

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

235

**CRWP-2673-2019 (O&M)
Date of Decision: 07.01.2020.**

Mohd. Israil

....Petitioner.

Versus

State of Haryana and others

....Respondents.

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. G.S. Dhillon, Advocate for the petitioner.

Mr. Kapil Bansal, Deputy Advocate General, Haryana
for respondents No.1 to 4.

Suvir Sehgal, J. (Oral)

Petitioner-Mohd. Israil has approached this Court for issuance of a writ in the nature of Habeas Corpus for release of the detenue namely Sanjaj @ Sehnaz wife of Mohd. Israil daughter of Jahid, from the illegal custody of respondents No.3 and 4.

The petitioner is the husband of the detenue and Nikah between them was performed on 14.11.2019 according to Muslim rites and Ceremonies, as is apparent from Marriage Certificate (Annexure P1). The marriage had taken place against the wishes of father of the detenue, respondent No.5. Since the detenue and the petitioner apprehended threat to the life and liberty, they filed CWP-34441-2019 titled as Sanjaj @ Sehnaz and another Vs. State of Haryana and others, which was disposed of by this Court vide order dated 26.11.2019 (Annexure P2) with a direction to respondent No.3—S.H.O. Police Station, Partap Nagar (Khizrabad), Distirct Yamuna Nagar, to look into the representation, if any, filed by the petitioners seeking protection, to verify its contents and if necessary to take

requisite steps for grant of protection to life and liberty of the petitioners in accordance with law.

When respondent No.3 was approached with the order dated 26.11.2019, the petitioner came to know that FIR No.155 dated 14.11.2019 had been registered against him under Sections 363, 366-A IPC at Police Station Partap Nagar (Khizrabad), District Yamuna Nagar, at the instance of respondent No.5 who had claimed that the detainee was 17 years of age as per School Leaving Certificate, wherein her date of birth was shown as 31.10.2002. The petitioner approached this Court by filing CRM-M-52162-2019 for quashing of the said FIR and this Court vide order dated 07.12.2019 (Annexure P4) issued notice of motion and notice regarding stay. In another petition, this Court had granted him anticipatory bail and his arrest was stayed vide order dated 19.12.2019 (Annexure P5). The petitioner claims that in fact as per the Aadhar Card, the date of birth of the detainee is 01.01.1999 and she is more than 20 years of age. He has further claimed that on 24.12.2019, the detainee came to the Court of Duty Magistrate, Bilaspur District Yamuna Nagar, where her statement under Section 164 Cr.P.C. was recorded, wherein she admitted that she had married the petitioner on her own free will and without any pressure. The petitioner still further claims that on the pretext of counseling, respondent No.3 took the detainee away from the petitioner and she was initially taken to safe house at Jagadhari from where she was shifted to CWC/One Stop Centre, Yamuna Nagar and has been detained there.

Learned counsel for the petitioner has argued that the petitioner and the detainee are Muslims and they are governed by the Muslims Personal Law. Their marriage is valid and the petitioner is entitled to take

the custody of the detenue as she is his legally wedded wife. Learned counsel has further placed reliance upon judgment of this Court in CRWP-532 of 2018—Mohd. Samin Vs. State of Haryana and others, decided on 26.09.2018.

On 30.12.2019, this Court issued notice to the official respondents and directed that the detenue be produced before the Court. The detenue, who was detained at Bal Kalyan, Chhachhrauli, District Yamuna Nagar, was produced in Court today. On being asked, she stated that she wanted to stay with her husband at her in-laws residence.

Learned State counsel has submitted that the date of birth of the detenue, as per School Leaving Certificate, is 13.10.2002 and that she is 17 years of age. The factual position regarding the marriage of the detenue with the petitioner, the filing of petition for protection as well as the petition for quashing and anticipatory bail by the petitioner could not be disputed by learned State counsel.

I have heard the counsel for the parties.

There is no dispute about legal position. The petitioner and the detenue, being Muslims, are governed by the Muslims Personal Law (Shariat) Application Act, 1937. After noticing the Muslim Personal Law and after extensive review of case law on the subject, this Court in **Mohd. Samin case (Supra)** held as under:-

“As per the Text Book of Mohammedan Law by Aqil Ahmad, “Puberty and majority” in the Muslim Law are one and the same thing. The presumption is that when a person attains majority at the age of 15 years, it is a age of puberty and the marriage of a minor without the consent of the guardian is invalid unless it is ratified after the attainment of majority. A boy or girl, who has attained puberty, is at liberty to marry any

one he or she likes and the guardian has no right to interfere.”

In any case, even as per the School Leaving Certificate, the detenue Sanjaj @ Sehnaz wife of Mohd. Israil daughter of Jahid was more than 17 years of age at the time when her marriage was solemnized. She has in unequivocal terms expressed her desire to live in her matrimonial home.

Keeping in view the facts and the settled position of law, as discussed above, the marriage of petitioner and detenue cannot be said to be invalid or void. Accordingly, the present petition is allowed and the detenue is entitled to remain with the petitioner being his wife. Incharge, Bal Kalyan, Chhachhrauli, District Yamunanagar is directed to complete all formalities and to forthwith release the detenue from detention.

(SUVIR SEHGAL)
JUDGE

07.01.2020

komal

Whether speaking/ reasoned	:	Yes/ No
Whether Reportable	:	Yes/ No