

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

CRWP. No.9956 of 2020 (O&M)

DATE OF DECISION: 16.12.2020

Jakar & Anr.Petitioners

versus

State of Haryana & Ors.Respondents

CORAM: HON'BLE MRS. JUSTICE ALKA SARIN

Present:- Mr. Vishal Garg Narwana, Advocate, for the petitioners.

Mr. Naveen Singh Panwar, DAG, Haryana.

Mr. Vipul Aggarwal, Advocate for respondent No.4

Ms. Sunita Gupta, Advocate for Warisa (first wife of
petitioner No.1)

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Taken up through video conferencing.

The present criminal writ petition has been filed under Article 226 of the Constitution of India for issuance of directions to respondent Nos.2 and 3 to protect the life and liberty of the petitioners at the hands of respondent Nos.4 to 7.

In the present case, the petitioners are both Muslim.

Petitioner No.1 is stated to be aged more than 23 years while petitioner

No.2 is stated to be aged more than 18 years. Aadhaar Cards of both the petitioners are attached with the petition as Annexures P-1 and P-2 respectively. On 21.11.2020 the petitioners solemnized their marriage as per Muslim rites and rituals and a translated copy of the Nikahnama is attached with the petition as Annexure P-3. The marriage was solemnized against the wishes of respondent Nos.4 to 7 who are the relatives of petitioner No.2. Counsel for the petitioners has submitted that the petitioners apprehend danger to their life at the hands of respondent Nos.4 to 7 and in this regard the petitioners have sent a representation dated 23.11.2020 (Annexure P-4) to the Superintendent of Police, Nuh, Haryana for providing adequate security. However, no action has been taken.

On 02.12.2020, when the matter was taken up for hearing, Mr. Vipul Aggarwal, Advocate joined the session through video conferencing on behalf of respondent No.4, who is the father of petitioner No.2 and pointed out that petitioner No.2 is 16 years old. Ms. Sunita Gupta, Advocate also put in appearance through video conferencing on behalf of the first wife of petitioner No.1 and contended that as per Muslim law the consent of the first wife is necessary for performing a second marriage. Today the same objections have been raised by them.

Counsel for the petitioners has relied upon the decisions by this Court in '*Kammu vs. State of Haryana & Ors.*' [2010(4) RCR (Civil) 716]; '*Yunus Khan vs. State of Haryana & Ors.*' [2014(3) RCR (Criminal) 518] and '*Mohd. Samim vs. State of Haryana & Ors.*' [2019(1) RCR (Criminal) 685] to contend that in Muslim law puberty and

majority are one and the same and that there is a presumption that a person attains majority at the age of 15 years. According to counsel, a Muslim boy or Muslim girl who has attained puberty is at liberty to marry anyone he or she likes and the guardian has no right to interfere.

This Court has taken note of the judgements cited on behalf of the petitioners and also the fact that the girl in the instant case i.e. petitioner No.2 is aged more than 18 years. In the case of **Yunus Khan** (*supra*) it has been noted that the marriage of a Muslim girl is governed by the personal law of Muslims. Article 195 from the book Principles of Mohammedan Law by Sir Dinshah Fardunji Mulla has also been reproduced in the said decision which article reads as under :

“195. Capacity for marriage - (1) Every Mahomedan of sound mind, who has attained puberty, may enter into a contract of marriage.

(2) Lunatics and minors who have not attained puberty may be validly contracted in marriage by their respective guardians.

(3) A marriage of a Mahomedan who is sound mind and has attained puberty, is void, if it is brought about without his consent.

Explanation - Puberty is presumed, in the absence of evidence, on completion of the age of fifteen years.”

Thus, the petitioner No.2 being of over 18 years of age was competent to get married as per Muslim law. Petitioner No.1 is in any

event is stated to be more than 23 years of age. Both the petitioners are of marriageable age as envisaged by Muslim law. The alleged illegality of the marriage of the petitioners having been solemnized without the consent of the first wife is not to be gone into in the present proceedings which are only regarding providing of protection to the petitioners. The issue in hand is not the validity of the marriage but the fact is that the petitioners are seeking protection of life and liberty as envisaged under Article 21 of the Constitution of India. Article 21 of the Constitution of India provides for protection of life and personal liberty and further lays down that no person shall be deprived of his life and personal liberty except as per the procedure established by law. The Court cannot shut its eyes to the fact that the apprehension of the petitioners needs to be addressed. Merely because the petitioners have got married against the wishes of their family members they cannot possibly be deprived of the fundamental rights as envisaged in the Constitution of India.

In view of the above discussion and without expressing any opinion with regard to the veracity of the contents of the petition and the submissions made by learned counsel for the petitioners, the present petition is disposed of with a direction to the Superintendent of Police, Nuh, Haryana to decide the representation of the petitioners dated 23.11.2020 (Annexure P-4) and take necessary action as per law.

It is, however, made clear that this order shall not, in any manner, be construed as an expression of the opinion on the veracity of the statement made by the petitioners or the validity of the marriage and shall

have no effect on any other civil or criminal proceedings, if any,
instituted/pending against them.

(ALKA SARIN)
JUDGE

16.12.2020
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NOTE : Whether speaking/non-speaking: Speaking Whether reportable: YES/NO
