

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.1190 of 2021

Arising Out of PS. Case No.-506 Year-2018 Thana- SAKRA District- Muzaffarpur

Nandani Kumari W/O Abhishek Kumar R/O Village- Ramnagar, P.S-Sakra
And District- Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar through Director General of Police Bihar
2. Superintendent of Police Muzaffarpur.
3. Officer-In-Charge, Sakra P.S. And District- Muzaffarpur.
4. Superintendent Balikagrih Begusarai P.S and District Begusarai.
5. Ravikant Jha S/O Shivkant Jha R/O Village-Ramnagar, P.S- Sakra And District- Muzaffarpur.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Diwakar Prasad Singh, Adv.
For the Respondent/s : Mr. Sheo Shankar Prasad, Adv.
For the respondent no.1 : Mr. Prabhat Kumar Singh, Adv.

CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL ORDER

9 18-02-2022 Heard learned counsel for the parties through video conferencing.

The petitioner has filed the instnat application for quashing the order dated 2.9.2021 passed by the learned ACJM-XII, Muzaffarpur in Sakra P.S.Case no. 506 of 2018 whereby the petition filed for release of the petitioner was rejected, for declaring the detention of the petitioner and her minor child in the Balika Grih Begusarai is illegal, for directing the respondents to release the petitioner and set her at liberty to go with her husband along with her minor child and for any other relief to which the petitioner is found entitled.



The relevant facts in brief are that Sakra P.S. Case no.506 of 2018 was registered under sections 363 and 366A of the Indian Penal Code on 20.11.2018 by the respondent no.5 alleging therein that his minor daughter had been kidnapped by Abhishek Kumar and others. The daughter of the informant i.e. the petitioner herein returned and her statement was recorded on 14.1.2020 under section 164 Cr.P.C. wherein she categorically stated that she was not kidnapped. Out of her own free will she eloped with Abhishek Kumar and married him in Delhi. On coming to know about a case having been lodged by her father, she returned from Delhi to Muzaffarpur and has come to the Court with her mother-in-law to give her statement.

By order dated 14.1.2020, based on the admit card issued by the Bihar School Examination Board produced by the father of the petitioner (respondent no.5 herein), she was assessed to be a minor. The order dated 14.1.2020 takes note of the fact the father of the victim tried his best to take her home but the victim vehemently opposed the request of her father. She was thus sent to the Balika Grih, Begusarai.

It is the categorical averment on behalf of the petitioner that in course of her incarceration at the remand home, the petitioner gave birth to a child. It would be relevant to point out here itself that although a counter affidavit has been



filed on behalf of the Superintendent of Police, Muzaffarpur and the Officer In charge, Sakra Police Station, District Muzaffarpur, however, the said statement made in paragraph no.16 of the petition has not been denied by the respondents and in reply they state that the same needs no comments.

It is the case of the petitioner that the Medical Board in the medical examination held on 2.11.2018 found the age of the petitioner to be 16 years. Thus two years later, having completed 18 years and having attained majority, the petitioner once again filed a petition for her release along with her child from the remand home. No order having been passed on the petitioner's petition, the petitioner moved this Court by filing Cr.WJC no.752 of 2021 which was disposed of by order dated 20.7.2021 (Annexure-10) with a direction to the learned ACJM-XII, Muzaffarpur East to hear the parties on the application filed by the petitioner within two weeks from the date of receipt/production of a copy of the order and he was directed to dispose of the application within three weeks.

By order dated 2.9.2021 the learned ACJM-XII, considered the application filed by the petitioner and taking note of the date of birth of the petitioner being 25.8.2004 as recorded in the certificate issued by the Bihar School Examination Board, held the petitioner to be a minor and thus rejected the



application filed on behalf of the petitioner for her release along with her new born daughter.

Learned counsel for the petitioner submits that it is not in dispute that in the medical examination conducted on 2.11.2018 the age of the petitioner was assessed to be 16 years and thus she completed the age of 18 years and attained majority in November, 2020. Further learned counsel for the petitioner places reliance on the Division Bench judgment of this Court dated 24.1.2011 passed in Cr.WJC.no.91 of 2011 to submit that the facts of the said case were very similar to the facts of the instant case and thus in view of the order passed therein, the instant application should also be allowed, the order impugned be set aside and the petitioner along with her minor daughter be released from remand home to go and reside with her husband. He submits that the instant petition has also been sworn by the mother-in-law of the petitioner.

Having heard learned counsel for the parties and taking into consideration the facts and circumstances of the case, it would be relevant to quote relevant portion of the judgment dated 24.1.2011 passed in Cr.WJC no. 91 of 2011 (Akhilesh Kumar Yadav versus State of Bihar and Ors.):-

“.....Petitioner was sent to jail and Puja Kumari was produced before the Magistrate of 1st Class, Saharsa. She had given



birth to a female child, who was one and half years, when she was produced before the Magistrate on 12.7.2010. On her production, her statement was recorded by the Magistrate under Section 164 of the Cr.P.C. On 12.7.2010 in which she fairly disclosed that she is living with her husband in Jharkhand and she has already met with her parents. Her age was also assessed by the doctor and she claimed to be 21 years of age but as per the medical report Annexure-5 her age was assessed between 17 to 19 years. Whatever could be the age of Puja Kumari, whether she was below 18 or has crossed 18 years, this is a fact that she has given birth to a child and the interest of child was also involved in this case. The Magistrate completely overlooked these aspects and instead of releasing her he passed order for sending Puja Kumari along with her daughter to Remand Home. This was completely an order without jurisdiction in the light of the decision of the Supreme Court of *Jaya Mala Vrs. Home Secretary Govt. of J & K. AIR 1982 SC 1297*. In similar situation, it has been held by the Apex Court that even if the girl is below 18 years but she has got married, started living as husband and wife, she should be allowed to go to the husband. In the present case, even the father of Puja Kumari who is the informant of Saharsa P.S. Case No.94 of 2008 had filed a petition on affidavit before the court that he is not willing to take his daughter back to



his home and she should be released to go to her husband's place, start living there and the husband should be asked to keep her as well as her daughter.

Considering the fact stated above, the Superintendent, Remand Home, Gai Ghat, Patna City, is directed to release Puja Kumar at once so that she may go along with her daughter to her husband and live with him at any place of her choice.

The order passed on 15.11.2010 by the Judicial Magistrate Ist Class, Saharsa in connection with Saharsa P.S. Case No.94 of 2008 Annexure-7 is quashed.

This application is allowed.”

It may be pointed out here that notices in the instant case was issued to the respondent no.5 ie the informant in the case as also the father of the petitioner on 20.12.2021. Learned counsel appearing for the respondent no.5 submitted that he does not intend to file any counter affidavit and has no objection in case the prayer made in the instant application is allowed.

Thus in the facts and circumstances of the case, taking note of the medical estimation of the age of the petitioner according to which she would be 18 years as on November, 2020 together with the more important fact that she has given



birth to a female child while in the remand home, this Court is of the opinion that it would be in the interest of both the petitioner as also her child that she be released from the remand home to go to her husband's place to start living there with her husband who will look after her as also the child.

Thus in the facts and circumstances of the case the order dated 2.9.2021 passed by the learned ACJM-XII, Muzaffarpur passed in connection with Sakra P.S.Case no. 506 of 2018 is hereby quashed.

The instant application is allowed.

The Superintendent, Balika Grih, Begusarai (respondent no.4) is directed to release the petitioner (Nandani Kumari) along with her minor child at once so that she may go to her husband's place.

(Partha Sarthy, J)

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