

CRWP-12067-2021

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

CRWP-12067-2021

Date of Decision: 22.12.2021

Nargis and another

... Petitioners

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr.Jaspreet Singh Benipal, Advocate,
for the petitioners.

HARNARESH SINGH GILL, J.(Oral)

Case is taken up for hearing through Video Conferencing.

This petition has been filed under Article 226 of the Constitution for issuance of a writ in the nature of mandamus directing respondents No.2 and 3 to protect the life and liberty of the petitioners at the hands of respondents No.4 to 6.

Learned counsel for the petitioners submits that petitioner No.1, though minor, and petitioner No.2, have married with each other against the wishes of respondents No.4 to 6 and have sought protection to their life and liberty. They apprehend danger at the hands of respondents No.4 to 6. The photograph, evidencing their marriage, is on record as Annexure P-3. The petitioners have submitted a representation dated 16.12.2021 (Annexure P-4) to respondent No.2-Senior Superintendent of Police, Malerkotla, for redressal of their grievance.

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Learned counsel for the petitioners further submits that this is the first marriage of both the petitioners. He has relied upon the decisions by the Coordinate Benches in '*Kammu vs. State of Haryana & Ors.*' 2010(4) RCR (Civil) 716; '*Yunus Khan vs. State of Haryana & Ors.*' 2014(3) RCR (Criminal) 518, '*Mohd. Samim vs. State of Haryana & Ors.*' 2019(1) RCR (Criminal) 685, and dated 25.01.2021 rendered in CRWP-733-2021, titled as '*Shoukat Hussain and another Vs. State of Punjab and others*', to contend that in Muslim law puberty and majority are one and the same and that there is a presumption that a person attains majority at the age of 15 years. It is further contented that a Muslim boy or Muslim girl who has attained puberty is at liberty to marry any one he or she likes and the guardian has no right to interfere.

Notice of motion to respondents No.1 to 3-State only, at this stage.

On the asking of this Court, Mr. Chaman Lal Pawar, Sr. DAG, Punjab, accepts notice on behalf of respondents No.1 to 3.

I have heard the learned counsel for the parties.

This Court has taken note of the judgements cited on behalf of the petitioners and also the fact that the girl in the instant case i.e. petitioner No.1 is aged about 17 years. In the case of *Yunus Khan(supra)*, it has been noticed that the marriage of a Muslim girl is governed by the personal law of the Muslims. Article 195 from the book 'Principles of Mohammedan Law by Sir Dinshah Fardunji Mulla' has also been reproduced in the said decision. The said Article reads as under :

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“195. Capacity for marriage - (1) Every Mahomedan of sound mind, who has attained puberty, may enter into a contract of marriage.

(2) Lunatics and minors who have not attained puberty may be validly contracted in marriage by their respective guardians.

(3) A marriage of a Mahomedan who is sound mind and has attained puberty, is void, if it is brought about without his consent.

Explanation - Puberty is presumed, in the absence of evidence, on completion of the age of fifteen years.”

A Coordinate Bench in Kammu's case (supra), has held in para No.20 that as per the text Book of Mohammedan Law by Aqil Ahmad, “Puberty and majority” in the Muslim law, are one and the same. The presumption is that a person attains majority at the age of 15 years. It should be noted that marriage of a minor without the consent of the guardian is invalid unless it is ratified after the attainment of majority. A boy or girl who has attained puberty is at liberty to marry any one he or she likes and the guardian has no right to interfere if the match be equal.

In view of the decisions cited above, the law is clear that the marriage of a Muslim girl is governed by the Muslim Personal Law. As per Article 195 from the book ‘Principles of Mohammedan Law by Sir Dinshah Fardunji Mulla’, petitioner No.1 being 17 years of age, is competent to enter into a contract of marriage with a person of her choice. Petitioner No.2 is stated to be about 33 years of age. Thus, petitioner No.1 is of marriageable age as envisaged by Muslim Personal Law. In any event, the issue in hand is not with regard to the validity of the marriage but to address the apprehension raised by the petitioners of danger to their life and liberty at

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the hands of the private respondents and to provide them protection as envisaged under Article 21 of the Constitution. Article 21 of the Constitution provides for protection of life and personal liberty and further lays down that no person shall be deprived of his or her life and personal liberty except as per the procedure established by law. The Court cannot shut its eyes to the fact that the apprehension of the petitioners needs to be addressed. Merely because the petitioners have got married against the wishes of their family members, they cannot possibly be deprived of the fundamental rights as envisaged in the Constitution.

In view of the above discussion, but without entering upon an exercise to evaluate the evidentiary value of the documents placed on the file, I dispose of the present petition with a direction to respondent No.2- Senior Superintendent of Police, Malerkotla, to decide the representation dated 16.12.2021 (Annexure P-4) moved by the petitioners, and grant protection to them, if any threat to their life and liberty is perceived. It is made clear that this order shall not be taken to protect the petitioners from legal action for violation of law, if any, committed by them.

22.12.2021

parveen kumar

(HARNARESH SINGH GILL)
JUDGE

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