

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPHC No. 11 of 2021**

Mantu Kumar Yadav S/o Shri Dhanoo Yadav, Aged About 41 Years R/o
Post Sunder Nagar, New Bhaisthan, Raipur, District Raipur Chhattisgarh

---- **Petitioner****Versus**

1. State of Chhattisgarh Through The Home Secretary, Department of Home Mahanadi Bhavan, Mantralaya, Naya Raipur, District Raipur Chhattisgarh
2. Director General of Police Chhattisgarh, District Raipur Chhattisgarh
3. The Superintendent of Police, Jahanabad (Bihar)
4. The Superintendent of Police, Patna (Bihar)
5. Station House Officer, Police Station Deendayal Nagar, District Raipur Chhattisgarh
6. Bittu, S/o Shri Shyam Babu, Aged About 18 Years R/o Devnagari, Ward No. 68, P.S. D.D. Nagar, Raipur, District Raipur Chhattisgarh (Accused Person)
7. Rishu, S/o Shri Arun Yadav, Aged About 16 Years R/o Aamanaka, P.S. Aamanaka, Raipur, District Raipur Chhattisgarh (Accused Person)
8. Deepak Kumar, S/o Ashok Prasad Yadav, R/o Village Bhagwan Khandha, P.S. Magdumpur, District Jahanabad (Bihar) (Accused Person) Mob.No. 9827999261
9. Deepak Kumar, S/o Sakaldev Prasad Yadav, R/o Village Mathiyapar, Masaudhi, District Patna (Bihar) (Accused Person) Mob. No. 7488867112
10. Sijay Kumar, S/o Ramakant Yadav, R/o Village Mahua Bigaha, P.S. Masaudhi, District Patna (Bihar) (Accused Person) Mob. No. 9123128036

---- **Respondents**

(Cause-title taken from Case Information System)

For Petitioner : Mr. B.P. Singh, Advocate

For Respondents 1 & 5 : Mr. Gagan Tiwari, Deputy Government Advocate

For Respondent Nos.6 & 8 : Mr. Jitendra Shukla and Mr. Priyanshu Gupta,
Advocates

For Respondent Nos.9 &10 : Mr. Kanwaljeet Singh Saini, Advocate

Hon'ble Shri Arup Kumar Goswami, Chief Justice

Hon'ble Shri N. K. Chandravanshi, Judge

Order on Board

Per Arup Kumar Goswami, Chief Justice

16.12.2021

Heard Mr. B.P. Singh, learned counsel for the petitioner. Also heard Mr. Gagan Tiwari, learned Deputy Government Advocate appearing for respondents No. 1 to 5, Mr. Jitendra Shukla and Mr. Priyanshu Gupta, learned counsel for respondents No. 6 and 8 and Mr. Kanwaljeet Singh Saini, learned counsel for respondent No. 9 and 10.

2. On 09.12.2021, this Court had passed the following order :

“Heard Mr. B.P. Singh, learned counsel for the petitioner. Also heard Mr. Gagan Tiwari, learned Deputy Government Advocate appearing for respondents No. 1 to 5, Mr. Jitendra Shukla and Mr. Priyanshu Gupta, learned counsel for respondents No. 6 and 8 and Mr. Kanwaljeet Singh Saini, learned counsel for respondent No. 9 and 10.

Pursuant to order dated 16.09.2021 of this Court, report was submitted by the Juvenile Justice Board (JJB), Mana, Raipur, Chhattisgarh, stating that Gudiya Kumari, whose age was directed to be determined, is more than 18 years of age.

Though not ordered, Gudiya Kumari, who is presently kept in Sakhi Centre, Raipur, is also produced under escort before the Court.

On being asked, Gudiya Kumari has stated that she is above 18 years of age and she, out of her own volition and will, had gone with Deepak Kumar Yadav i.e. respondent No.8 and they have married on 10.08.2021. She states that her father used to beat her at home and she does not want to go back to the house of her father and entreated that she be not sent back there. She repeatedly says that she wants to live with her husband (Deepak Kumar Yadav i.e. respondent No.8), who had taken good care of her, while she was with him.

Deepak Kumar Yadav, i.e. respondent No.8 is also present and he states that he is 22 years of age and is presently living with his parents and is engaged in agricultural activities.

Reliance was placed by JJB on the birth certificate (Ex-P-2) issued by the Registrar of Gram Panchayat, Tulapatti, Department of Planning and Development and on the X-ray report (Ex-P-20) dated 03.09.2021 of Assistant Professor, Department of Radio Diagnosis and the Resident Medical Officer, Department of Radiology of the Pt. Jawaharlal Nehru Medical College and Dr. Bhim Rao Ambedkar

Memorial Hospital, Raipur, where it is recorded that age of Gudiya Kumari is more than 18 years of age, in coming to the conclusion that Gudiya Kumari is above 18 years in age.

At this stage, Mr. Shukla submits that he would like to file an application, seeking police protection for onward journey from Raipur (C.G.) to Bhagwan Khandha (Bihar), due to some threat perception.

Such application may be filed within a period of four days from today.

Registry will list this case on 16.12.2021.”

3. The respondent No.8 has filed an application, being I.A. No.02/2021, wherein it is stated that the respondent No.8 and the detenue wish to live together at the residence of respondent No.8. The uncle of the detenue and the other family members have made serious threats to the life of the respondent No.8 as well as to the life of the detenue and therefore, in the event the detenue is allowed to go along with respondent No.8, appropriate directions may be issued to the police authorities for providing adequate police protection to the respondent No. 8 and the detenue in their journey to reach the residence of respondent No. 8.

4. Though copy of the application was furnished to Mr. Singh, he submits he will not file any objection to the prayer made. He, however, at the same time, contends that no such threat was made as alleged.

5. By relying upon I.A. No. 03/2021, Mr. Singh submits that the Mukhiya (Panchayat Head) of Gram Panchayat, Tulapatti had issued a certificate Ex-P-23 before the JJB indicating that Ex-P-2 was not issued by the Gram Panchayat and that village of the detainee comes under the purview of District – Patna and not under the territorial jurisdiction of Gram Panchayat, Tulapatti and therefore, it is necessary to ascertain the correctness of the Ex-P-2 and Ex-P-23.

6. It is to be noted that the birth certificate which was relied upon by the JJB is signed by the Registrar (Birth & Death) of Gram Panchayat, Tulapatti.

7. Even if the aforesaid certificate is discarded, in Ex-P-20, it is recorded that as the lower end of radius and ulna is fused, the age of Gudiya Kumari is more than 18 years of age. It is also noticed that in terms of section 94(3) of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short, the 'JJ Act'), the age recorded by the JJB to be the age of person so brought before it shall, for the purpose of the JJ Act, be deemed to be the true age of that person.

8. In that view of the matter, no directions, as prayed for, are called for in I.A. No. 03 of 2021 and accordingly, the same shall stand disposed of.

9. At this juncture, Mr. Gagan Tiwari submits that since Gudiya Kumari is now to be released from Sakhi Centre, Raipur, an appropriate declaration is to be taken from her for her release from Sakhi Centre. He also submits that necessary police protection will be given for onward journey of Gudiya Kumari and respondent No.8 to their destination.

10. Though Mr. Tiwari has submitted that necessary police protection will be given, we also deem it appropriate to give direction to Superintendent of Police, Raipur to ensure safety and security of Gudiya Kumari and Deepak Kumar by providing necessary police protection on their journey to their destination.

11. At this juncture, Mr. Singh submits that liberty may be granted to the father of Gudiya Kumari to challenge the finding of the JJB with regard to age of Gudiya Kumari by filing a civil suit.

12. Without making any comment on merit of his contention, liberty is granted to the father of Gudiya Kumari, as prayed for.

13. In view of the above, this petition for habeas corpus is not required to be entertained any further. Accordingly, the petition stands disposed of.

Sd/-
(Arup Kumar Goswami)
Chief Justice

Sd/-
(N.K. Chandravanshi)
Judge