

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.241 of 2020

Arising Out of PS. Case No.-631 Year-2019 Thana- PIRBAHOR District- Patna

Bibi Darakhshan Firoz Wife of Md. Firoz Alam Resident of Village - Chikni,
Ward No. 2, P.O.- Rahua, P.S.- Sour Bazar, District- Saharsa-852127

... .. Petitioner

Versus

1. The State of Bihar through the Director General of Police, Govt. of Bihar, Patna Bihar
2. The Senior Superintendent of Police, Patna Bihar
3. The Officer-in-charge, Pirbahore Police Station, District- Patna Bihar
4. Ravindra Kumar Yadav Son of Biren Yadav Resident of Village - Chikni, Ward No.-6, P.O.- Rahua, P.S.- Sour Bazar, District- Saharsa- 852127
5. Rinku Devi Wife of Ravindra Kumar Yadav Resident of Village - Chikni, Ward No.-6, P.O.- Rahua, P.S.- Sour Bazar, District- Saharsa- 852127
6. Nitish Kumar Son of Ravindra Kumar Yadav Resident of Village - Chikni, Ward No.-6, P.O.- Rahua, P.S.- Sour Bazar, District- Saharsa- 852127
7. Resham Firoz D/O - Md. Firoz Alam Resident of Village - Chikni, Ward No.-2, P.O.- Rahua, P.S.- Sour Bazar, District- Saharsa- 852127

... .. Respondents

Appearance :

For the Petitioner : Mr. Syed Masleh Uddin Ashraf, Adv.
For the State : Mr. Prabhu Narayan Sharma, APP
For the Respondent Nos.4 to 7 : Mr. Shailendra Kumar Singh, Adv.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)

Date : 30-11-2021

Heard learned counsel for the petitioner, learned counsel for the State and learned counsel for the respondent nos.6 and 7.

2. The instant application has been filed by the



mother of respondent no.7 for issuance of a writ in the nature of *habeas corpus* directing respondent nos.2 to 6 to produce respondent no.7 in the Court. The contention of the petitioner is that respondent no.7 is a student of B.A. Part-2 in B.N. College, Patna. She was staying in Shahin Girls Hostel, Ramna Road, Patna. She became traceless from her hostel from 07.12.2019. Despite all sincere efforts, she could not be traced out. Hence, on 11.12.2019, Pirbahore P. S. Case No. 631 of 2019 was instituted under Sections 363 and 364 of the Indian Penal Code on the basis of a written report submitted to the S.H.O. of Pirbahore Police Station by Md.Tanvir Alam, the maternal uncle of respondent no.7, who was her local guardian.

3. In the written report, Md. Tanvir Alam stated that his niece Resham Firoz (Respondent No.7), aged about 19 years, daughter of Md. Firoz Alam, resident of Village- Chikni, P.S. Sour Bazar, District- Saharsa, a student of B.A. Part-2 of B.N.College, Patna was pursuing her studies while staying in Shahin Girls Hostel, Ramna Road, Patna. On 07.12.2019, she went out of her hostel at 07:15 AM and since then she is missing. On inquiry, he came to know that Nitish Kumar (Respondent no.6), aged about 19 years, who is a co-villager of respondent no.7 had threatened the brother of respondent no.7



that he would forcibly lift respondent no.7 from her place of stay. On further inquiry, he came to know two numbers of mobile phone of respondent no.6, but they were switched off. The mobile phone of his niece was also switched off. He suspected that his niece has been abducted and is being wrongfully confined for some illegal purpose.

4. The further contention of the petitioner is that on 19.01.2020 she received a call on her mobile number from the mobile number of respondent no.7. She informed her that she has been forcibly taken and married to respondent no.6 with the help of respondent nos.4 and 5, who are father and mother of respondent no.6 respectively and has been kept captive by them. She also stated that they are frequently moving with her from one place to another. Again, on 21.01.2020, respondent no.7 called from her mobile to the mobile numbers of her grandfather and mother and on 22.01.2020 to mobile number of her father and expressed her desire to get her recovered from the captivity of respondent nos.4 to 6.

5. Mr. Syed Masleh Uddin Ashraf, learned counsel appearing for the petitioner submitted that the petitioner along with her family members met respondent no.3 and the investigating officer and requested them to recover her daughter,



who has been confined illegally and forcibly by respondent nos. 4 to 6, but they are not making any sincere effort to get her daughter recovered from the illegal confinement of the said respondents. He further contended that respondent no.7 has repeatedly expressed her desire to come to home, but on account of her illegal confinement, she is unable to move freely. He contended that it is a gross case in which this Court should issue a writ in the nature of *habeas corpus* directing the respondents, especially, respondent nos. 2 to 6 to produce respondent no.7 and hand over her custody to the petitioner.

6. Mr. Prabhu Narayan Sharma, learned counsel appearing for the State and Mr. Shailendra Kumar Singh, learned counsel appearing for respondent nos. 4 to 7 have categorically stated that the writ petition lacks merit. The petitioner has filed the present case only because it is an inter-religion marriage. They contended that respondent no.7 has chosen a life partner herself and she is being harassed in various ways by her parents.

7. In the present matter, two counter affidavits have been filed, one on behalf of respondent no.2 and the other on behalf of respondent nos. 6 and 7. In his counter affidavit, respondent no.2 has stated that during the course of



investigation of Pirbahore P.S. Case No. 631 of 2019, the investigating officer recorded the statements of the informant and witnesses, namely, Farida Khatoon, Firoz Hashmi and Danish Parwez. The investigating officer also collected call detail records of respondent nos.6 and 7 from 01.12.2019 to 11.12.2019. The matter was also supervised by the senior police officers. Later, respondent no.7 physically appeared before the Pirbahore Police Station on 20.01.2019 and her statement was recorded under Section 164 of the Code of Criminal Procedure before the Judicial Magistrate 1st Class, Patna in which she confessed that she got married to Nitish Kumar (Respondent No.6) with her own wish and volition on 13.12.2019 in the court of Jamtara and on 14.12.2019 in the temple at Chitranjan. She further stated that no one had kidnapped her. The respondent no.7 also produced her Adhar Card and matriculation mark-sheet. A perusal of those documents shows her date of birth as 31.03.2001 from which it would be clear that she is above 18 years of age. Thus, after investigation and supervision on all points and on the basis of the statement of respondent no.7 and the facts revealed during investigation of the case, a final report vide Final Form No. 25 of 2020 dated 07.03.2020 was submitted before the court holding the allegations made in the



FIR to be a 'mistake of fact'.

8. In the joint counter affidavit filed on behalf of respondent nos. 6 and 7, it has been stated that the maternal uncle of respondent no.7 has falsely lodged the FIR being Pirbahore P.S. Case No. 631 of 2019. When respondent no.7 came to know about the false case lodged by her maternal uncle, she came to Patna along with respondent no.6, his father and mother in order to give statement before the court. Accordingly, on 20.01.2020, her statement was recorded by a learned Judicial Magistrate 1st Class, Patna under Section 164 of the Code of Criminal Procedure in which she has categorically stated that she came out of Shahin Girls Hostel, Ramna Road, Patna without disclosing about it to anyone and reached near NIT More and from there she called respondent no.6 and went together with him at his room where she stayed for 4-5 days. Thereafter, she went to Jamtara by train along with Nitish Kumar. She further disclosed in her statement that on 13.12.2019 she got married to Nitish Kumar in court and on 14.12.2019 she married him in a temple at Chitranjan. Since then, she is living together with respondent no.6 as husband and wife.

9. Even after filing of the aforesaid counter affidavits,



learned counsel appearing for the petitioner had raised apprehension about safety and security of the respondent no.7. He had submitted that it is not known whether the statements made by the respondent no.7 before the court of Magistrate was voluntary or under threat and duress. Considering the apprehension raised by the mother of respondent no.7, vide order dated 25.11.2021, we had directed respondent nos. 6 and 7 to be present 'in Chambers' on 30.11.2021.

10. Pursuant to the aforesaid order dated 25.11.2021, the respondent nos.6 and 7 appeared in person in Chambers. On inquiry made by us, the respondent no.7 categorically stated that the contents of the FIR lodged by the Pirbahore Police Station are not true. She stated that she is a co-villager of the respondent no.6. She was reading together with him since Class-8 and fell in love with him. She stated that both were in relationship and were aware of each other's religion and both decided to solemnize their marriage that has been notarized and subsequently they married in a temple also. She further stated that she was not abducted by anyone and out of her own volition she married the respondent no.6. On being asked whether she desires to meet her father and mother and talk to them, she offered the following answer :-



“I do not wish to meet my father or mother or talk to them. I should not be forced to meet them. I do not desire to return to the home of my parents. I am accompanied by the respondent no.6. I shall accompany him to the place from where we both travelled voluntarily to this Court today. I want to remain married to the respondent no.6. I am being kept well by my in-laws and husband in my matrimonial home.”

11. We have heard learned counsel appearing on behalf of the parties, interacted with the respondent no.7 and perused the materials on record.

12. The Constitution of India guarantees every individual the right to live and liberty through Article 21. The Supreme Court has held in various judgments from time to time that the right to marry a person of one's choice is an integral part of Article 21. The Supreme Court upheld an individual's right to marry a person of her own choice as well as right to choose a religion. It has held that the expression of choice was a fundamental right under Articles 19 and 21 of the Constitution and form an essential component of the exercise of liberty and autonomy.

13. In ***Shafin Jahan Vs. Asokan K.M.***, since reported



in **(2018) 16 SCC 368**, the Supreme Court traced the legal history of writ of Habeas Corpus and interpreted its meaning and scope. In doing so, the Court referred to Indian as well as English and American cases, such as, ***Cox v. Hakes, (1890) LR 15 AC 506 (HL)***, ***Secy. of State for Home Affairs v. O'Brien, 1923 AC 603***, ***Kanu Sanyal v. DM, Darjeeling (1973) 2 SCC 674***, ***Ware v. Sanders, 124 NW 1081 (1910)*** and ***Ummu Sabeena v. State of Kerala, (2011) 10 SCC 781***. The Supreme Court observed that “... *the pivotal purpose of the said writ is to see that no one is deprived of his/her liberty without sanction of law. It is the primary duty of the State to see that the said right is not sullied in any manner whatsoever and its sanctity is not affected by any kind of subterfuge. The role of the Court is to see that the detenue is produced before it, find out about his/her independent choice and see to it that the person is released from illegal restraint....*”

14. The Supreme Court in ***Shafin Jahan Vs. Asokan K.M.*** (Supra) further held that “*the expression of choice is a fundamental right under Articles 19 and 21 of the Constitution, if the said choice does not transgress any valid legal framework.*” The Court highlighted that Hadiya (Respondent No.9) appeared before the High Court and stated that she was



not under illegal confinement and in view of this the High Court had no warrant to proceed further in the exercise of its jurisdiction under Article 226 but had been incorrectly swayed by Respondent No.1's averments. The Supreme Court further observed that *"it was no part of the jurisdiction of the High Court to decide what it considered to be a "just" way of life or "correct" course of living for Hadiya. She has absolute autonomy over her person"*.

15. The Supreme Court further observed that *"the ambit of a habeas corpus petition is to trace an individual who is stated to be missing. Once the individual appears before the court and asserts that as a major, she or he is not under illegal confinement, which the court finds to be a free expression of will, that would conclude the exercise of the jurisdiction"*.

16. In the instant case, the mother of the respondent no.7 alleged that her daughter was illegally confined by the respondent no.6. The matter has already been investigated by the police, who have found the allegations made in the FIR to be a 'mistake of fact'. The respondent no.7 has personally appeared before the Court and has categorically stated that she has not been abducted by anyone. She is living with the respondent no.6 of her own free will and there is no coercion. She stated that her



parents are against this alliance, but she got married to the respondent no.6 way back on 13.12.2019 and is now happily living with him.

17. Since the respondent no.7, admittedly a major girl, is living in her matrimonial home out of her own volition and choice and there is no threat or coercion, no case for handing over her custody to the petitioner is made out. The petitioner must respect the decision of her daughter and allow her to live peaceful life in her matrimonial home.

18. In view of the discussions made above, we see no merit in this application. It is dismissed, accordingly.

(Ashwani Kumar Singh, J)

(Rajeev Ranjan Prasad, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	---
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