

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 1359 OF 2021

Hirabai Vitthal Jadhav

Petitioner

Versus

The State of Maharashtra & others

Respondents

Mr. V. P. Narwade, advocate for the petitioner
Mr. S. J. Salgare, APP for Respondents.

**CORAM : V.K.JADHAV AND
SANDIPKUMAR C. MORE, JJ.**

DATE : 03rd March, 2022.

PC :

1 By an order dated 17.02.2022, after interacting with missing woman Pooja in the open Court and after hearing learned Counsel for the petitioner as also the petitioner in-person, we have directed that the missing woman Pooja along with her three children be kept at "Snehalaya", Ahmednagar, for 15 days from the date of the order. We have also directed to make inquiry about the antecedents of Santosh Singh with whom missing woman Pooja wants to stay. We have further directed that after expiry of period of 15 days, Pooja and her three children shall be produced before this Court along with report of the P. S. I. About the antecedents of Santosh Singh. We have also directed the petitioner to remain

present on the next date along with husband of Pooja, namely Digamber Shende.

2 Today, we have again interacted with said Pooja in the open Court. She is reluctant to go along with her husband Digambar for the reason that her husband Digambar Shende used to ill-treat and beat her under the influence of liquor. She has stated before us unequivocally that she wants to stay away as per her wish and she do not want to join company of her husband Digambar Shende nor want to go with her mother i.e. the petitioner herein.

3 The learned Counsel for the petitioner has vehemently submitted before us that during the subsistence of first marriage, Pooja, who is having three children, cannot marry with said Santosh Singh, who is having criminal antecedents.

4 We have also gone through the report submitted by the Investigating Officer. It appears that Santosh Singh has been convicted for the offence punishable under Section 376 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for seven years. He has undergone imprisonment to the extent of

two years and seven months and is presently on bail. The Investigating Officer has also recorded statement of Sarpanch of village Rohini Dera, Tahsil Sikandara, District Kanpur (Uttar Pradesh). Said Sarpanch Ratneshkumar Ramashankar Dixit has stated in his statement that said Santosh Singh has now improved his behaviour and presently doing business of selling of clothes and is not indulged in any criminal activity. Said Sarpanch has also stated in his statement that Pooja along with her three children were residing in the house of parents of Santosh Singh and even parents of Santosh Singh have also accepted Pooja as wife of Santosh Singh. The statement of father of said Santosh Singh, namely Yashpal Singh is also recorded and today, he is also present in the Court premises. Said Yashpal Singh, father of Santosh Singh, has also stated in his statement that after undergoing the sentence in connection with the criminal case, his son is now released on bail and he is doing the business of selling clothes and not indulged in any criminal activity.

5 We are not going into the question as to whether Pooja can perform second marriage during subsistence of first marriage. It is open for her husband – Digamber Shende to initiate appropriate proceedings, including filing of the complaint.

However, said Pooja, who is major woman of 25 years having three children, is free to stay any where as per her wish and we cannot send her to petitioner's house against her wish. Similarly, we cannot direct Pooja, who is a major woman, to join company of her husband.

6 In view of the same, missing woman Pooja shall be set at free forthwith.

7 Rule of habeas corpus stands discharged.

8 Criminal Writ Petition is accordingly disposed of.

9 Authenticated copy of this order be supplied to the learned A. P. P.

(SANDIPKUMAR C. MORE)
JUDGE

(V.K.JADHAV)
JUDGE

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