

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.558 of 2023

Arising Out of PS. Case No.-100 Year-2023 Thana- PATLIPUTRA District- Patna

Shyam Sundar Devi Wife of Shri Binod Prasad Resident of Village Mohalla Mainpura, House Laljeet Rai Gate of Mahanth Hanuman Sharan College , P.S Patliputra, Patna.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Director General of Police, Bihar, Sardar Patel Bhawan, Jawaharlal Nehru Marg, Patna 800023 Bihar.
3. The Inspector General of Police, Central Range, Police Office, Patna 800001 Bihar.
4. The Senior Superintendent of Police, Patna 800001 Bihar.
5. The City Superintendent of Police, Central Patna 800001 Bihar.
6. The Deputy Superintendent of Police, Law And Order, Kotwali Police Station Campus, Patna- 800001 Bihar.
7. The Station House Officer, Patliputra Police Station, Patna-800013 Bihar.
8. Shri Uttam Kumar Jha Fathers Name Not Known Sub- Inspector Of Police, Patliputra PS, Patna- 800013 Bihar.
9. Miss Puja Kumari Fathers Name Not Known, Sub-Inspector of Police, Patliputra PS, Patna-800013 Bihar.
10. Saurabh Kumar, Son of Late Suren Rai, Resident of Village Adhkeli, P.S. Dagarua, District Purnea.

... .. Respondent/s

Appearance :

For the Petitioner	:	Mr. Shambhu Shankar Thakur, Advocate Mr. Arvind Kumar, Advocate Mr. Arun Kumar, Advocate
For the Respondent/s	:	Mr. Prabhu Narayan Sharma, AC to AG

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

8 13-09-2023 This petition has been filed under Article 226 of the Constitution of India wherein the petitioner, who is mother of the respondent-corpus, has prayed that the respondent police



authorities be directed to handover the custody of the corpus to the petitioner.

2. Heard Mr. Shambhu Shankar Thakur, learned counsel for the petitioner and Mr. Prabhu Narayan Sharma, learned AC to AG for the respondent authorities.

3. Learned counsel for the petitioner has referred the averments made in the memo of the petition and also referred the supplementary affidavit filed by the petitioner and thereafter contended that the minor girl of the petitioner has been kidnapped by the private respondent and, therefore, the petitioner has lodged FIR before the concerned police station. It is further submitted that during the course of investigation, the respondent-corpus was found out and she was produced before the concerned Magistrate Court where her statement under Section 164 of the Code of Criminal Procedure, 1973 came to be recorded by the learned Magistrate. It is further submitted that before the learned Magistrate, the corpus has disclosed her age as 19 years and, therefore, the learned Magistrate has handed over the custody of the corpus to the private respondent. However, learned counsel has pointed out from the record that date of birth of the corpus is 02.04.2008 and, therefore, as on today, the corpus is less than approximately 16 years of age. However, the concerned authority has produced the forged documents before this Court, i.e., the



forged birth certificate as well as Aadhar Card of the corpus before this Court wherein wrong date of birth of the corpus is shown as 01.01.2004. Learned counsel, therefore, urged that when the corpus is minor, her custody be handed over to the petitioner.

4. On the other hand, learned counsel appearing for the respondent authorities has referred the counter affidavit as well as supplementary affidavit filed on behalf of the concerned respondents. After referring to the same, it has been contended that as per the birth certificate and Aadhar Card collected by the concerned agency, the date of the birth of the corpus is 01.01.2004 and, therefore, she is major. The learned Magistrate has, therefore, after considering the age pointed out by the girl, i.e., corpus handed over the custody of the corpus to her in-laws. He also pointed out that the corpus got married with the newly added respondent no.10 who is shown as an accused in the FIR filed by the present petitioner. Learned counsel for the respondents has also contended that when there is a dispute with regard to the age of the corpus as to the correct birth certificate or the Aadhar Card produced by both the parties, it is not desirable that the said disputed question of fact be examined in the petition filed under Article 226 of the Constitution of India. At this stage, it is also pointed out that as per the order passed by this Court, the concerned police authority has brought the corpus before this



Court.

5. As the corpus is present, the matter is taken up in Chamber at 02:15 p.m. and we have interacted with the corpus. The name of the corpus is Kajal Kumari. It is stated by her that her marriage was solemnized with respondent no.10 in February, 2023 and at present she is pregnant. The corpus has specifically stated that she is about 19 years of age. The corpus has also produced medical certificates/reports from which it is pointed out that she is carrying pregnancy of about five months. We have perused the said reports. We have further inquired with the corpus and she has specifically stated before us in presence of the learned counsel appearing for the concerned parties and in presence of the staff of the Court that she wants to go with her in-laws as she is pregnant.

6. In the present petition, the case of the petitioner is that corpus is minor whereas, as per the official respondents, the corpus is major. Two different sets of birth certificates as well as Aadhar Cards were produced and, therefore, in the present petition, which is filed under Article 226 of the Constitution of India for issuance of a writ of *habeas corpus*, it would be difficult for this Court to go into this disputed question of fact. Further when the petitioner has already lodged the FIR against respondent no.10 and the police authority is investigating into the matter, it is always open for the said authority to collect the necessary



evidence even with regard to the age of the victim/present corpus. If the police authority is not carrying out the investigation in proper direction, it is always open for the petitioner to file a petition or initiate appropriate proceeding before the appropriate forum. However, the scope of petition filed for issuance of writ of *habeas corpus* is in very narrow compass.

7. Thus, looking to the aforesaid facts and circumstances of the present case, when the corpus was produced before us and when her specific case is that she is major, i.e., 19 years, when her marriage is solemnized with respondent no.10, when she is pregnant and she wants to go to her matrimonial house, we are not inclined to entertain the present petition looking to the aforesaid facts of the present case.

8. With the aforesaid discussions, this petition is dismissed.

(Vipul M. Pancholi, J.)

(Chandra Shekhar Jha, J.)

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