

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.342 OF 2021

. Meena w/o. Khushalsing Thakur
Age: 40 years, Occu.: Labour,
R/o. Behind Balaji Mangal Karyalaya,
Balaji Nagar, Aurangabad,
Tq. and Dist.Aurangabad. ..Petitioner

VERSUS

1. The State of Maharashtra,
Through the Secretary,
Home Department,
Mantralaya, Mumbai -32.
2. The Commissioner of Police,
Aurangabad, Dist.Aurangabad.
3. The Superintendent of Police,
Aurangabad Dist. Aurangabad.
4. The Police Inspector,
Police Station, Jawahar Nagar,
Aurangabad, Dist.Aurangabad.
5. Lakhan @ Sandesh S/o. Mangesh Pardesi
Age: 20 years, Occu.: Nil.
6. Mangesh S/o (not known) Pardesi,
Age: 45 years, Occu.: Business.
7. Mangal w/o. Mangesh Pardesi
Age: 40 years, Occu.: Household.
8. Jay s/o.(not known) Pardesi
Age: 40 years, Occu.: Business.
9. Sunita w/o. Jay Pardesi
Age: 35 years, Occu.: Household.
10. Mayur s/o. (not known) Pardesi
Age: 35 years, Occu.: Business.

No.5 to 10 All R/o. Mahu Nagar,
Near Balaji Nagar, Aurangabad,
Dist.Aurangabad.

..Respondents

...
Advocate for Petitioner : Shri Pradeep V. Ambade
APP for Respondents-State : Shri A.S.Shinde
...

**CORAM : V.K.JADHAV &
M.G.SEWLIKAR, JJ.**

DATE: 12th March, 2021

ORAL JUDGMENT:- (Per: V.K.Jadhav, J.)

1. Rule. Rule made returnable forthwith.
2. Heard finally with consent of the parties, at the admission stage.
3. Petitioner is the mother of the missing girl. She has filed the *Habeas Corpus* petition seeking directions against the respondents authorities to produce the petitioner's daughter namely Sakshi Khushalsing Thakur before this Court from the custody of respondent Nos.5 to 10.
4. The missing girl Sakshi, aged 19 years, is now produced before us. Sakshi has given statement to the Police on 08-03-2021, wherein she has stated that she is major and residing with Lakhan @ Sandesh S/o. Mangesh Pardesi, who is

her distant relative, voluntarily without any pressure and that she is not ready to go to her parents' home. It has been specifically stated in the said statement that petitioner's mother would be performing her marriage with some unknown boy without her consent. She has expressed danger to her life from her mother.

5. Learned counsel for the petitioner-mother submits that though Sakshi has attained age of majority, however, she is just 19 years of age and unable to understand the consequences of her act. Furthermore, Sakshi is residing with the said boy without marriage. The learned counsel submits that even in the year 2019, when the petitioner has filed the missing report in the concerned Police Station, under the orders of the Court, Sakshi was sent to Mahila Sudhar Gruha and after intervention of concerned Police Inspector, the custody of Sakshi was given to the petitioner's mother. The learned counsel submits that thereafter, again Sakshi left the house and started residing with the same boy alongwith his family members.

6. The learned counsel for the petitioner submits that the said boy Lakhan @ Sandesh is not related to them. The learned counsel, on instructions of petitioner-mother, submits that petitioner-mother is ready to perform marriage of Sakshi with

Lakhan @ Sandesh after he attains 21 years of age. The learned counsel submits that the missing girl Sakshi does not understand the meaning of 'living in relationship' with Lakhan @ Sandesh and as such custody of Sakshi may be given to the petitioner-mother.

7. Learned APP for the respondents-State submits that missing girl Sakshi is major and she is free to take her decision about her future on her own. Even in the year 2019, Sakshi was detained in connection with the missing report and that time also Sakshi has given statement similar to the statement given in the present case.

8. Learned APP placed his reliance on ***Nandakumar and Anr. Vs. State of Kerala and Ors.*** reported in ***AIR 2018 Supreme Court 2254***, wherein the Hon'ble Supreme Court has observed that the marriage is not null and void, if husband is not of marriageable age i.e. 21 years of age. The Hon'ble Supreme Court has made the said observations in connection with petition of *Habeas Corpus*.

9. We have carefully gone through the investigation papers, particularly statement of Sakshi recorded on 08-03-2021. It is

not in dispute that Sakshi has attained age of majority. She has completed 19 years of age. It further appears from her statement that she resides with Lakhan @ Sandesh voluntarily without any pressure and she is not willing to go to her mother's house for various reasons. As per her statement, the petitioner-mother would perform her marriage with some other boy without her consent and that she had also expressed danger to her life from her mother, if she is not giving consent to the said marriage.

10. We have also interacted with Sakshi in the open Court, wherein she has made a unequivocal statement before us that she is a major girl and she is not ready to go with her mother (petitioner herein). Sakshi has further stated that she is going to perform marriage with Lakhan @ Sandesh after he attains 21 years of age. Though, the petitioner-mother has shown her readiness and willingness to perform the marriage of Sakshi with Lakhan @ Sandesh, however, it appears that petitioner-mother is interested only in custody of Sakshi by any means. Even in the year 2019, when the petitioner-mother has filed missing report, that time when Sakshi, who brought by the Police and when her statement was recorded, the petitioner-mother has made the similar statement of performing marriage of Sakshi with the

same boy namely Lakhan @ Sandesh, but she has failed to fulfill her promise. If further appears that when Sakshi was kept in Mahila Sudhar Gruha, she was constrained to go with her mother because of the atmosphere in the said Mahila Sudhar Gruha.

11. In the case of ***Nandakumar and Anr.*** (supra) relied upon by the learned APP, in paragraph Nos.13, 14 and 15, the Hon'ble Supreme Court has made the following observations:

13. We also reproduce the following discussion from the concurring judgment rendered by Dr. Justice D.Y. Chandrachud in the said case:

"81. In a more recent decision of a three Judge Bench in Soni Gerry v. Gerry Douglas' (AIR 2018 SC 346), this Court dealt with a case where the daughter of the appellant and respondent, who was a major had expressed a desire to reside in Kuwait, where she was pursuing her education, with her father. This Court observed thus:

"9.....She has, without any hesitation, clearly stated that she intends to go back to Kuwait to pursue her career. In such a situation, we are of the considered opinion that as a major, she is entitled to exercise her choice and freedom and the Court cannot get into the aspect whether she has been forced by the father or not. There may be ample reasons on her behalf to go back to her father in Kuwait, but we are not concerned with her reasons. What she has stated before the Court, that alone

matters and that is the heart of the reasoning for this Court, which keeps all controversies at bay.

10. It needs no special emphasis to state that attaining the age of majority in an individual's life has its own significance. She/He is entitled to make her/his choice. The courts cannot, as long as the choice remains, assume the role of parens patriae. The daughter is entitled to enjoy her freedom as the law permits and the court should not assume the role of a super guardian being moved by any kind of sentiment of the mother or the egotism of the father. We say so without any reservation."

14. It may be significant to note that insofar as Thushara is concerned, she has expressed her desire to be with appellant No. 1.

15. Accordingly, we allow this appeal and set aside the impugned judgment of the High Court. However, since Thushara has not appeared as she was not made party in these proceedings, while setting aside the directions of the High Court entrusting the custody of Thushara to respondent No. 4, we make it clear that the freedom of choice would be of Thushara as to with whom she wants to live.

Appeal Allowed."

12. We have repeatedly asked Sakshi about her wish and Sakshi, who is a major girl, has informed to us that she is willing to perform marriage with said Lakhan @ Sandesh and she is

residing with the said boy alongwith his parents. She has further explained to us that after the said boy attains 21 years of age, they would perform marriage. It further appears that Sakshi and the said body are in relationship from 2018.

13. Thus, considering the entire aspect of the case, we respect the will and wish of the major girl. She is certainly at liberty to take her decision on her own. In view of the same, we direct the Police Inspector, Jawahar Nagar Police Station, Aurangabad, to set her free at once.

14. We accordingly discharge the rule of *Habeas Corpus* and dispose of this petition.

(M.G.SEWLIKAR)
JUDGE

(V.K.JADHAV)
JUDGE

SPT