

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.949 of 2022

Arising Out of PS. Case No.-183 Year-2021 Thana- TRIVENIGANJ District- Supaul

1. SARSWATI DEVI W/o Tunay Yadav Resident of Village - Sujanpur, P.s.- Kishanpur, Distt.- Supaul.
2. Tunay Yadav Son of Late Natay Yadav @ Nari Yadav Resident of Village - Sujanpur, P.s.- Kishanpur, Distt.- Supaul.

... .. Petitioners

Versus

1. The State of Bihar through the Principal Secretary, Deptt. of Social and Welfare, Bihar Patna. Bihar
2. The Director Deptt. of Social and Welfare Bihar, Patna. Bihar
3. The Distt. welfare Officer, Supaul. Bihar
4. The Distt. Magistrate, Supaul. Bihar
5. The Secretary Child Welfare Committee, Supaul. Bihar
6. The Superintendent of Police, Supaul. Bihar
7. The S.H.O. Triveniganj, Supaul. Bihar

... .. Respondents

Appearance :

For the Petitioners : Mr. Pramod Mishra
For the Respondents : Mr. P. N. Sharma, AC to AG

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE KHATIM REZA

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

5 01-12-2022 The petitioners claim to be the Uncle and Aunt of 'X' (name concealed) and have filed the present writ application seeking issuance of a writ in the nature of writ of *habeas corpus* for release of 'X' in their favor, who has been sent to short stay home (अल्पावास) under an order passed by a Special Judge, POCSO, dated 18.05.2022. From the order dated



18.05.2022, it appears that 'X' has been found to be a minor, based on the entries made in the school register and Aadhaar Card.

Learned counsel appearing on behalf of the petitioners, on the other hand, has submitted that 'X' is major, above 18 years of age, as has been found by the Doctor. He submits that 'X' has declined to go under the guardianship of her parents. He further contends that she has married the nephew of these petitioners. A statement to this effect 'X' has made in her statement under Section 164 of the Code of Criminal Procedure, he contends.

Learned counsel representing the State, on the other hand, has relied on a Full Bench decision of this Court in case of ***Shikha Kumari Vs. The State of Bihar (Full Bench)***, reported in **2020(2) PLJR 15**, to contend that when the detention/stay is based on a judicial order passed by a competent court, a writ of *habeas corpus* for production of such person under detention/stay is not maintainable.

Indisputably, the order passed by the learned Special Judge, POCSO, dated 18.05.2022 has not been challenged. The finding by the Special Court that 'X' is a minor is also not under challenge and cannot normally be challenged in the present



proceeding under Article 226 of the Constitution of India.
Further, the petitioners, in any event, do not have any right to
claim custody of ‘X’.

In our opinion, this writ application is misconceived
and deserves to be dismissed.

This application is accordingly dismissed.

(Chakradhari Sharan Singh, J)

(Khatim Reza, J)

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