

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.5308 of 2022

Arising Out of PS. Case No.-437 Year-2021 Thana- PURNEA SADAR District- Purnia

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1. Shakila Begam W/O Akbar Khaliffa R/o- Khushkibag, Kaptan Para, (Ranipatra), P.S.- Sadar, District- Purnea
 2. Anju Devi W/o Late Jainul Khaliffa R/o village- Angarh Hat, P.S.- Angarh, District- Purnea

... .. Petitioner/s

Versus

1. The State of Bihar through The D.G.P. Bihar.
2. The Superintendent of Police, Purnea Bihar
3. The Dy. S.P., Purnea Bihar
4. The S.H.O., Sadar, Purnea Bihar
5. Anil Kumar Sinha, Reserve Police Inspector, Police Line, Purnea Bihar
6. The Superintendent, Nari Gunjan Child Home, Purnea Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. N. K. Agrawal, Sr. Advocate.
	:	Mr. Ashok Kumar Jha, Advocate
For the Opposite Party/s	:	Mr. M. K. Nirala, APP.

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

3 13-10-2022 Learned counsel for the petitioner is permitted to remove the defect(s), as pointed out by the office, within a period of four weeks from today.

Heard Mr. N. K. Agrawal, learned senior counsel for the petitioner, duly assisted by Mr. Ashok Kumar Jha, learned counsel and Mr. M. K. Nirala, learned APP for the State.

The petitioners are invoking the inherent jurisdiction of this court seeking quashing of the order dated 20.11.2021, passed by the learned Additional Sessions Judge- 6th -cum- Special Judge, POCSO Act, Purnea in connection with Special Case No. 437 of 2021, arising out of Sadar Purnea P.S. Case No.



437 of 2021, registered for the offence punishable under Sections 341, 342, 366A, 367, 370, 370(A), 370(S), 371, 372, 373, 376 and 120(B) of the Indian Penal Code, Sections 3, 4, 5, 6, 7 and 9 of the Immoral Traffic Act, Sections 75, 81 and 84 of the Juvenile Justice Act and Sections 3, 5, 6, 7, 8, 9 and 10 of the Protection of Children from Sexual Offences Act, whereby and whereunder the prayer for release of the daughters of petitioner No.1, namely, Heena Praveen, Deepa Kumari and Rozy Praveen and Petitioner No.2, namely, Rachna Praveen and Sanjana Khatton, have been refused.

The prosecution case is based on a written report dated 28.08.2021, alleging therein that the informant got an information with regard to keeping minor girls in the house of Akbar Khaliffa, husband of Petitioner No.1 and are being indulged in illegal flesh trade for earning huge amount and also indulged in sale and purchase of girls. On the tip of aforesaid information, a raid was conducted with the help of NGO and from the house of Akbar Khaliffa, Rachna Praveen, Sanjana Praveen, Deepa Kumari, Heena Praveen and Rozy praveen were recovered. It is further alleged that the victim Sanjana and Ranjana disclosed before the informant that after death of their father, they were kept by Akbar Khaliffa and Sangina Rustam



forcibly compelled them to indulge in flesh trade. Further, the victim Deepa Kumari and Heena Praveen also made similar statement. The victim Muskan Praveen has stated that she eloped with a boy, who left her and then she was also forcibly indulged in flesh trade. On the aforesaid accusation, a formal FIR has been registered.

Learned senior counsel appearing on behalf of the petitioners straightway drawn the attention of this court towards the order dated 17.09.2018 passed by learned Additional Sessions Judge- 1st -cum Special Judge, POCSO Act, in connection with Special Case No. 53 of 2018, arising out of Sadar P.S. Case No. 193 of 2018 and on the strength, thereof, he submitted that earlier also a similar kind of case has been instituted against the husband of the petitioner No.1 and after having considering all the materials including the documents showing the parentage of the victims with the petitioners, the learned court directed the release of the victim girls vide order dated 17.09.2018, with a condition that the petitioner No. 1 would produced the victims before the court, if and when they required. He further drawn the attention of this court towards the statement of the victim girls recorded under Section 164 of Cr.P.C., wherein they have not made any complaint against their



parents, as contained in Annexures 7 and 8 of the supplementary affidavit.

He next contended that vide order dated 01.09.2022 the State was directed to file counter affidavit, duly sworn by the Superintendent of Police, Purnea (Opposite Party No.2) and in compliance thereof, a counter affidavit has been filed. Learned senior counsel also drawn the attention of this court towards Paragraph 8 of the counter affidavit, which reads as follows:-

“Para: 8, That with regards to relation of the petitioner with the minor girls it is respectfully submitted that the petitioner, namely, Shakila Begam is the mother of Hina Praveen, Roji Praveen and Deepa Praveenm and Anju Khatoon is the mother of the Rachna Praveen and Sanjana Khatoon.”

He next submitted that from the averments made in the counter affidavit, it is admitted that the victim girls are daughters of Petitioner No.1 and 2 respectively, however, only on account of pendency of earlier case, the variance of the statements of the victims and medical report their release have been protested. He further added in his submissions that petitioners being mother of the victim girls have every right to have their possession and see welfare of the children and the impugned order has been passed without taking into account the



bona fide documents, such as Aadhaar Cards, School Certificates, which are clearly indicating the fact that the alleged victims are daughters of the petitioners.

On the other hand, learned counsel for the State submitted that earlier the victim girls were rescued in connection with Sadar P.S. Case No. 193 of 2018 and later on released in favour of the petitioner vide 17.09.2018, passed in Special Case No. 53 of 2018, but the victim girls were again found to be involved in illegal Immoral Act, due to which Sadar P.S. Case No. 437 of 2021 was instituted. He further contended that in connection with Sadar P.S. Case No. 193 of 2018, investigation was conducted and on being found the allegation true against the petitioners, charge-sheet has been submitted vide Final Form No. 216 of 2018 dated 31.07.2018. He also submitted that the victim Hina Praveen, disclosed her father named as Amar Kumar and mother name as Reshma Khatoon and stated that Akbar Khalifa and petitioner No.1 is her maternal grandfather and mother, though during the course of medical examination, she disclosed the name of her father as Akbar Khalifa and as such there is discrepancies in the statement of the victim. He lastly submitted that if the victim would be released in favour of their parents, there is every



chance that they would be forcibly indulged in flesh trading again.

Having heard the counsels for the parties and after carefully going through the materials on record, this court finds substance in the submission made by the learned senior counsel for the petitioners. From the averments made in the counter affidavit, it appears that the petitioners are mothers of respective victims and till date no conclusive proof has come to suggest that the petitioners and the victims were indulged in flesh trading, as the investigation is still going on, apart from the earlier case bearing Special Case No. 53 of 2018 is still pending for consideration before the learned Special Judge POCSO Act, Purnea.

In view of the above, this court is left with no option but to quash the impugned order dated 20.11.2021 passed by the learned Additional Sessions Judge-VI-cum- Special Judge, POCSO Act, Purnea, in connection with Special Case No. 437 of 2021 arising out of Sadar P.S. Case No. 437 of 2021, to the extend it relates to the release of the victim girls, namely, Heena Praveen, Deepa Kumari, Rozy Praveen , Rachna Praveen and Sanjana Khatoon, in favour of their respective parents, with following conditions :-



(i) The petitioners would file an undertaking before the jurisdictional court (Additional Sessions Judge-VI-cum-Special Judge, POCSO, Purnea) that the victims would not be indulged in any illegal immoral activities.

(ii) The petitioners would produce the victims before the Court, as and when their presence are required.

(iii) The investigating officer would be at liberty to inspect the houses of the petitioners, where the victims usually reside, as and when required.

Accordingly, the impugned order dated 20.11.2021, is hereby quashed to the extent indicated, hereinabove.

The present application stands allowed.

(Harish Kumar, J)

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