

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

233

**CRM-M-33530-2020
Date of decision: 17.11.2020**

Neetu

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Ms. Nupur Choudhary, Advocate
for the petitioner.

Mr. Sandeep Singh Deol, DAG, Punjab
for the respondents.

ARUN KUMAR TYAGI, J (ORAL)

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

The petitioner has filed the present petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Cr.P.C.") for directions to respondents to conduct and conclude the investigation in case FIR No.104 dated 04.07.2020 registered under Sections 363 and 366A of the Indian Penal Code, 1860 (for short, "the IPC") at Police Station Phase I, SAS Nagar.

The petitioner has sought further relief of issuance of directions to the Director, PGIMER, Chandigarh to constitute a Medical Board to conduct the medical examination of the petitioner's minor daughter Roli including ossification test to determine her age and for issuance of directions to respondents to restore the custody of her minor daughter to the petitioner and for taking action on application dated 10.08.2020.

Briefly stated, the petition has been filed on the averments that the petitioner has lodged FIR against Suraj regarding abduction of her minor daughter Roli. The above said accused forged Aadhaar Card of her minor daughter by showing her date of birth as 01.01.2002 and obtained protection order from this Court by filing CRWP-3897-2020 on the basis thereof by misleading this Court by producing forged Aadhaar Card. The husband of the petitioner filed habeas corpus petition which was dismissed by Co-ordinate Bench of this Court vide order dated 04.08.2020 in view of her statement that she had voluntarily married the accused. The husband of the petitioner submitted application dated 10.08.2020 to the police but no action has been taken on the same.

The petition has been contested by learned State Counsel for the respondents in terms of status report filed by way of affidavit of Gursher Singh Sandhu, PPS, Deputy Superintendent of Police City-I, District SAS Nagar (Mohali) through e-mail print out of which is taken on record.

Vide order dated 10.11.2020, respondent No.2-Senior Superintendent of Police, SAS Nagar (Mohali) was directed to ensure presence of Roli before this Court through video conferencing.

In compliance with the above said order, Roli has been produced by SI Amandeep Kaur through video conferencing.

On being questioned by this Court, Roli has stated that she is aged more than 18 years. She has solemnized marriage with Suraj who is in custody at present and she is living with her mother-in-law with her own free will.

I have heard learned Counsel for the petitioner and learned State Counsel and have gone through the record.

Learned Counsel for the petitioner has submitted that as per the School Leaving Certificate and her Aadhaar Card, detenue Roli is minor and her marriage with Suraj is illegal. The petitioner is entitled to custody of her minor daughter Roli and the same be handed over to her. The police is not properly investigating the criminal case and directions for carrying out proper investigation and taking of action on representation dated 10.08.2020 may be issued.

On the other hand, learned State Counsel has submitted that on conducting of ossification test detenue Roli was found to be major and as detenue Roli expressed her unwillingness to go with her parents the Judicial Magistrate First Class, Mohali set her free. Detenue Roli is now living with her mother-in-law and cannot be said to have been illegally detained. Learned State Counsel has further submitted that investigation of the case will be concluded expeditiously and that representation dated 10.08.2020 made by husband of the petitioner will also be considered.

Suraj and detenue Roli filed CRWP-3897-2020 for protection of their life and liberty from danger at the instance of her parents on the ground of having solemnized marriage against their wishes. The said petition was allowed vide order dated 18.06.2020 whereby the Senior Superintendent of Police, Mohali was directed to get the alleged threat perceptions of the petitioners examined expeditiously in accordance with law and take necessary steps as may be warranted under the facts and circumstances of the case.

The petitioner has claimed that the above said order was obtained by Suraj by misleading the Co-ordinate Bench of this Court by producing forged Aadhaar Card. Since the Aadhaar Card was allegedly forged before filing of the petition, the petitioner will be at liberty to make complaint to the police for registration of FIR or file complaint before the Judicial Magistrate having territorial jurisdiction regarding the alleged offences committed by Suraj and filing of the complaint by this Court will not be necessary for taking of cognizance of the alleged offences committed by Suraj by the concerned Court.

Ram Manohar father of detenue Roli filed CRWP-5090-2020 for directions to respondents No.1 to 3 to get his daughter Roli released from illegal custody of respondents No.4 and 5 therein which was dismissed by the Co-ordinate Bench of this Court vide order dated 04.08.2020 in view of her statement that she had solemnized marriage with Suraj.

In their reply respondents No.1 to 4 have submitted that during investigation of the FIR registered on statement of the present petitioner, Roli was taken for her medical examination to Civil Hospital, Phase VI, Mohali where she refused to undergo medical examination. However, she gave consent for ossification/X-ray test and the same was got done. As per the report, radiological age of Roli was between 18 to 20 years. Roli was thereafter produced before the Judicial Magistrate First Class, Mohali who recorded her statement under Section 164 of the Cr.P.C. and in view of her unwillingness to go with her parents she was set free. Roli is at present living with her mother-in-law.

Since ossification test of detainee Roli has already been conducted there is no necessity of constituting of any Medical Board for conducting her ossification test. As per ossification test detainee Roli has been found to be major. Detainee Roli, being major, is living with her mother-in-law out of her own free will.

Even if detainee Roli be assumed to be minor, even then this Court does not consider it appropriate to direct that Roli's custody be forcibly entrusted to her parents against her wishes. In ***CRWP-4181-2020 titled as 'Preeti and another Vs. State of Haryana and others'*** ***decided on 16.10.2020***, a Co-ordinate Bench of this Court held that where the minor girl, who claims to have married, expresses her unwillingness to go with her parents, her custody can be given to her mother-in-law.

In the facts and circumstances of the present case, it will be appropriate that detainee Roli is allowed to live with her mother-in-law. Therefore, the petitioner is not entitled to handing over of custody of detainee Roli.

However, the Chairperson of the Child Welfare Committee, SAS Nagar (Mohali), is directed to depute a Child Welfare Officer to randomly visit the house where detainee Roli is residing with her mother-in-law periodically to ensure that Roli is being well cared for and to ascertain whether she has any complaints. The Child Welfare Committee, SAS Nagar (Mohali), shall take on record the reports of such Child Welfare Officer and move this Court for appropriate directions, if so considered necessary.

In the present case neither there is any prayer nor any

ground is made out for transfer of investigation to any other agency or Special Investigation Team. In the facts and circumstances of the case, respondents No.2 and 3 are directed to consider the representation dated 10.08.2020 made by husband of the petitioner and to take appropriate action in view of the averments made therein as may be warranted by the facts and circumstances of the case and to conduct and conclude the investigation in accordance with law.

The petition is disposed of accordingly with the above said directions.

17.11.2020

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(ARUN KUMAR TYAGI)
JUDGE

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