

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRWP No. 8593 of 2022

Date of Decision: 8th September, 2022

Jagwinder Singh and another

Petitioners

Versus

State of Punjab and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Sudesh Sahi, Advocate for the petitioners.
Mr. Arun Luthra, DAG, Punjab.

AVNEESH JHINGAN, J (Oral):

A direction is sought to the official respondents to protect the life and liberty of the petitioners from the hands of private respondents, (arrayed in the petition), who are living in live-in relationship.

Petitioner No.1 is 27 years and Petitioner No. 2 is 16 years of age. Petitioners are living together.

Learned counsel for the petitioners contends that the petitioners are living together, they have intention to get married. The submission is that parents of petitioner No. 2 are opposed to the relationship. He submits that petitioner No. 2 has right to give consent for going with petitioner No. 1. It is further submitted that representation dated 30.8.2022 was made to Senior Superintendent of Police, Barnala but same has not been acted upon.

As per the pleadings, Petitioner No. 2 is a minor of sixteen years of age. Her date of birth is stated to be 13.4.2006. To prove the date of birth, copy of Aadhaar Card is annexed. It would not be out of place to mention that Aadhaar Card is not proof of date of birth.

Petitioner No. 2 (a minor) has been impleaded through petitioner No. 1 as the next friend. Petitioner No. 2 is not of marriageable age. The affidavit supporting the petition is of petitioner No. 1 only. From the pleadings, it is evident that family of petitioner No. 2 has lodged a

complaint regarding kidnapping of petitioner No. 2. Representation dated 30.8.2022 was filed stating that there is apprehension of threat. The relief is claimed against the relatives of petitioner No. 2. It would be relevant to consider whether petitioner No. 1 can be held to be next friend of petitioner No. 2, more-so when there is contradiction of interest.

Before proceeding further, another aspects needs to be looked into. It would be relevant at this stage to quote Sections 4(b), 6 and 13 of the Hindu Minority and Guardianship Act, 1956 (for short, 'the 1956 Act') and Section 7 of the Guardians and Wards Act, 1890 (for short, 'the 1890 Act'). The same are reproduced below:

“Sections 4(b) and 6 of the 1956 Act

4. Definitions.- In this Act,--

xx

xx

xx

(b) “guardian” means a person having the care of the person of a minor or of his property or of both his person and property, and includes--

(i) a natural guardian,

(ii) a guardian appointed by the Will of the minor's father or mother,

(iii) a guardian appointed or declared by a court, and

(iv) a person empowered to act as such by or under any enactment relating to any court of wards;

6. Natural Guardians of a Hindu minor:-

The natural guardians of a Hindu minor, in respect of the minor's person as well as in respect of the minor's property (excluding his or her undivided interest in joint family property,) are:—

(a) in the case of a boy or an unmarried girl—the father, and after him the mother; provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother ;

(b) in the case of an illegitimate boy or an illegitimate unmarried girl—the mother, and after her, the father ;

(c) in the case of a married girl.— the husband :

Provided that no person shall be entitled to act as the natural

guardian of a minor under the provisions of this section:—

(a) if he has ceased to be a Hindu, or

(b) if he has completely and finally renounced the

world by becoming a hermit (Vanaprastha) or an

ascetic (Yati or Sanyasi). Explanation :—In this

section, the expressions ‘father’ and ‘mother’ do not

include a step-father and a step-mother.

13. Welfare of minor to be paramount consideration.

(1) In the appointment of declaration of any person as guardian of a Hindu minor by a court, the welfare of the minor shall be the paramount consideration.

(2) No person shall be entitled to the guardianship by virtue of the provisions of this Act or of any law relating to guardianship in marriage among Hindus, if the court is of opinion that his or her guardianship will not be for the welfare of the minor.

Section 7 of the Guardians and Wards Act, 1890:-

Power of the Court to make orders as to guardianship.-

(1) Where the Court is satisfied that it is for the welfare of a minor that an order should be made-

(a) Appointing a guardian of his person or property or both,

(b) declaring a person to be such a guardian the Court may make an order accordingly.

(2) An order under this section shall imply the removal of any guardian who has not been appointed by will or other instrument or appointed or declared by the Court.

(3) Where a guardian has been appointed by will or other instrument or appointed or declared by the Court, an order under this section appointing or declaring another person to be guardian in his stead shall not be made until the powers of the guardian appointed or declared as aforesaid have ceased under the provision of this Act.

As per Section 4(b) of the 1956 Act, the guardian includes, natural guardian, appointed by the Will of the minor's father or mother,

appointed or declared by a court or the person empowered to act under an enactment relating to any court of wards.

Section 6 of the 1956 Act provides that in case of a boy or an unmarried girl- the father and after him the mother, in case of an illegitimate boy or an illegitimate unmarried girl-- the mother, and after her, the father and in case of a married girl- the husband are natural guardians.

Section 13 states that while appointing guardian, welfare of minor is of utmost importance.

Section 7 of the 1890 Act empowers the Court to appoint guardian on being satisfied for welfare of the minor.

Petitioner No. 1 does not fall within ambit of Sections 4 and 6 of the 1956 Act. The petitioners have not solemnised the marriage.

There is no material on record to even *prima facie* satisfy Court with regard to the welfare of the minor. In writ, it would not be possible to record evidence to the effect that petitioner No. 1 is acting for the welfare of petitioner No. 2 and his interest is not adverse to the interest of the minor.

The petitioners claim to be in live-in relationship, meaning thereby that minor is with not her guardians. The petition is filed to be used as a shield against the complaint filed by the family of petitioner No. 2.

No case is made out for interference in the writ jurisdiction.

The petition is dismissed.

[AVNEESH JHINGAN]
JUDGE

8th September, 2022

mk

1. Whether speaking/ reasoned	:	Yes / No
2. Whether reportable	:	Yes / No