials had called them at the jurisdiction of Police Station, City Jind. Respondent No.6 had also come there with his associates and had taken them away by forcibly putting them inside the car and the SHO, Police Station, City Jind did not help them. The brother of the petitioner No.2 was waiting outside the Police Station, had seen the said incident. Resultantly, the present petition was filed in this Court on 21.08.2020.

4. It is pertinent to mention that the SHO, Police Station, Charthawal, District Muzaffarnagar (U.P) and Senior Superintendent of Police, District Muzaffarnagar (U.P) had also been impleaded as respondents No.8 & 9 without any relief being sought against them. Accordingly, notice of motion was issued on the said date, with directions to respondent No.9 to look into the matter and in case of illegal custody, do the needful in accordance with law and submit his report, on the next date of hearing.

5. At the first instance, respondent No.6 filed his reply submitting that Ajay Kumar son of the petitioners had been arrested in FIR No.318 dated 06.08.2020 under Sections 363, 366, 376 IPC and Sections 3 & 4 of POCSO Act, registered at Police Station Charthawal, District Muzaffarnagar (U.P), on 15.08.2020. The petitioner No.1 had been telephonically informed about the said fact and met with the detainee Ajay Kumar in the police station on 15.08.2020 and 16.08.2020 and was accompanied by an Advocate. They had also met with the respondent No.6 and, therefore, were aware of his arrest and the fact that he was in Muzaffarnagar Jail, therefore, it was argued rightly that the petitioners knew that he was in custody of respondents No.8 & 9. Therefore, on account of concealment of facts, the dismissal of the present criminal writ petition was sought.

6. It was further submitted that the present petition had only been filed on 21.08.2020 and neither any complaint had been filed. It

was also alleged that Ajay Kumar had forged the Aadhaar Card of Pinki Pundir, to show her date of birth as 01.01.2002 and annexed the same as Annexure P-1 with CRWP-5491-2020. Her age was stated to be 16 years 11 months when directions were issued by this Court and since her date of birth was 08.08.2003, therefore, she had been kidnapped from the lawful guardianship of her parents and was not eligible to marry. All these facts had been concealed. It was also averred that no marriage had happened at all and only photographs had been arranged and it is only sham transaction and a underage girl had been taken by Ajay Kumar on false premises. It was further alleged that he was in lawful custody in District Jail, Muzaffarnagar in the said FIR and the girl was in lawful guardianship of her father at village Biralsi. Statement of Pinki had also been recorded under Section 164 Cr.P.C., before the Judicial Magistrate, Muzaffarnagar on 13.08.2020 and, therefore, it was held out that the present petition was not maintainable.

7. It has been denied that son of the petitioners had remained in the custody of respondents No.6 & 7. Pinki was living with her parents and had told her parents that Ajay Kumar wanted to sell her to someone else. The High School result card (DMC) was attached to show her date of birth as 08.08.2003 alongwith with the transfer certificate form issued by Dayanand Gurukul Inter College, Biralsi, Muzaffarnagar and Aadhaar Card bearing No.647403884281, which is stated to have been issued on 27.08.2020 and downloaded on 01.09.2020.

8. In the reply filed by the Deputy Superintendent of Police, Narwana, it is stated that in compliance of the protection order dated 31.07.2020 both the detenues had joined the inquiry. Since they were not apprehending any danger to their life and liberty, as the girl had talked with her parents and brother, their statements were recorded on 08.08.2020 (Annexure R-1). It is further submitted inquiry had been made that Pinki was now residing with her parents at village Biralsi and not illegally detained and her statement had been recorded (Annexure R-3). FIR No.318 dated 06.08.2020 had been lodged at Police Station, Charthawal, District Muzaffarnagar (U.P) and the girl had been recovered on 13.08.2020 and her statement was got recorded under Section 164 Cr.P.C., wherein she levelled allegations of committing rape upon her and, therefore, on the basis of the same, Section 376 IPC and Sections 3 & 4 of POCSO Act were added. Ajay Kumar had been arrested on 15.08.2020 from Pipal Shah Tiraha at 11:30 AM and, thus, was lodged in judicial custody.

9. Keeping in view the documents on record, directions were issued on 08.09.2020, after calling and referring to the file of CRWP-5491-2020, since the same Aadhaar Card showed her date of birth as 01.01.2002. It was, thus, noticed that apparently there is forgery at some end. It was also noticed that the birth certificate (Annexure R-4) relied upon now was registered on 07.09.2020 and as noticed after proceedings had been initiated by this Court and the reply was filed by the private

respondents. It was also noticed that the date of issuance was 07.09.2020 after the protection order had been passed by this Court. It was also noticed that there is some overwriting on the date of birth of the scholar in Annexure R-2. Thus, directions were issued to respondent No.3 to look into this aspect and personally supervise the investigation without associating the DSP, Narwana and to confirm the location of Ajay Kumar as to whether he was in the State of Haryana till 09.08.2020 and when he reached the State of Uttar Pradesh. Similarly the location of Pinki Pundir and her father, whether they were in District Jind on 09.08.2020, was to be made from the mobile phones location.

10. In the meantime, respondents No.8 & 9 filed their reply, since notice was also issued to them through the official respondents of the State of Haryana. The said reply is specific on the fact of minority of Pinki and the lodging of the FIR and NBWs having been issued by the POCSO Court and that Ajay had been sent to judicial custody by the Court concerned on 15.08.2020. The charge-sheet had been sent to the Court, after investigation had been completed and the statement recorded under Section 164 Cr.P.C., of the girl.

11. The status report was filed by way of affidavit of Shri Shashank Kumar Sawan, IPS, Superintendent of Police, Jind on 23.09.2020, in compliance of the order dated 08.09.2020. It revealed that the mobile number of the detainee was active on 09.08.2020 and its last location was found in Kaushik Nagar, Jind till 13:09:25. Information

regarding reaching in the State of Uttar Pradesh could not be traced and no call was made on emergency No.100 from his phone. The phone of Pinki which was registered in the name of one Seema, her mother was not used for the period for which the call detail report was procured. The location of the Pinki thus could not be traced as to when she left the company of Ajay. Her date of birth was found to be 08.08.2003 as per documents. The Aadhaar Card procured during the enquiry conducted by the DSP, City Jind, produced for obtaining protection order, was stated to be a false document. The mobile number of respondent No.6 as per the inquiry showed that the location was in Jind on 09.08.2020.

12. Counsel for the petitioner has, thus, vehemently submitted that the petitioners son Ajay Kumar had been wrongly kidnapped as such from the jurisdiction of the State of Haryana and, thereafter, he has been handed over to the police authorities of Uttar Pradesh and the official respondents were thus lax in giving heed to the protection order dated 31.07.2020 of this Court.

13. Counsel for the State has submitted that the authorities as such had recorded the statements of the couple on 08.08.2020 and the matter has been resolved inter se and no further protection was required. He submitted that the present petition was not maintainable, since the girl was in custody of her parents and was in lawful guardianship. Ajay Kumar was in judicial custody, in pursuance of the above said FIR No.318 dated 06.08.2020 and there was no illegal detention and there is

nothing on record to show that the officials of the Haryana Police had helped respondent No.6 to take custody of the girl.

14. Similarly, counsel for the private respondents, Mr. Rana, has also argued that the petitioners were well aware regarding the detention of their son in jail and had been informed by the police authorities while referring to the arrest memo appended alongwith the reply of SSP, Muzaffarnagar to show that the parents had been informed of the arrest on 15.08.2020. Therefore, he contended that no case is made out for issuing directions as the detainee was in judicial custody in FIR No.318 dated 06.08.2020, lodged by father of the girl and in the absence of any illegal detention, no further orders were called for.

15. After hearing counsels for the parties, this Court is of the opinion that the respondents as such have been able to rebut the case of the petitioners. There is sufficient material available to show that the girl's age might be 08.08.2003, in view of the documents which had been placed on record. The protection order was based on the same Aadhaar Card, whereby her date of birth was shown as 01.01.2002. Thus, it would be a matter of trial as to which of the documents would depict the correct date of birth and which of the document is forged or has been got issued subsequently in support of the case of the parties.

16. It is the settled principle that the writ Court will not go into the disputed questions. *Prima facie* this Court is of the opinion that at this stage the girl would not be over 18 years, at the time the protection

order was passed, since apart from Aadhaar Card, no other conclusive material was placed on record. Now documents Annexure R-1 to R-4 have been placed on record, which were got issued by the parents of the girl. All of these documents as such are showing common date of birth as 08.08.2003. Therefore, this Court will not opine upon the authenticity of any of the documents, since it would be giving its opinion on the basis of the documents alone without calling for the records and it would prejudice the proceedings in the FIR case which stands registered against Ajay Kumar at Police Station Charthawal, District Muzaffarnagar (U.P).

17. Another fact is apparent that the present petition was filed on 21.08.2020 and Ajay Kumar had gone missing on 09.08.2020 and his arrest was shown on 15.08.2020. The petitioners thus did not approach this Court at that stage, but choose to file the case and impleaded respondents No.8 & 9 knowing that their son was in their legal custody of the said respondents without seeking any relief against them, in pursuance to FIR No.318, but choose not to mention the said facts.

18. Resultantly, it can be safely held that no further orders are liable to be passed in the present criminal writ petition, since the custody of Ajay Kumar is with the respondents No.8 & 9 and not with respondents No.6 & 7, in pursuance of legal proceedings initiated by respondent No.6, on account of the kidnapping of his daughter. The detention as such cannot be said to be illegal in view of the above facts and the jurisdiction of the same cannot be questioned. Similarly, the girl

is in the custody of her guardian/parents at her ancestral village and the petitioners as such would have no right for her custody being the parents of her alleged husband, in preference to the natural parents. Accordingly, the present criminal writ petition is dismissed with the abovesaid observations.

19. Needless to say that anything observed herein is only for the purpose of deciding the present criminal writ petition and will not prejudice the trial Court at Muzaffarnagar, in any manner while deciding the case on merits.

13.10.2020
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:	Yes
Whether Reportable:	Yes