

225 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRWP No.10723 of 2020
Date of Decision: 05.01.2021

Rakesh Yadav ...Petitioner

Versus

State of Haryana and others ...Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Sandeep Bhardwaj, Advocate
for the petitioner.

Mr. Munish Sharma, AAG, Haryana.

Through Video Conferencing

JASGURPREET SINGH PURI, J.(ORAL)

The present petition has been filed under Article 226 of the Constitution of India seeking a writ in the nature of habeas corpus for directing the respondents to produce the alleged detainee namely, Sonu Kumari, before this Court.

Learned counsel for the petitioner has argued that the alleged detainee is the wife of the petitioner and they got married on 15.12.2020, vide Annexure P-1, at Ghaziabad. He has also argued that the wife of petitioner is above 18 years of age and is major. He further submitted that the private respondents are the parents of the girl and had taken his wife against her wishes and she has been kept in illegal captivity.

Notice of motion was issued by this Court on 21.12.2020 to respondent Nos.1, 2 and 3 only and Superintendent of Police, District

Bhiwani was directed to look into the averments made in the petition and to take appropriate steps in accordance with law. It was also directed that a lady police official shall be deputed in this regard and thereafter, a status report shall be filed before this Court.

Today, status report has been filed by the Deputy Superintendent of Police, Bhiwani, by way of e-mail. The print out of the same is directed to be taken on record.

Mr. Munish Sharma, AAG, Haryana, while referring to the affidavit, which has been filed by the Deputy Superintendent of Police, District Bhiwani, has submitted that one lady police official was deputed in this regard to enquire into the matter in question. He pointed out towards the contents of the affidavit in which it is stated that during enquiry, the Enquiry Officer has visited the house of the respondent Nos.4 to 6 and the alleged detainee as well as private respondent Nos.4 to 6 were found present in the given address and thereafter, they told the Enquiry Officer that on a complaint of the alleged detainee, a case/FIR No.114, dated 18.12.2020 under Section 6 of POCSO Act and Section 328, 376 and 506 of IPC, 1860 has been registered against the petitioner. It has been further stated in the affidavit that the alleged detainee submitted her handwritten statement to the Enquiry Officer on 24.12.2020, in which she has levelled the allegations against the present petitioner regarding forcibly commission of rape, threat and obtaining signatures on papers in condition of intoxication etc. and lastly, she has written that she wanted strict legal action against the present petitioner. Similarly, the statements of respondent Nos.4 to 6 were also recorded and thereafter, the certified copy of FIR and certified copy of statement of alleged detainee recorded under Section 164 of Cr.P.C. were also obtained from the concerned police station and a copy of statement of

alleged detainee recorded under Section 164 of Cr.P.C. and the copy of birth certificate of alleged detainee has been attached herewith as Annexures R-1 and R-2, respectively.

Learned counsel for the petitioner has submitted that vide Annexure R-2, the date of birth of the alleged detainee is 07.10.2002 and the alleged detainee is therefore above 18 years of age and is major. He further referred to the contents of the affidavit to submit that during enquiry when the detainee was asked about her marriage with the present petitioner, then she had replied that she has already given her handwritten statement and if there is any allegation of marriage with the present petitioner then the same is wrong. She further told that she has not performed marriage with the present petitioner and the alleged photographs and marriage certificate are result of fraud and misrepresentation. She further told that the present petitioner obtained her signatures on some blank papers under her semi-conscious condition. It is further stated in the affidavit that during the enquiry, it has come to light that the alleged detainee is living at her parental home with her own wish and will and without any pressure or coercion.

Learned State counsel has further submitted that the present petition is in the nature of habeas corpus and it has been found that the alleged detainee is more than 18 years of age and she is living with her parents according to her own wish and, therefore, has prayed for dismissal of the present petition.

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

The prayer of the petitioner is for seeking a writ in the nature of habeas corpus and on status report which has been filed by the State, it has been found that the alleged detainee is major and is living with her parents

according to her own wish and therefore, the prayer of the petitioner seeking a writ in the nature of habeas corpus would not survive. It is a case where the petitioner is alleging that the petitioner is the husband of the alleged detenue but on enquiry, it has been found that the alleged detenue has stated that the alleged marriage with the petitioner was by way of intoxication and her signatures were taken by the petitioner in semi-conscious condition. This Court would not go into the legality and illegality of the aforesaid marriage since this Court is only dealing with a prayer of habeas corpus and it has been found that the alleged detenue who is major is living with her parents on her own wish and, therefore, the present petition in the nature of habeas corpus would not survive.

In view of the above, the present petition is dismissed.

(JASGURPREET SINGH PURI)
JUDGE

January 05, 2021
Manpreet

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No