

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.108 of 2021

Arising Out of PS. Case No.-264 Year-2019 Thana- MOTIHARI MUFASIL District- East Champaran

NISHA KUMARI W/o Suman Kumar, D/o Suresh Kunwar Resident of Village- Bara Basatpur, P.S.- Motihari Muffasil, District- East Champaran, presently residing at Village- Patpariya, Motihari Muffasil, District- East Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar Through The Principal Secretary, Deptt. of Home, Govt. of Bihar, Patna
2. The Director General of Police, Bihar, Patna. Bihar, Patna.
3. The Senior Superintendent of Police, Patna. Patna.
4. The District Magistrate, East Champaran at Motihari East Champaran.
5. The Superintendent of Police, East Champaran at Motihari East Champaran.
6. The Superintendent, After Care Home, Gaighat, Patna. Patna.
7. The Officer in Charge, Motihari Muffasil P.S., District- East Champaran. East Champaran.
8. Suresh Kunwar S/o Late Ganaur Kunwar Resident of Village- Bara Basatpur, P.S.- Motihari Muffasil, District- East Champaran.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Sangeet Deokuliar, Advocate
For the State : Ms. Divya Verma, AC to AAG 3
For the Respondent no.8 : Mr. Navin Kumar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL ORDER

10 30-11-2021 Heard learned counsel for the petitioner, learned counsel for the State and learned counsel for the respondent no. 8.

The petitioner has filed the instant application for quashing the order dated 8.8.2019 and the consequential orders whereby the petitioner was sent to After Care Home at Gaighat in Patna, for a direction to the respondents to release the



petitioner from her detention in the After Care Home and for other reliefs.

The case of the petitioner in brief is that an FIR being Motihari Muffasil P.S. Case no. 264 of 2019 was registered under sections 363, 366A and 34 of the Indian Penal Code and section 3 and 6 of the POCSO Act by her father alleging that the petitioner had been kidnapped by the accused persons. The petitioner appeared and her statement was recorded under section 164 Cr.P.C. wherein she stated that she had gone out of her own volition and had married Suman Kumar at Areraj Mandir. Subsequent to her statements being recorded under section 164 Cr.P.C. on 7.1.2019, by order dated 8.8.2019, learned Special Judge, POCSO Act passed an order directing the petitioner victim to be sent to the After Care Home at Gaighat, Patna.

It is submitted by learned counsel for the petitioner that although the petitioner is aged about 20 years and is a major as she described herself in her statement under section 164 Cr.P.C., at the relevant time she was not agreeable to go with her parents and categorically made assertions that she wanted to go with her husband to her in-laws place. Taking into account her date of birth which was recorded as 16.10.2004, order dated



8.8.2019 was passed sending her to the After Care Home, Gaighat in Patna. Learned counsel for the petitioner submits that the petitioner still wants to go with her husband Suman Kumar, however in the alternative, the Court may direct for her release from the After Care Home, Gaighat, Patna to be sent with her father, the respondent no. 8 and the informant of the present case who has also appeared in the case.

The informant of the case ie the respondent no. 8 has appeared in this case and has filed a counter affidavit wherein it has been stated that he accepts the marriage of the petitioner his daughter with Suman Kumar and wants that they lead a happy conjugal married life. The differences between the parties have been resolved.

Learned counsel for the State opposes the application submitting that as per school leaving certificate the date of birth of the petitioner is 16.10.2004, she is still a minor and thus cannot be released in favour of her husband.

Having heard learned counsel for the parties and taking into consideration the facts and circumstances of the case, the facts which are not in dispute is that the age of the petitioner was ascertained by the medical board on the basis of radiological examination to be between 17-18 years on



7.8.2019. A copy of the said report of the medical board determining the age of the petitioner has been brought on record as Annexure-1 to the petition. Thus, according to the said determination, as of today, the age of the petitioner will be between 19-20 years. So far as the school leaving certificate showing her date of birth to be 16.10.2004 is concerned, the age of the petitioner as per the same, as of today will be 17 years 1 month. However, in view of the stand taken by learned counsel appearing for the petitioner that the petitioner is ready to be sent with her father and natural guardian, respondent no.8 herein, whether the petitioner has attained majority or not no longer remains an issue.

In view of the facts and circumstances of the case, the Superintendent, After Care Home, Gaighat, Patna, respondent no.6 herein, is directed to release the petitioner immediately in favour of and under the guardianship of the petitioner's father ie the respondent no.8.

The writ petition stands disposed of with the above observations and directions.

(Partha Sarthy, J)

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