

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRWP-9833-2022

Date of Decision: 29.10.2022

Sukhdev Raj

... Petitioner

VS.

State of Punjab & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Sarvesh Malik, Advocate for the petitioner

Mr. Rajiv Verma, DAG Punjab

Mr. Vipul Aggarwal, Advocate for respondents No.5&6

Sandeep Moudgil, J. (Oral)

In the instant petition, the petitioner has invoked Article 226/227 of the Constitution of India for issuance of a writ in a nature of Habeas Corpus to produce the detenu, namely, Rohit (son of the petitioner).

On 13.10.2022, the following order was passed:-

“It has been asserted on behalf of counsel for the petitioner that the alleged detenu and respondent No.5-Muskan were residing together in live-in-relationship and both are major. Earlier both of them have sought protection of their lives and liberty vide CRWP-3136-2022 from the family members of respondent No.5. A reference has been made to the order dated 04.05.2022 (Annexure P-1).

A perusal of order dated 04.05.2022 (Annexure P-1) crystallizes that in that petition the matter was referred to the Mediation and Conciliation Centre of this Court wherein, finally a settlement/agreement was reached at in between the parties on 27.04.2022 (Annexure P-2).

The said settlement depicts that the parents of respondent No.5 were present therein, which was on the following terms:-

8. The following settlement has been arrived at between the parties hereto:

(a) That Muskan-petitioner No. 1 has stated that she wants to accompany petitioner No. 2-Rohit as per her own wish and there is no pressure or coercion from any side. This is her independent decision as she being major.

(b) That Sukhdev Rai son of Sh. Diwan Chand, father of petitioner No. 2 has stated that he has no objection if his son Rohit-petitioner No. 2 and Muskan-petitioner No. 1 performs marriage and he has assured that he will take care of both the petitioners and will perform their marriage shortly.

(c) That Sukhdev Raj son of Sh. Diwan Chand, father of petitioner No. 2 has further informed that he has taken already divorce from his wife namely Sarabjeet Kaur, mother of Rohit and is living separately. He has further assured that for the security of petitioner No. 1-Muskan, he will furnish FDR of Rs.One Lac in the name of petitioner No. 1 - Muskan before the Hon'ble High Court on the next date of hearing.

(d) That parents of Muskan-petitioner No. 1 have stated that they have not accepted this relationship. However, they have stated that they will not interfere in the lives of petitioners in any manner.

(e) The parties have decided not to disturb each other's peaceful life or in any manner interfere in each other's life.

(f) The parties have further decided that in case petition for quashing of FIR No. 0110 dated 29.03.2022 under Section 346 IPC registered at Police Station 'A' Division, Amritsar, District Amritsar is filed in this Hon'ble Court, Radha complainant/ respondent No. 4 shall not oppose the same. Radha-complainant/ respondent No. 4 shall not

oppose if cancellation report is filed by police in the above-noted FIR. Radha-complainant/ respondent No. 4 shall make statement if so directed by the Hon'ble High Court or any other Court.

(g) Both the parties have agreed that they and their family members will obey/carry out the present settlement/agreement in all fairness and will not create any hurdle.

(h) In case any complaint filed by any of the party is pending before any competent authority/police, the same shall be withdrawn by the respective party in view of the present settlement."

In view of that settlement the said petition was withdrawn by respondent No.5 and the alleged detenu who are living together, to which no objection was given before this Court by the parents of respondent No.5.

However, a perusal of the present petition shows that subsequently the parents of respondent No.5 have turned hostile and showed disregard to the settlement arrived at in between the parties before this Court, which was a clever device adopted by the parents of respondent No.5 to get the petition disposed of at that time. In the month of July, 2022, when the alleged detenu was away to work, respondent No.5 was taken away forcibly by her parents. The alleged detenu immediately gave a representation dated 26.07.2022 to Senior Superintendent of Police, Batala-respondent No.3 (Punjabi version of which has been attached as Mark 'A').

It is also evident from the pleadings that respondent No.5 seems to have been pressurized by her parents to give false complaint against the alleged detenu before respondent No.2-Inspector General of Police, Border Range, Amritsar with the allegation of gang rape on 31.07.2022 (Anneuxre P-4). In fact at

that time respondent No.5 is alleged to be on family way, the medical record is attached as Annexure P-3.

Thereafter very smartly respondent No.6, mother of respondent No.5, gave a statement before the Deputy Superintendent of Police, CAW, Batala that they do not want to pursue the said complaint/application which may be filed as they have already submitted an application on the same allegations before respondent No.4-SHO, Police Station Rambagh, District Amritsar.

In pursuance thereof, respondent No.4 called upon the alleged detenu for settlement. On 10.10.2022, the alleged detenu went to the Police Station Rambagh, District Amritsar, wherein, he was put in the lockup straight way without any efforts of settlement and without issuing any warrants of arrest whatsoever. Since then, the alleged detenu is in illegal confinement of respondent No.4, as has been averred in the present petition.

Be that as it may, prima-facie it appears that the alleged detunue is in illegal custody of respondent No.4.

Notice of motion for 18.10.2022.

Registry is directed to appoint a Warrant Officer, who shall visit the Police Station Rambagh, District Amritsar and any other place as may be pointed out by the petitioner. In case, the Warrant Officer finds that the alleged detenu is in illegal confinement of respondent No.4, he shall be released forthwith and record his statement.

Report to this effect shall be prepared and submitted by the Warrant Officer on or before the next date of hearing. The remuneration and transportation/conveyance charges of the Warrant Officer shall be borne by the High Court Legal Services Committee.”

Pursuant thereto, the Warrant Officer has submitted the report dated 18.10.2022 with the fact that the statement was given on 27.09.2022 in the Court of Sh. Varinder Kumar, JMIC, Amritsar under Section 164 CrPC dated 28.09.2022 by Mandeep Kaur and the offence under Section 376/406 IPC was added in FIR No.110 dated 29.03.2022 registered at Police Station A-Divn, Amritsar.

It has also been pointed out in the said report that the Detenue Rohit is under judicial custody in the aforesaid FIR and was arrested vide GD No.37 dated 13.10.2022 (Flag C).

A perusal of the aforesaid report and the copy of the GD No.30 dated 10.10.2022 (Flag A) as well as the statement of Muskan under Section 164 CrPC (Flag B), this Court is of the considered view that the detenue Rohit is not in illegal custody as averred in the present petition. Therefore, the writ of Habeas Corpus is not required to be issued as the same is not maintainable in view of the aforesaid facts and circumstances inasmuch as Rohit has not been found to be in illegal confinement.

The present criminal writ petition is disposed of accordingly.

29.10.2022

V.Vishal

1. Whether speaking/reasoned?

2. Whether reportable?

(Sandeep Moudgil)
Judge

Yes/No

Yes/No