

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH
Sr. No.: 208

Criminal Writ Petition No.9379 of 2021
Decided on: December 23, 2021

Chhalo Rani

.....Petitioner

Versus

State of Punjab & others

.....Respondents

. . .

CORAM : HON'BLE MR. JUSTICE SANT PARKASH

. . .

Present:- Mr. Ashok Kumar Khunger, Advocate, for the petitioner.

Mr. Tanvir Joshi, Assistant Advocate General, Punjab.

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Sant Parkash, J

This petition has been filed under Article 226/227 of the Constitution of India, for issuance of a writ in the nature of Habeas Corpus directing the respondents to release detainee Nisha (daughter of Amit Kumar – respondent No.5) wife of Sandeep (son of petitioner), who has been detained in Vanita Gandhi Ashram (Nari Niketan), Jalandhar against her wishes. Prayer has also been made for quashing order dated 01.09.2021 (Annexure P-2) passed by the Judicial Magistrate 1st Class, Fazilka sending the detainee Nisha before Child Welfare Committee, Fazilka, who further sent her to Vanita Gandhi Ashram (Nari Niketan), Jalandhar against her wishes.

Brief facts of the case are that Sandeep son of petitioner and detainee Nisha fell into love and decided to marry but parents of Nisha

refused their relationship and threatened them of dire consequences. Sandeep and Nisha being major solemnized marriage and filed Crl. W.P. No.3722 of 2021 before this Court which was disposed of vide judgment dated 20.04.2021 with a direction to Senior Superintendent of Police, Fazilka to decide their representation and grant them protection, if there was any threat to their life and liberty. However, in the interregnum, father of Nisha got lodged an FIR No.0063 dated 17.04.2021 under Sections 363, 366-A IPC and under Section 8 of POCSO Act, 2012, at Police Station, Fazilka.

During investigation, Sandeep son of petitioner was arrested and produced before JMIC, Fazilka, alongwith Nisha whose statement under Section 164 Cr.P.C. was recorded, wherein she specifically stated that she was major and solemnized marriage with Sandeep and that she was not willing to go to her parents. However, during the course of proceedings, the trial court found that her date of birth was wrongly mentioned in Aadhar Card. Consequently, vide order dated 01.09.2021, it was directed that she be produced before the Child Welfare Committee, Fazilka for appropriate order regarding her care, custody and protection.

Pursuant to order dated 01.09.2021, she was produced before the Child Welfare Committee, Fazilka, from where, she was sent to Vanita Gandhi Ashram (Nari Niketan), Jalandhar.

Complying with order dated 02.12.2021 passed by this Court, reply/status report dated 14.12.2021 by way of affidavit of Gurjinder Singh Maur, Joint Director, Department of Social Security and Women & Child Development, Punjab has been filed on behalf of the respondent – State submitting that Nisha was residing in the Children Home, Gandhi Vanita

Welfare Committee, Fazilka and that she has desired to stay there until she attains the age of 18 years; she wants to stay with her in-laws and does not intend to meet her parents. The statement was also recorded in audio and visual form on 12.12.2021, duly verified by the Chairperson and members of Child Welfare Committee, Jalandhar on 14.12.2021.

Learned counsel for the petitioner while reiterating the averments made in the petition, has contended that detenue has been illegally detained in Vanita Gandhi Ashram, Jalandhar whereas she wants to live in her matrimonial home. She has also made statements before the Child Welfare Committee expressing her willingness to live with petitioner, therefore, custody of detenue may be ordered to be handed over to the petitioner by quashing impugned order dated 01.09.2021.

Per contra, learned counsel for the respondent – State has submitted that detenue Nisha, being minor, may be kept in Children Protection Home (Gandhi Vanita Ashram), Jalandhar till she attains majority and her custody may not be given to the petitioner and the petition may be dismissed.

Respondents No.5 and 6 had appeared before the Court on 02.12.2021 and stated that they will comply with the order to be passed by the Court.

I have heard learned counsel for the parties and perused the record.

In compliance of order dated 15.12.2021, detenue Nisha has been produced before this Court and made the following statement:-

“Stated that I do not want to meet my parents and do not want to reside with them because of the threat perception from them as they want to marry me with boy of their own choice

against my wishes. I want to with the petitioner – Chhalo Rani wife of Shambhu Singh resident of Street No.3, Dhobi Ghat, Fazilka, Tehsil and District Fazilka who is mother of the boy namely Sandeep with whom I had performed marriage.”

Similar question has been answered by a coordinate Bench of this Court in ***CRWP No.4181 of 2020 titled as Preeti and another versus State of Haryana and others***, wherein Preeti, aged 16 years and 10 months and Sahil aged 18 years ran away from their home and solemnized marriage. The Coordinate Bench of this Court, while ordering handing over the custody of Preeti to her mother-in-law, who accepted Preeti as her daughter-in-law and was prepared to stand by their marriage, observed as under:-

“As on date, Preeti is 10 months short of attaining majority. It is not as if, upon the clock striking 12 midnight on the eve of her 18th birthday, Preeti would magically assume the mental maturity and wisdom to claim the status of an adult. The age of majority as prescribed must therefore be construed and interpreted in the context of the law for which it is being considered and in a case of this nature, where the minor is certain and unshaken in her opinion and desire, it would not be right and proper for this Court to brush aside her views on the ground that she is not 18 years of age as on date and is only 17 +. This Court therefore does not deem it appropriate to direct that Preeti's custody should be forcibly entrusted to her parents against her wishes or that she should be kept in a Protection Home till she attains the age of 18 years. It would suffice at this stage if Preeti is allowed to go with Neelam, Sahil's mother, and remain with her till she attains the age of 18 years. Neelam shall be bound by the affidavit filed by her before this Court and take care of Preeti to the best of her capacity and ability. However, as Neelam is not her legal guardian and she is being entrusted Preeti's custody only as per the desire and wish expressed by Preeti herself, it would be appropriate that the Child Welfare Committee, Sonipat, monitors Preeti's well-being till she attains the age of 18 years while she remains in Neelam's custody. The Chairperson of the Child Welfare Committee, Sonipat, is accordingly directed to depute a Child Welfare Officer to randomly visit Neelam's residence at Kakroi, District Sonipat, twice a month to ensure that Preeti is being well cared for and to ascertain whether she has any complaints. The Child Welfare Committee, Sonipat, shall take on record the reports of such

Child Welfare Officer and monitor the case till Preeti attains the age of 18 years.”

I am in full agreement with the observations made by the Coordinate Bench. However, it may be added here that in view of the observations of this Court in ***CRM-M-22389-2020 titled as Parminder Singh Vs. State of Haryana and another***, decided on 24.09.2020, Sandeep will not be entitled to consummate the marriage till Nisha attains the age of 18 years.

In view of the facts and circumstances of the present case, willingness of Nisha to live with her mother-in-law Chhalo Rani (petitioner) and acceptance by the petitioner of Nisha as her daughter-in-law, I am of the considered view that it will be appropriate that custody of Nisha be handed over to the petitioner and detune Nisha be allowed to live with the petitioner subject to the following conditions:-

(i) that the petitioner shall submit an affidavit before learned Chief Judicial Magistrate/Duty Magistrate, Fazilka, that she will take care of Nisha to the best of her capacity and ability;

(ii) that the petitioner shall also submit her personal bond in the sum of Rs.1,00,000/- before learned Chief Judicial Magistrate/Duty Magistrate, Fazilka undertaking that she shall not allow her son Sandeep to consummate the marriage till Nisha attains the age of 18 years. In case of any default, the amount of Rs.1,00,000/- shall be liable to be realised by learned Chief Judicial Magistrate, Fazlka from the petitioner as penalty under Section 446 of the Cr.P.C.;

(iii) that the petitioner shall ensure payment of amount of Rs.5,000/- per month to Nisha as personal expenses till she attains majority; and

(iv) that in case of breach of any of these conditions, the petitioner shall also be liable to punishment for contempt of this Court.

In view of the above discussion, the petition is allowed and order dated 01.09.2021 passed by learned Sub Divisional Judicial

produced on 10.01.2022 before CJM/Duty Magistrate, Fazilka where petitioner Chhalo Rani shall also appear and custody of Nisha be handed over to the petitioner-Chhalo Rani (mother-in-law) on submission of the affidavit and personal bond in compliance with the aforesaid conditions before learned Chief Judicial Magistrate/Duty Magistrate, Fazilka.

Detenue Nisha be sent back to Gandhi Vanita Ashram from where she was produced today in Court.

However, the Chairperson of the Child Welfare Committee, Fazilka is directed to depute a Child Welfare Officer and that of District Legal Services Authority concerned to randomly visit the house where Nisha would be residing with her mother-in-law periodically to ensure that she is being looked after properly. The Child Welfare Committee, Fazilka shall take on record the reports of such Child Welfare Officer and move this Court for appropriate directions, if so considered to be necessary.

Copy of this order be sent to Chairperson, Child Welfare Committee, Fazilka and Secretary, District Legal Services Authority, Fazilka for compliance.

**(Sant Parkash)
Judge**

December 23, 2021
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Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No