

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

267

CRWP-4568 of 2021

Date of Decision:15.11.2022

Ajit Singh

....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Dhruv Walia, Legal Aid Counsel,
for the petitioner.

Mr. Kunal Vinayak, AAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

The present petition has been filed under Article 226 of the Constitution of India seeking a writ in the nature of *habeas corpus* for releasng of the alleged detainee namely Harjeet Kaur from the illegal custody of respondents No.6 to 11. The petitioner is stated to be the father of the alleged detainee.

This Court had issued notice of motion and thereafter on 12.07.2021, learned counsel for the petitioner had submitted that the detainee is about 16 years of age and her date of birth is 07.12.2005 and therefore she is a minor. However, learned State counsel had submitted that both the aforesaid detainee and the boy namely Gurdeep Singh (respondent No.6) with whom she was stated to have married were absconding and therefore an FIR was registered against the boy under Sections 363 and 366-A IPC at Sri Hargobindpur, Police District Batala and efforts were made to trace the girl and the boy.

Therefore, this Court directed the Senior Superintendent of Police,

Batala as well as the Senior Superintendent of Police, Amritsar (Rural) to coordinate with each other and deputed some senior lady police officer for tracing the girl and upon tracing the girl, she shall be kept in Nari Niketan, Jalandhar or at any other suitable place, where the SSPs of both the districts may deem fit and also directed that the safety of the girl shall be of a paramount consideration at the first instance. Thereafter on 14.09.2021, the learned State counsel informed this Court that the girl has been traced out and has been sent to Nari Niketan but thereafter she has been released from the Nari Niketan and was sent to her father. Since there was no order passed by this Court for her release, this Court had directed the State to file an affidavit as to what procedure was adopted for releasing her from custody and giving the custody of the girl to her father especially in view of the fact that the girl was apprehending threats from her own father who is the petitioner.

Thereafter, affidavit was filed by the SSP, Batala wherein it was stated that the girl was released by the Child Welfare Committee, Gurdaspur on 02.09.2021 and her custody was given on the basis of her undertaking. This Court therefore directed that a proper explanation be sought from the Child Welfare Committee through its Chairperson as to under what circumstances, the girl was released once there was an express order of this Court to keep her in safe home.

Thereafter, the Chief Welfare Committee also filed an affidavit wherein they submitted that they were not aware of the orders passed by this Court.

After 04.03.2022 when the aforesaid order was passed, the matter was taken up four times, but the learned counsel for the petitioner did not appear and therefore this Court appointed Mr. Dhruv Walia, Advocate as a Legal Aid Counsel

on 06.09.2022.

Today the learned Legal Aid Counsel has also appeared and has made his submissions. He submitted that now the girl has again been sent to the Nari Niketan and has submitted that her age as of today is 1 year and 1 month short of 18 years and since the petitioner is the father of the girl, she may be released from Nari Niketan.

However, Mr. Kunal Vinayak, learned AAG, Punjab has stated, on specific instructions from ASI Tejinder Singh, that in fact during the course of trial in the FIR registered under Sections 363 and 366-A IPC, the prosecutrix who is the detainee in the present case has specifically deposed before the learned trial Court on 24.08.2022 that earlier the examination-in-chief which was recorded by her was under force and was under threat from her own mother and father who threatened her that in case she did not depose against the accused then they will kill her and with also sell her for consideration amount of Rs.20,00,000/-. She has also deposed that her father, maternal aunt and maternal grandfather and one other lady have threatened her and she also stated that she married with Gurdeep Singh on her own will and he never committed rape upon her. The learned State counsel has further submitted that thereafter on the same date, i.e. 24.08.2022 when she deposed before the learned trial Court expressing threat and apprehension at the hands of her own parents which includes the petitioner who is the father of the girl, the girl was immediately sent to the Nari Niketan once again so as to ensure her safety. He has submitted that in view of the deposition made by the detainee, she will not be safe in case she is released from Nari Niketan and it will be just and proper in case she remains in Nari Niketan at least till she attains the age of

majority after one year and one month approximately. Learned State counsel also stated that the girl was again sent to Nari Niketan under the orders of Child Welfare Committee.

I have heard the learned counsel for the parties.

The detenue is undoubtedly a minor as per the learned counsel for the parties. She was sent to Nari Niketan by the orders passed by this Court dated 12.07.2021 but released by the Child Welfare Committee of their own. Thereafter when she deposed before the learned trial Court while deposing in the aforesaid FIR she stated that her parents have threatened her and therefore she was again sent to Nari Niketan on 24.08.2022.

In view of the aforesaid facts and circumstances, since the detenue is in the Nari Niketan in accordance with law in view of the order earlier passed by this Court and now again by the orders of the Child Welfare Committee as per the learned State counsel, she cannot be said to be in illegal custody. Rather on the other hand, in order to secure her safety, it will be just and proper that she remains in Nari Niketan at least till she attains the age of majority. After attaining the age of majority, she may move an application before the Child Welfare Committee which shall thereafter consider the same in accordance with law.

In view of the aforesaid position, nothing survives in the present petition and the same is hereby dismissed.

(JASGURPREET SINGH PURI)
JUDGE

November 15, 2022

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Whether speaking	:	Yes/No
Whether reportable	:	Yes/No