

Sr.No.104

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRWP-11013 of 2020
Date of decision:05.02.2021**

Rakesh Kumar

... Petitioner(s)

versus

State of Punjab and others

... Respondent (s)

Coram: Hon'ble Mr. Justice Jasgurpreet Singh Puri

Present: Ms. Rahish Pahwa, Advocate
for the petitioner.

Mr. Luvinder Sofat, Asst.AG, Punjab.

Through Video Conference

Jasgurpreet Singh Puri, J.(Oral)

Present petition has been filed under Article 226 of Constitution of India with a prayer for issuance of writ in the nature of habeas corpus for directing respondents No.2 to 5 to release the detenue namely, Sapna @ Barnali Das. Respondent No.4 is the Child Welfare Committee, Ludhiana and respondent No.5 is the Chairman, Department of Social Security and Development of Women and Children, Sector 34, Chandigarh.

Learned counsel for the petitioner has argued that the petitioner got married with the aforesaid Sapna @ Barnali Das on 09.01.2020 vide

Annexure P-1 at Jammu. He has submitted that perusal of the aforesaid Marriage Certificate would show that the age of the Sapna @ Barnali Das is 19 years as on 09.01.2020 which is the date of the Marriage Certificate. She has further submitted that the aforesaid Sapna @ Barnali Das alongwith the sister of the petitioner namely, Aarti were travelling by train from Jammu to Muzaposur near Patna, Bihar to attend the marriage of cousin of Sapna @ Barnali Das and as per schedule they had to first reach at Ambala and from Ambala they were to board another train to Patna. Both of them boarded train from Jammu Tawi bound to Ambala at about 6 PM on 23.12.2020 holding a valid ticket for reserved seat. At about 10 or 11 pm when the train reached at railway station, Ludhiana, the Railway Police who is impleaded as respondent No.3 got both the girls alighted from the train and did not allow them to continue with their journey. On the same night they were detained at Bala Ji Ashram Ludhiana and on the next morning i.e. 24.12.2020 the family of both the girls reached Ludhiana and then the family members were informed that the girls have been handed over to respondent N.4 (Child Welfare Committee, Ludhiana) and they were asked to come on 28.12.2020 to get the detenues released. She has further submitted that the petitioner who is the husband of Sapna @ Barnali Das and some other family members again reached Ludhiana on 28.12.2020 and respondent No.4 i.e. Child Welfare Committee, Ludhiana released Aarti to her family members but they refused to release Sapna @ Barnali Das. She has further submitted that the petitioner had provided all the documents including the Marriage Certificate and Ration Card to respondent No.4 but they did not release her and insisted that she will be released only if her parents come and approach. Learned counsel has further submitted that parents of Sapna

@ Barnali Das are residents of Assam and do not have any means to come to Ludhiana especially, during the Covid-19 epidemic and further she has submitted that father of the girl is a truck driver who plies between Mumbai and other States for months together. She has further submitted that since Sapna @ Barnali Das is a legally wedded wife of the petitioner and she is above the age of 18 years she has been wrongly detained by the aforesaid respondent No.4 and therefore, she should be released from the aforesaid respondent No.4 which is the Child Welfare Committee, Ludhiana.

Initially, reply was filed by respondent No.3 which is the Railway Police, P.S.GRP Ludhiana, District Ludhiana by stating that the lady personnel of Police Station GRP Ludhiana who got a DDR No.24 dated 24.12.2020, had found three girls namely, Sapan,Aarti and Shalini with the help of the Railway Protection Force (RPF) and therefore, two lady constables handed them over to Shri Balaji Prem Aashram, Nikhil Vidhalaya Lalte Kalan, Ludhiana. It has been further stated in the affidavit that thereafter the rest of the proceedings were carried out by the office of the Chairman of Child Welfare Committee, Ludhiana.

On 29.01.2021, learned State counsel had sought time to file affidavit of Child Welfare Committee, Ludhiana (respondent No.4) and this Court directed the Commissioner of Police, Ludhiana to forthwith depute a Senior Lady Police Official to visit the said Shri Balaji Prem Aashram, Nikhil Vidhalaya Lalte Kalan, Ludhiana and to ensure the safety of the girl either at the place of the Aashram or at the place where the concerned police official shall deem fit. Commissioner of Police, Ludhiana was also directed to take into custody the entire record of the Child Welfare Committee, Ludhiana immediately in his possession and produce the same before this

Court on the next date of hearing. It was also directed that aforesaid Sapna @ Barnali Das be produced before the Illaqa Magistrate for recording her statement with regard to ascertain factum of her marriage with the petitioner with a further direction to file an affidavit in this regard before the next date of hearing.

Consequently, an affidavit of Rupinder Kaur, PPS, Additional Deputy Commissioner of Police-Investigation, Ludhiana dated 01.02.2021 has been filed in this Court. In the affidavit, it has been stated that the deponent visited the said Aashram on 29.01.2021 and found out that the girl Sapna has been kept under proper care and is being looked after well. The girl told the Additional Deputy Commissioner of Police- Investigation, Ludhiana that she is satisfied with the care and behaviour of the said Ashram staff and she does not want to go to any other such place. At the same time, she expressed her desire to go to her husband. Thereafter, the statement of Sapna was got recorded before the Court of Shri Vikrant Kumar, PCS, Additional Chief Judicial Magistrate, Ludhiana on 30.01.2021 in which Sapna stated that her date of birth is 02.10.2001 and that she is resident of Assam and she performed her marriage with the petitioner on 10.01.2020. She further stated that the petitioner is the resident of Jammu and he was working in a cloth factory at Assam where the petitioner and Sapna had met first time in June/July 2019. She further stated that she has performed her marriage with the present petitioner with the consent of her parents and they performed firstly, the marriage at Guwahati according to their rites and thereafter, on 10.01.2020, they performed Court Marriage at Jammu. Sapna further stated that she wants to go with the present petitioner who is her husband. The aforesaid statement before the learned Additional

Chief Judicial Magistrate, Ludhiana was also attached along with the reply as Annexure R-1. It has further been stated in the affidavit that on 23.12.2020 the Member of Child Line namely, Manjit Kumar and SI Harwinder Singh and Lady Constable Shikha and Bhanu Priya of RPF were present at Railway Platform, Ludhiana where they found three minor girls including Sapna and therefore, the said team Member of Child Line took the said girl in the abovestated Ashram and in this regard DDR was also recorded on 24.12.2020 thereafter, on 24.12.2020 the said Ashram produced the said girl Sapna before the Child Welfare Committee and the said Committee ordered to keep the girl Sapna in the Ashram and since then the girl is staying in the Ashram. The relevant documents of the Team Members of the Child Line as well as the orders passed by the Child Welfare Ludhiana dated 24.12.2020 are also attached along with the affidavit. Furthermore, girl was medically examined and to determine the age of the girl, an Ossification test was also conducted and the certificate of the department of Radiology L.M.Civil Hospital, Ludhiana has also been attached as Annexure R-5 in which it has been opined that the age of the girl would be from 17 to 20 years.

Reply has also been filed by way of an affidavit of the Chairman of the Child Welfare Committee, Ludhiana on behalf of respondent No.4 in which it has been stated that when she was brought before the Committee, there was no age proof with regard to the age of the girl but as per her own statement she stated that she is 17 years of age and the petitioner had come to claim the custody of the girl. It is further stated in the affidavit that the aforesaid petitioner had also shown a school record of Sapna and as per the same, she was only 16 years of age and since it was

considered to be a case of child marriage the Child Welfare Committee, Ludhiana decided to handover the girl to her parents for her proper care and protection and she could not be handed over to the petitioner because she was minor and that petitioner also agreed before the Child Welfare Committee, Ludhiana to hand over the girl to her parents, but there was no proper proof of age. It was further stated in the affidavit that the parents of the girl have not yet approached the Committee for the custody of Sapna and to ascertain the age of Sapna an Ossification test was conducted by the Civil Hospital, Ludhiana on 04.01.2021 and in the Report, it was opined that the age of the girl was 17 to 20 years.

In pursuance of directions issued by this Court, the record of the Child Welfare Committee, pertaining to the aforesaid girl Sapna was also produced before this Court. A perusal of the record would shows that the Report was submitted by the Member of the Childline Railway, Ludhiana on 24.12.2020 at 12:55 PM before the Committee vide FORM NO.17 and there is another FORM No.42 pertaining to Overnight Protective Stay and both these forms have been signed by Manjeet Kumar, Team Member. Furthermore, vide order dated 24.12.2020 which has been passed by the Child Welfare Committee, Ludhiana it has been ordered that Sapna be kept in the Children's Home/Fit Facility/SAA Shri Bala G Prem Ashram & Nikhil Vidayla, Ludhiana. This order has been signed by three persons including the Chairperson but one of the member has not signed this order. A perusal of the record would further show that marriage agreement duly attested by the Notary of petitioner with aforesaid Sapna is also attached wherein according to the agreement petitioner and Sapna have executed an instrument of marriage agreement on 09.01.2020 at Jammu and alongwith

the aforesaid agreement two reports of Arora Digital X-ray, Ultra sound, EEG and ECG Clinic, Jammu also attached wherein the radiological age of Sapna has been shown to be more than 19 years and the radiological age of the petitioner has been shown to be more than 22 years. Furthermore, an affidavit has also been executed by Sapna wherein she has stated that she is 19 years of age and is marrying the petitioner with her own free will and mutual consent without any coercion, fraud and misrepresentation. However, there is another document in vernacular (in Punjabi) which it is stated to be a counselling report in which statement has been made by Sapna on plain paper that her date of birth is 02.10.2001 and the second document appears to be in Assamese language. However, the aforesaid counselling report which is in punjabi language the year of birth has been corrected to 2004 and there are other cuttings also which are apparent from the aforesaid counselling report. There is no other document apart from the aforesaid document to suggest as to what would be the age of the girl. The School Certificate which has been stated by the Committee in the affidavit is not available in the record.

I have heard the learned counsel for the parties.

Present petition pertains to the release of Sapna @ Barnali Das and does not pertain to the release of the other girls who had already been released and were handed over to their parents. So far as Sapna @ Barnali Das is concerned she was detected in a train on 23.12.2020 and on suspicion she alongwith with other two girls were detained by the Child Help Line Railway Police, Ludhiana and they were produced before the Child Welfare Committee under the provisions of The Juvenile Justice Care and Protection Act, 2015. The Child Welfare Committee on the very next date i.e.

24.12.2020 passed an order where in she was ordered to be kept in Children's Home/Fit Facility/SAA Shri Bala G Prem Ashram & Nikhil Vidayla, Ludhiana. Perusal of the affidavit filed by the State, the Chairman and Members of the Child Welfare Committee, Ludhiana would show that the girl was detained by the Child Help Line and thereafter, on the orders of the Child Welfare Committee to the aforesaid Ashram in view of the fact that age of the girl could not be ascertained and it was thought that girl is of 16 years of age. The orders were passed on 24.12.2020 and it can not be said that such orders were beyond 24 hours as envisaged under provisions of Section 31 of the The Juvenile Justice Care and Protection Act, 2015. Furthermore, inquiry was carried out and Ossification test of the girl was also conducted and the doctors opined that the age of the girl is 17 to 20 years.

In the present case, the girl is now in custody of the Child Welfare Committee and is residing at Shri Balaji Prem Aashram, Nikhil Vidhalaya Lalte Kalan, Ludhiana. The issue which is stated to be considered by this Court would be as to whether the girl should be released to enable her to go to a place of her choice or not. As per the record produced by the Committee the marriage agreement between the petitioner and Sapna shows the age of Sapna to be 19 years of age and the said agreement along with the affidavit of Sapna the age of Sapna herself has been mentioned as 19 years. Similarly, the Marriage Certificate dated 09.01.2020 also shows the age of Sapna to be 19 years of age. The Ossification report prepared by the department of Radiology, Civil Hospital, Ludhiana which was got conducted by the Child Welfare Committee shows the opinion of the Board members that the age of Sapna would be between 17 to 20 years. However, there is

nothing on record to show that the age of Sapna is either 16 years of below 18 years. One Counselling certificate which has been written in punjabi in which the statement of Sapna has been recorded shows that she has stated that her date of birth is 02.10.2004, however, such a note given by Sapna can not be given much credibility. According to learned counsel for the petitioner Sapna does not know punjabi language and furthermore there are number of interpolations in the aforesaid counselling report including the year of birth.

It can be seen from the documents available with this Court that the aforesaid Sapna was produced before the learned Additional Chief Judicial Magistrate, Ludhiana on 20.01.2021 in pursuance of the directions issued by this Court in which Sapna has stated her date of birth to be 02.10.2021 and she has stated that she has performed marriage with petitioner and she wants to go with petitioner Rakesh Kumar. Since there is no document to show that the age of Sapna could be less than 18 years of age apart from the Ossification report which gave a range of 17 to 20 years the statement given by Sapna before the learned Additional Chief Judicial Magistrate, Ludhiana has to be relied upon in totality. In the aforesaid statement she has even stated that she is married with Rakesh Kumar petitioner and she wants to go with him.

Considering the totality and circumstances of the present case and considering the fact that there is nothing on record to show that Sapna is less than 18 years of age, this Court deems it fit and appropriate to allow this petition. It is directed that the aforesaid Sapna @ Barnali Das shall be released from Shri Balaji Prem Aashram, Nikhil Vidhalaya Lalte Kalan, Ludhiana forthwith. The aforesaid Sapna @ Barnali Das shall be free to go

to a place of her choice. The record sent by the Child Welfare Committee be sent back to the aforesaid Committee forthwith.

Petition stands allowed.

A copy of this order be given to the learned counsel for the parties under the signatures of the Court Secretary of this Court.

5th February, 2021
Shivani Kaushik

[JASGURPREET SINGH PURI]
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
Whether Reportable	Yes/No