

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-32531-2020 (O&M)

Ikhlas MahomadPetitioner

Versus

State of HaryanaRespondent

CRM-M-28408-2020 (O&M)

Ikhlas Mahomad and anotherPetitioners

Versus

State of Haryana and anotherRespondents

CRWP-7850-2020 (O&M)

Ikhlas MahomadPetitioner

Versus

State of Haryana and othersRespondents

Date of Decision: 17.12.2020

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present : Mr. Inderjeet Singh, Advocate, (In CRM-M-32531-2020 &
CRWP-7850-2020)
Mr. S.K.Panwar, Advocate, (In CRM-M-28408-2020)
for the petitioners.

Mr. Munish Sharma, AAG, Haryana.

Mr. Satish Chaudhary, Advocate,
for the complainant.

Through Video Conferencing

JASGURPREET SINGH PURI, J. (Oral)

These three petitions are being taken up together as being inter

connected with each other.

In CRM-M-32531-2020, the prayer made is for grant of anticipatory bail to the petitioner, in CRM-M-28408-2020, the prayer made is for quashing of the FIR No.187 dated 30.08.2020 and in CRWP-7850-2020, the prayer made is for issuance of a writ in the nature of habeas corpus seeking directions to respondent Nos.2 and 3 to produce the detenue, namely, Sabana.

The facts of the case which have come up from the pleadings and from the submissions of the learned counsel for the parties are that it is a case put up by the petitioner that he got married to a girl namely Sabana, who was below 18 years of age and according to him, the marriage was solemnized as per the Muslim law and since the age of puberty under the Muslim law was 15 years, thus, according to the learned counsel for the petitioner the marriage was a perfectly legal marriage. The father of the petitioner filed an FIR No.187 dated 30.08.2020, under Section 363 and 366-A of the Indian Penal Code, at Police Station Pratap Nagar, District Yamuna Nagar (Haryana), by alleging that the aforesaid girl was his daughter whose age is about 17 years and on 30.08.2020, at about 3:00 am in the morning, the girl was not found in her room so the family members started searching for her but she could not be found. It was stated in the FIR itself that they have an apprehension that the petitioner, namely, Iklash resident of Mamliwala, Police Station Partap Nagar, District Yamuna Nagar, has enticed away his daughter on the pretext of marrying her and therefore, stern action should be taken against him.

It has come on record that the petitioner and the girl had filed a

joint petition seeking protection of their life and liberty, before this Court vide CRWP-6593-2020 and this Court on 04.09.2020, disposed of the petition and gave a direction to the police to decide the representation of the petitioners and to grant them protection, if the threat to their life and liberty is perceived and it was also made clear that the order shall not be taken to protect the petitioners from legal action for violation of law, if any, committed by them. Thereafter, the petitioner and the aforesaid girl again filed a joint petition before this Court, i.e., CRM-M-28408-2020 seeking quashing of the aforesaid FIR No.187 dated 30.08.2020 in which it was stated that both of them have performed a love marriage (Nikah) of their own sweet will and therefore, the FIR should be quashed. This Court while issuing notice of motion on 17.09.2020, also directed that no coercive steps shall be taken against the petitioner till the next date of hearing. Thereafter, the petitioner filed another petition bearing CRWP-7850-2020, seeking a writ in the nature of habeas corpus against the father of the girl and some other persons on the ground that they have illegally detained the aforesaid girl stated to be his wife. This case was directed to be heard with other two cases on 23.11.2020. Thereafter, the petitioner filed another petition, i.e., CRM-M-32531-2020 on 08.10.2020 seeking anticipatory in the aforesaid FIR, by stating that now offences under Section 6 of the Prevention of Children from Sexual Offences Act and Section 9 of the Child Marriage Prohibition Act have also been added and therefore, he sought anticipatory bail from this Court. On 13.10.2020, this Court had issued notice of motion for 12.11.2020. On that date, the learned counsel for the State of Haryana stated that in the protection petition which was filed by the petitioner earlier,

he had attached certificate of marriage of a Masjid which was not in existence as per the investigation and on inquiring upon this when the statement of girl was again recorded under Section 164 Cr.P.C., before the learned Magistrate, she has stated that she had given the earlier statement under threat.

Since, there were two contradictory statements by the girl under Section 164 Cr.P.C., this Court directed the Superintendent of Police, Yamuna Nagar, Haryana, to constitute a team of police officials headed by a woman police officer not below the rank of a gazetted officer to visit the place where the girl is residing and get her statement recorded afresh before the learned Magistrate and thereafter, file his detailed affidavit with regard to the present controversy and interim protection was also granted to the petitioner. On 16.10.2020, an affidavit was filed by the Deputy Superintendent of Police, Yamuna Nagar, wherein it was stated that in pursuance of the directions of this Court, the girl was produced before the learned Court of Ilqa Magistrate, Bilaspur, on 14.10.2020. Her statement under Section 164 Cr.P.C. was recorded in which she has deposed that on 30.08.2020 at 3:00 am, the petitioner called her telephonically out of her house and his cousin brother, namely, Dilshan was also along with him and they took her forcibly on the bike to the Som river. The petitioner committed wrong act with her at Som river and Dilshan left them at village Aasre wala. Ikhlas (petitioner) kept her there for 20/21 days and committed wrong act upon her and she also stated in her statement that both Ikhlas and Dilshan threatened her that if she will not depose statements in their favour, then her brother and father shall be put to death and that when she deposed

earlier statement under Section 164 Cr.P.C. before the learned Magistrate, she was under the influence of fear and has also stated that stern legal action should be taken against them. The factum of marriage between the petitioner and the girl was also disputed by the learned State counsel and while referring to the affidavit, which was filed by the State, it was stated that the investigating agency have found that the marriage was also fake and the certificate of marriage issued was also fake. The learned State counsel also submitted that although earlier on the basis of the petition filed by the petitioner, protection order was passed by this Court but those were based upon the certificates of marriage which according to the investigating agencies were fake. In view of the statement made by the girl under Section 164 Cr.P.C, in pursuance of the directions of this Court, wherein she has stated that she had been taken by the petitioner and Dilshan by force, this Court vacated the interim order dated 13.10.2020 in CRM-M-32531 of 2020.

The custody of the girl, who is admittedly minor is presently with the parents of the girl. The learned counsel for the petitioner as well as the learned counsel for the complainant (father) have categorically stated that the girl is now residing with her parents.

CRM-M-32531-2020 (O&M)

CRM-28930-2020

This is an application for placing on record the copy of Facebook chat (Annexure P-8).

For the reasons mentioned in the application, the same is allowed subject to all just exceptions and the copy of Facebook chat

(Annexure P-8) is taken on record.

This application stands disposed of accordingly.

Main Case

The learned counsel for the petitioner has submitted that the petitioner had got married with the girl although she was of minor age but as per the Muslim law, she has attained the age of puberty and therefore, the marriage was legal in the eyes of law. He has further submitted that earlier when the statement was recorded under Section 164 Cr.P.C, the girl had deposed before the learned Magistrate that she has got married with the petitioner of her own consent and thereafter, a contradictory statement had come which the petitioner again recorded under Section 164 Cr.P.C before the learned Magistrate. He further submitted that in pursuance of the directions issued by the Court when for the third time the statement was recorded under Section 164 Cr.P.C. although the girl had stated that she was taken forcibly by the petitioner and one another person, namely, Dilshan and wrongful act was committed by them upon her but this statement was made under threat and therefore that statement cannot be taken into consideration. The learned counsel for the petitioner further relied upon the conversation on Facebook messages which he had attached as Annexure P-8 with the application, and stated that after recording the statement under Section 164 Cr.P.C., the girl has stated that statement was recorded at night time and the petitioner was not present there and that the petitioner should forgive her and various other conversation has been mentioned in the Facebook conversation. The learned counsel for the petitioner has further submitted that the petitioner had legally married the girl and therefore, she cannot be

kept in custody with the parents of the girl and prayed for grant of anticipatory bail as well as seeking a direction to handover the custody of the girl to the petitioner.

On the other hand, the learned State counsel has submitted that Firstly, a statement was recorded under Section 164 Cr.P.C in pursuance of the directions passed by this Court in which she has categorically stated that she was forcibly taken away by the petitioner and another person namely Dilshan and wrongful act was committed by them and therefore, the statement which has been recorded in pursuance of Section 164 Cr.P.C in pursuance of directions of this Court has to be given credibility . He has further submitted that even if the earlier two statements were contradictory in nature but now since this Court had issued directions to the Superintendent of Police, a lady police officer was deputed for this purpose and the statement was recorded before the learned Magistrate under Section 164 Cr.P.C., the present petition is liable to be dismissed. Secondly, in the affidavit, which has been filed by the State, it has been stated that the marriage certificate itself was fake as per the investigation conducted by the police. While referring to para 3 of the affidavit, wherein it has been stated that an SIT consisting of SI Mahroof Ali, L/ASI Sabana Begam and ASI Inderdeep Singh was constituted on 07.09.2020 and during the course of investigation, it was found that the Nikahnama was fake as in the village Rajpur, District Saharanpur (U.P.), no Masjid by the name of Jamia Ullam was found existing and this fact has been confirmed by the Pardhan/Sarpanch of village Rajpur, District Saharanpur (U.P). The statement of Pardhan/Sarpanch was also attached as Annexure R-1.

Furthermore, in the alleged Nikahnama, a person namely Mohd. Furkan son of Musatkeem, resident of Tajewala is shown as witness No.2 and Julfan son of Yamin, resident of village Khijri is shown as an advocate of Nikah, whereas in the said villages, no persons of such names were found residing and in this regard, certificates have also been issued by the Sarpanchs of the said villages Tajewala and Khijri, respectively, and are attached as Annexures R-2 and R-3. It is further stated in the affidavit that keeping in view the seriousness of the case, a team was constituted of Woman SI Mewa Devi and SI Satish Kumar to assist Smt. Mamta Sauda, HPS, Deputy Superintendent of Police, Head Quarters, Kurukshetra, and after passing order of this Court, the said Deputy Superintendent of Police took help from the Yamuna Nagar police and conducted an inquiry and produced the girl before the learned Court of Ilqa Magistrate, Bilaspur on 14.10.2020 for getting her statement under Section 164 Cr.P.C. In her statement, she deposed that on 13.08.2020 at 3:00 am, the petitioner called her telephonically out of her house. His cousin brother namely Dilshan i.e. Son of his maternal uncle was also along with him and they took her forcibly on the bike to the Som river. The petitioner committed wrong act upon her at Som river and Dilshan left them at village Aasre wala. The petitioner kept her there forcibly for 20/21 days and committed wrong act upon her and both of them threatened her that if she will not depose statements in their favour, then her brother and father shall be put to death. Thirdly, the learned State counsel further argued that the Facebook conversations which have been relied upon by the learned counsel for the petitioner after the recording of the statement do not reflect anything with regard to validity of the

statement under Section 164 Cr.P.C given by the girl. A perusal of the aforesaid conversation on Facebook does not suggest that the statement which was recorded by the girl on 14.10.2020 was under a threat or fear and therefore, reliance made by the learned counsel for the petitioner on the aforesaid Facebook conversations are of no use or significance. Apart from the same, since the girl is admittedly minor such kind of Facebook conversations etc will have no significance in the eyes of law. The learned State counsel has further submitted that it is a case where serious offence has been committed by the petitioner and now the girl has also given categorical statement before the learned Magistrate in this regard and for that purpose the police investigation of the petitioner is very essential. He submitted that considering the peculiar facts of the case, which have been stated above, there is every likelihood that the petitioner can influence the witnesses and the girl in case he is granted the benefit of bail. Therefore, he has strongly opposed the grant of bail.

Mr. Satish Chaudhary, Advocate, who is the father of the girl and the complainant in the FIR has stated that the girl is now residing with them and the girl has given correct statement before the learned Magistrate in pursuance to the directions of this Court. So far as the earlier statement which has made by the girl before the learned Magistrate, the same was under force and threat from the petitioner and therefore, now she has made the position clear in this regard and therefore, has opposed the grant of bail to the petitioner.

I have heard learned counsel for the parties at length.

It is correct that two statements were made by the girl earlier on

two occasions but when this Court directed the Superintendent of Police to constitute a team of lady police officials for ascertaining the truth and for getting the statement recorded before the learned Magistrate, the girl recorded the statement before the learned Magistrate under Section 164 Cr.P.C., in which she has categorically stated that she was forcibly taken away by the petitioner and another person namely Dilshan and wrongful act was committed by the petitioner. Furthermore, they had given threats to the girl in this regard. So far as the marriage certificate relied upon by the learned counsel for the petitioner is concerned, the SIT of the police enquired with regard to the authenticity of the same and it was found that certificate was fake. So far as the Facebook conversations between the petitioner and the girl are concerned, the same would be of no significance in view of the fact that a perusal of the same would show that there is nothing in these messages to depict the girl has stated that her statement was not correct. Apart from the same, the girl being admittedly minor, these kinds of messages cannot be considered as having any significance or bearing upon case. It is an admitted position that at present the girl is residing with her parents and considering the factum of the statements wherein she has rather given two contradictory statements before the learned Magistrate earlier, this Court is satisfied that the submission made by the learned counsel for the State that in case, bail is granted to the petitioner then there is a likelihood that he may interfere in the investigation process and influence the witnesses carries some weight.

In view of the totality of the circumstances of the present case, I do not deem it fit and appropriate to grant bail to the petitioner. The present

petition is hereby dismissed.

CRM-M-28408-2020

This petition has been filed for quashing of the FIR 187 dated 30.08.2020. The petition is being filed jointly by the petitioner and the girl, namely, Sabana. This petition lacks merits in view of the fact that one of the petitioner is the girl, who has now given the statement before the learned Magistrate that she was forcibly taken away by the petitioner and therefore, such a petition cannot be sustained on behalf of the aforesaid girl. Even otherwise also, in view of the aforesaid background of the case, no ground is made out for quashing of the FIR and therefore, the same is hereby dismissed.

Ordered accordingly.

CRWP-7850-2020

This petition has been filed by the petitioner seeking a writ in the nature of habeas corpus to produce the girl, namely, Sabana.

In view of the aforesaid observations made in the other connected cases, the question of issuance of any directions or producing the girl would not arise, particularly in view of the statement given by the girl under Section 164 Cr.P.C. before the learned Magistrate and therefore, this petition is also hereby dismissed.

Ordered accordingly.

(JASGURPREET SINGH PURI)
JUDGE

17.12.2020
adhikari

Whether speaking/non-speaking	:	Yes/No
Whether reportable	:	Yes/No