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

CRWP-10225-2021

Date of Decision: 25.03.2022

Anu

...Petitioner

Versus

State of Punjab and others

...Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Vaibhav Narang, Advocate
for the petitioner.

Mr. Bhupender Beniwal, AAG, Punjab.

JASGURPREET SINGH PURI, J.(ORAL)

1. The present petition has been filed under Article 226 of the Constitution of India with a prayer to issue a writ or direction in the nature of habeas corpus directing the respondent authorities to get the detenue namely, Mehak Sodhi, who is stated to be the daughter of the petitioner be released from respondent No.4 - Incharge Nari Niketan, Kapurthala Road, Gandhi Vanita ashram, Jalandhar.

2. Learned counsel for the petitioner has submitted that the petitioner is the mother of the detenue and the date of the birth of detenue is 10.08.2004 and she is approximately 17 years and 7 months of age and is 5 months short of from attaining the age of majority. He submitted that the allegations against the petitioner were that she was forcing the detenue into prostitution and thereafter, the detenue had run away from the house and reached the police station and thereafter the present FIR was lodged against the petitioner and after that the detenue was sent to safe home by the Child Welfare Committee under the provisions of Juvenile Justice Act. Learned counsel for the petitioner has submitted that the petitioner has been released

on regular bail by this Court and the allegations against the petitioner were totally mis-conceived due to some misunderstanding and the same having been removed, the detenue has also called the petitioner on telephone stating that she also wants to come back to her mother and therefore she may be released from the aforesaid Nari Niketan.

3. On the other hand, Mr. Bhupender Beniwal, learned AAG, Punjab has submitted that status report in the present case has already been filed by the State.

4. I have heard the learned counsel for the parties.

5. The present petition has been filed seeking a writ in the nature of habeas corpus. For the purpose of maintainability of the present petition, first of all it has to be seen that as to whether the custody of the detenue was illegal or not. As per the factual position, the detenue was sent to Nari Niketan by the Child Welfare Committee constituted under Juvenile Justice Act and such an action/order of the aforesaid Child Welfare Committee has not been challenged by anybody and therefore, by no stretch of imagination it can be said that the custody of the detenue is illegal. So far as the second argument raised by learned counsel for the petitioner that the mother of the detenue is entitled to her custody being a natural guardian, the factual background of the case pertaining to serious allegations against the petitioner would show that the detenue is a minor girl and the petitioner would not be entitled for the grant of custody of minor girl, at least till the time she attains the age of majority i.e. for another five months.

6. The background of the case is that an FIR was lodged against the petitioner and one another person namely, Munish, who is also a minor under Sections 376, 366, 372, 120-B IPC, Section 6 of POCSO Act and Sections 3, 4 and 5 of the Immoral Traffic (Prevention) Act, 1956 at Police Station

Division-B, District Police Commissionerate, Amritsar, on the basis of the complaint made by the aforesaid detenue herself, who was the prosecutrix/victim in that case and on her statement, the present petitioner, who is her mother was arrested. The allegation were that the husband of the petitioner is not living with her and the petitioner has three minor children and the petitioner has forced her children including the detenue into prostitution by sending her to various other persons and the petitioner is earning money out of it and after a lapse of eight years, the detenue ran away and went to the police station, where the present FIR was registered and the Child Welfare Committee took a decision to send her to protection/safe home especially because she was a minor and she needed immediate protection. Although, the petitioner was granted regular bail by this Court but the contention raised by the learned counsel for the petitioner that the petitioner has reformed and has mend her ways and the FIR was lodged on the basis of some misunderstanding cannot entitle the petitioner for having the custody of her minor daughter particularly in view of the factual background of the case.

7. In any case, only the period of five months has been left for the detenue to attain the age of majority. Therefore, in the peculiar facts and circumstance of the present case, the petitioner is not entitled for the grant of custody of minor detenue, at least, at this stage. Consequently, finding no merit in this petition, the same is hereby dismissed.

8. It is made clear that the aforesaid observations would not mean anything on the merits of the case, as the same are only for the purpose of deciding the present petition.

(JASGURPREET SINGH PURI)
JUDGE

March 25, 2022

Manpreet

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