

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRWP-1514-2022

Date of decision : 21.02.2022

Jahir Khan and another

... Petitioners

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Ms. Vandana Sharma, Advocate
for the petitioners.

Mr.Praveen Bhadu, AAG, Haryana.

(Through Video Conferencing)

VIKAS BAHL, J. (ORAL)

The present Criminal Writ Petition has been filed under Article 226 of the Constitution of India for directing the official respondents to protect the life and liberty of the petitioners.

It is the case of the petitioners that petitioner no.1 was born on 29.07.2003 as is apparent from his Aadhaar Card (Annexure P-2). It is thus apparent that petitioner no.1 is although major but is not of marriageable age. Petitioner no.2 is stated to be 22 years as per her affidavit dated 11.02.2022 (Annexure P-3). It is further contended that the petitioners have performed marriage (*Nikah*) on 09.02.2022 and for the said purpose, reference has been made to *Nikah Nama* dated 09.02.2022 (Annexure P-1).

It is also submitted that the petitioners have given a detailed representation

dated 14.02.2022 (Annexure P-4) to respondent no.2 as they are apprehending harm to their life and liberty and have, thus, sought protection.

Learned counsel for the petitioners has submitted that in the present case, petitioner no.2 has filed an affidavit in which it has been stated that her documents were snatched by her earlier husband (respondent no.8) and has further stated that she is 22 years of age. He has further submitted that petitioner no.2 was earlier married to respondent no.8 and respondent no.8 had given divorce (talaq) to petitioner no.2 on 06.01.2021. Reliance has been placed upon the judgment of Division Bench of this Court dated 03.09.2021 passed in **LPA-769-2021** titled as “***Ishrat Bano and another vs. State of Punjab and others***” to contend that even in case the divorce is not in accordance with law then also protection should be granted to the petitioners. It is also pointed out by learned counsel for the petitioners that petitioner no.1 is although a major but is of not marriageable age and on the said aspect the judgment of coordinate Bench of this Court in ***Jashanpreet Kaur and another vs. State of Punjab and others***, reported as **2019(4) RCR (Civil) 183** has been relied upon.

Notice of motion to respondents no.1 to 3 only.

On advance notice, Mr.Praveen Bhadu, Addl.A.G. Haryana, appears and accepts notice on behalf of respondent nos.1 to 3 and on a specific query put by this Court, he has stated that he has no objection in case, respondent no.2-of Police, District Nuh, Haryana, looks into the representation dated 14.02.2022 (Annexure P-4) and takes appropriate action in accordance with law.

This Court has heard learned counsel for the parties and has perused the paper book.

A coordinate Bench of this Court in ***Jashanpreet Kaur's*** case (supra) had held as under:-

“1 to 5 xxx xxx

6. Facts, as pleaded in the petition, succinctly are that the petitioner No.1, a minor girl born on 04.10.2003 and petitioner No.2, a boy born on 10.03.2000, though a major, but not of marriageable age, purportedly are in love with each other and got married on 17.06.2019 at Panchkula according to Hindu Rites and Ceremonies. Photographs of their marriage have been appended with the petition.

7 to 16. xxx xxx

17. The issue in hand, however, is not marriage of the petitioners, but the deprivation of fundamental right of seeking protection of life and liberty. I have no hesitation to hold that Constitutional Fundamental Right under Article 21 of Constitution of India stands on a much higher pedestal. Being sacrosanct under the Constitutional Scheme it must be protected, regardless of the solemnization of an invalid or void marriage or even the absence of any marriage between the parties.

18. It is the bounden duty of the State as per the Constitutional obligations casted upon it to protect the life and liberty of every citizen. Right to human life is to be treated on much higher pedestal, regardless of a citizen being minor or a major. The mere fact that the petitioners are not of marriageable age would not deprive them of their fundamental right as envisaged in Constitution of India, being citizens of India.

19. In view of the discussion above, the Senior

Superintendent of Police, Batala is directed to verify the contents of the petition particularly the threat perception of the petitioners and thereafter provide necessary protection qua their life and liberty, if deemed fit.

20. It is clarified that this order shall neither be treated as a stamp of this Court qua marriage of the petitioners nor any reflection on the merits of the contentions raised by them in the present petition.

21. The writ petition is, accordingly, disposed of. ”

The above case was a case in which the girl was aged about 15 years and 8 months and the boy was aged about 19 years and 3 months and yet the coordinate Bench after considering the provisions of Hindu Marriage Act, 1955, was pleased to protect the life and liberty of the petitioners therein.

Further, with respect to the aspect of divorce by talaq between petitioner no.2 and respondent no.8 being legal or not, the Division Bench of this Court in ***Ishrat Bano's*** case (supra) had held as under:-

“The aspect which we are considering and dealing with is with regard to the threat to the life and liberty to the appellants as has been asserted by them. No doubt, in case a criminal case is registered against any of the parties, the law should take its own course, however, the life and liberty of any person who has approached the Court with such a grievance need to be taken care of and the protection be provided as permissible in law. No person can be permitted or allowed to take law in his hands and therefore, keeping in view the said aspect, we dispose of the present appeal by observing that the Senior Superintendent of Police, Maler Kotla, shall take into consideration the representation dated 17.08.2021

(Annexure P-5) submitted by the appellants and if some substance is found therein, take appropriate steps in accordance with law to ensure that the life and liberty is not jeopardized of the appellants at the hands of the private respondents. This direction shall not be construed in any manner to restrain the official respondents to proceed against the appellants in case there is some criminal case registered against them. The law shall take its own course and it shall be open to the authorities/investigating agency to proceed against the appellants, if required in law and in accordance thereto.”

Thus, the Division Bench after considering the aspect of protection of life and liberty being of paramount consideration and without getting into the issue as to whether the relationship between the parties was legal or not, even in spite of the fact that there is a criminal case registered against the parties, however, granted them protection.

In view of the same, it goes without saying that protection of life and liberty is a basic feature of the Constitution of India. Every person, more so, a major, has right to live his / her life with a person of his / her choice at any rate whenever this Court, prima-facie, is satisfied that on account of some relatives/ persons being unhappy with the relationship between the petitioners could cause harm to the life and liberty of the petitioners, then in such circumstances, the Courts are then required to pass necessary directions for their protection.

Keeping in view the above said facts and circumstances and without commenting upon the legality of the marriage and expressing any opinion on merits of the case, the present Criminal Writ Petition is disposed

of with direction to respondent no.2-Superintendent of Police, District Nuh, Haryana, to look into the representation dated 14.02.2022 (Annexure P-4) and after considering the threat perception to the petitioners, respondent no.2 will take appropriate action in accordance with law.

It is, however, clarified that this order shall not debar the State from proceeding against the petitioners, if involved in any other case.

(VIKAS BAHL)
JUDGE

February 21, 2022.

Davinder Kumar

Whether speaking/reasoned:-	Yes/No
Whether reportable:-	Yes/No