

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.484 of 2021

Arising Out of PS. Case No.-269 Year-2020 Thana- BANMANKHI District- Purnia

AFSANA KHATUN Wife of Late Mehdi Shah, Daughter of Iliyas Sah
Resident of Village- Ward No.7, Dudhpura Mangal Garh Hasanpur, P.S.-
Hasanpur, District- Samastipur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Home Secretary, Govt. of Bihar, Patna. Bihar
2. I.G. Prison, Bihar Patna. Bihar
3. Superintendent of Police, Purnea Bihar
4. Superintendent of Nari Gunjan Kendra, Balika Girh, Purnea City, Purnea Bihar
5. Officer in Charge, Banmankhi Bihar
6. Joya @ Kamal @ Kajal @ Yasim Khatoon Daughter of Afsana Khatoon
Father Late Mehdi Shah Resident of Village- Ward No.07 Dudhpura Mangal
Garh Hasanpur, P.S. Hasanpur, District- Samastipur.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Ram Prawesh Kumar, Adv.

Mr. Awanish Kumar, Adv.

For the Respondent/s : Mr. Divya Verma, A.C. to AAG 3

CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL ORDER

2 07-02-2022 Heard learned counsel for the petitioner and learned
counsel for the respondents through video conferencing.

The petitioner has filed the instant application for
quashing the order dated 18.1.2021 passed in Banmankhi P.S.
Case no. 269 of 2020 registered under sections 323, 353, 346,
367, 368, 370, 370(a), 372, 373, 376 and 120B of the Indian
Penal Code, sections 4, 6, 12 and 17 of the POCSO Act, sections
3, 4, 5 and 6 of the Immoral Traffic (Prevention) Act, 1956 and



sections 75 and 79 of the Juvenile Justice (Care and Protect of Children) Act whereby the petition dated 5.12.2020 filed by the petitioner for release of her daughter respondent no.6 in her favour, was rejected, for giving a direction to release the respondent no.6 in favour of the petitioner and for other reliefs to which the petitioner is found entitled.

An F.I.R. being Banmankhi P.S. Case no.269 of 2020 was registered on 18.10.2020 under sections 323, 353, 346, 367, 368, 370, 370(1), 372, 373, 376 and 120B of the Indian Penal Code, sections 4, 6, 12 and 17 of the POCSO Act, sections 3, 4, 5 and 6 of the Immoral Traffic (Prevention) Act, 1956 and sections 75 and 79 of the Juvenile Justice (Care and Protect of Children) Act on the statement of the informant Inspector Sunil Kumar Suman. It was stated therein that on 18.10.2020, on receiving orders from the Senior Officers a raiding team was constituted for the purpose of conducting raid in the house of Nizam @ Noor Alam and his associates. As per the information received, minor girls were being brought there for prostitution. It is stated that in the raid conducted, the thirteen years old respondent no.6 was recovered from the house of Nizam @ Noor Alam and various incriminating articles including condom



etc. were also recovered. It was stated that the recovered girls stated that they were forced into prostitution by Md. Nizam @ Noor Alam and on their resisting they were also beaten up. After registering of the F.I.R. the investigation started and the statement of the respondent no.6 was also recorded under section 164 Cr.P.C. which is Annexure-2 to the petition.

A petition dated 12.2.2020 was filed on behalf of the petitioner who happens to be the mother of respondent no.6, in Special Case no.73 of 2020 (arising out of Banmankhi P.S. Case no.169 of 2020) in the Court of learned 6th Additional District Judge-cum-Special Judge, POCSO Act, Purnea praying therein that the respondent no.6 who happens to be her daughter be released in her favour.

By order dated 18.1.2021 the learned Special Judge, POCSO Act, Purnea was pleased to reject the petition dated 5.12.2020 filed by the petitioner. It is against this order dated 18.1.2021 that the instant application has been filed.

It is the case of the petitioner that there is no dispute in the fact that neither the respondent no.6 nor her mother the petitioner herein, have been made accused in the F.I.R./case registered being Banmankhi P.S. Case no.269 of 2020 giving rise



to Special POCSO Case no. 73 of 2020. The statement of the respondent no.6 was recorded under section 164 Cr.P.C. (Annexure-2) wherein she has categorically stated that nothing untoward happened with her and that she wants to go with her mother to her home. It is submitted that the petitioner being the mother and natural guardian of respondent no.6, the order impugned dated 18.1.2021 is unsustainable, the same be set aside and direction be given to the authorities concerned to release respondent no.6 in favour of the petitioner.

The prayer is opposed by learned counsel appearing for the State. It is submitted that the allegations in the F.I.R. are serious and various incriminating material was found at the place of occurrence. The prayer of the petitioner for release of respondent no.6 in her favour was rejected on the basis of report of the District Probation Officer. Learned counsel for the State further relies on the judgment in the case of *Shikha Kumari versus State of Bihar* [2020(2) BLJ 544].

Having heard learned counsel for the parties and on going through the materials on record including the report of the District Probation Officer which has been enclosed with the counter affidavit filed on behalf of the Superintendent of Police,



Purnea, it is not in dispute that neither the petitioner nor the respondent no.6 have been made accused in the F.I.R. from which the instant application arises. No doubt the allegations in the F.I.R. are serious, however, just for the reason of gravity of the offence, the respondent no.6 being the minor daughter of the petitioner cannot be kept away from her mother the petitioner herein, who also happens to be her natural guardian. On perusal of the report of the District Probation Officer, Purnea brought on record as Annexure-1 series to the counter affidavit filed on behalf of the Superintendent of Police, Purnea, the Court is unable to agree with the conclusions arrived at by the respondent- State as at a number of places the observations made by the Probation Officer is based on conclusions arrived by him without any concrete material and it is for this reason that he uses the term "that it appears". Thus in the facts and circumstances of the case, the Court does not find the order dated 18.1.2021 nor the reasons stated therein to be sustainable and thus the order dated 18.1.2021 passed in Special POCSO Case no. 73 of 2020 (Banmankhi P.S.Case no.269 of 2020) by the learned 6th Additional District Judge-cum-Special Judge, POCSO Act, Purnea is set aside.



The application is allowed.

The respondent authority specially the Superintendent of Naari Gunjan Kendra, Balika Grih, Purnea City, Purnea (respondent no.4) is directed to hand over the custody of respondent no.6 to the petitioner (mother of respondent no.6) without any delay.

The application stands allowed.

(Partha Sarthy, J)

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