

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.1699 OF 2021

Prakash Kumar ...Petitioner

vs.

The State of Maharashtra and Others ...Respondents

Mr. Akash Giri, for the Petitioner

Smt. A.S. Pai, PP for the Respondent-State.

**CORAM : S. S. SHINDE &
N. J. JAMADAR, JJ.**

**DATE : JULY 09, 2021
(THROUGH VIDEO CONFERENCING)**

P.C.:

1. This petition under Article 226 of the Constitution of India is preferred seeking a writ of habeas corpus.

2. The substance of the petition is that one Miss 'S' with whom the petitioner claims to have solemnized the marriage on 13th January, 2021 at Mumbai, is illegally detained by the orders of the Child Welfare Committee, Bharatpur, Rajasthan-respondent No. 3.

3. According to the petitioner, Miss 'S' was rescued in a raid conducted by APMC police station at a hotel, "Blue Star Bar and Restaurant" Vashi, Navi Mumbai on 20th November, 2019. Miss 'S'

along with other victims was kept in Navjivan Mahila Vasati Gruh by the order of the Court. The learned Additional Sessions Judge, Thane handed over the custody of Miss 'S' to her father - respondent No. 5. The petitioner alleges that the respondent Nos. 5 and 6 attempted to again push Miss 'S' into the flesh trade. Miss 'S' resisted and confided in the petitioner. Thus, the petitioner and Miss 'S' solemnized marriage on 13th January, 2021.

4. Agitated and dissatisfied, the respondent Nos. 5 and 6 got a false First Information Report registered at Rudawal police station, Dist. Bharatpur, Rajasthan against the petitioner for the offences punishable under sections 363 and 366 of the Indian Penal Code, 1860 and 17 and 18 of the Protection of Children From Sexual Offences Act, 2012. Miss 'S' was kept in the Children's Home-respondent No. 2, and later on by the orders of the Child Welfare Committee dated 18th January, 2021, Miss 'S' was handed over to the Rajasthan police for being produced before the Child Welfare Committee, Bharatpur, Rajasthan. The petitioner alleges that the respondent Nos. 5 to 7 have falsely claimed that Miss 'S' is a minor and thereby obtained orders of Child Welfare Committee.

5. We have heard Mr. Giri, learned counsel for the petitioner.

6. It was urged that the material on record would indicate that Miss 'S' had attained majority much before she solemnized marriage with the petitioner. In the wake of this submission, we called upon the petitioner to place on record reliable documents to show the date of birth of Miss 'S'. An additional affidavit was filed, annexing thereto a copy of the ration card to indicate that Miss 'S' was 10 years old in the year 2002. No other document of unimpeachable character could be placed on record, to show the date of birth of Miss 'S'.

7. The situation which thus obtains is that the custody of Miss 'S' was entrusted to respondent No. 5 by the order dated 10th January, 2020 of the learned Additional Sessions Judge, Thane. The petitioner claims to have solemnized marriage with Miss 'S' on 13th January, 2021. Indisputably, the First Information Report was registered against the petitioner at Rudawal police station, Rajasthan on 13th January, 2021 with the allegations that Miss 'S' was kidnapped. Eventually, the custody of Miss 'S' was handed over to Rajasthan police by the orders of Child Welfare Committee.

As of now, the petitioner is an accused in C.R. No. 19 of 2021 registered at Rudawal police station, Bharatpur, Rajasthan.

8. The submission on behalf of the petitioner that the said First Information Report is false cannot be legitimately examined by this Court, in this petition. Miss 'S' is stated to be kept in safe custody under the order of Child Welfare Committee, Bharatpur, Rajasthan. The question as to whether Miss 'S' is a child in need of care and protection can be determined only by the appropriate authorities under the Juvenile Justice Act.

9. In the aforesaid circumstances, we are not persuaded to entertain the instant petition. The petitioner is, however, at liberty to agitate the grievances before the appropriate jurisdictional forums and our disinclination to entertain this petition will not be construed as an impediment in availing the remedies, as permissible in law.

10. The petition stands rejected.

(N. J. JAMADAR, J.)

(S. S. SHINDE, J.)