

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1380 of 2022

Arising Out of PS. Case No.-211 Year-2021 Thana- BYPASS District- Patna

Priyanka Kumari @ Priyanka Sharma Daughter of Pramod @ Pramod Kumar
R/O Mohalla- Indralok Nagar, Near Golden Community Hall, Agamkuan,
P.S.- Bypass, District- Patna, A/P- Nishant Balika Grih, Gai Ghat, P.S.-
Alamganj, District- Patna

... .. Petitioner/s

Versus

1. Child Welfare Committee, Patna Through its Chairperson, Office at- Apna Ghar, Department of Social Welfare, Punaichak, Behind Lalit Bhawan, Bailey Road, Patna
2. Superintendent, Balika Grih Nishant, Gai Ghat, P.S.- Alamganj, District- Patna Bihar
3. The State of Bihar through Senior Superintendent of Police, Patna, Office at Gandhi Maidan Road PS- Gandhi Maidan, Distt.- Patna
4. Station House Officer, Bypass Police Station, MarchaMarchi Road, P.S.- Bypass, District- Patna Bihar
5. Pramod Kumar Son of Surendra Sharma Resident of Mohalla- Indralok Nagar, Near Golden Community Hall, Agamkuan, P.S.- Bypass, District- Patna
6. Sumit Kumar @ Sumit Son of Ramnath Mahto @ Ramnath Mahaseth Resident of Village- Ranauli, P.S.- Bathnaha, District- Sitamarhi, A/P- Mudian Kalan, Near FORTIS Hospital, District- Ludhiyana- 141015, Punjab

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Ravindra Kumar, Advocate
For the Respondent/s : Mr. Saroj Kumar Sharma, AC to AG-3

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

4 08-02-2023 Heard learned counsel appearing on behalf of the parties.

This writ application has been preferred by the victim girl/petitioner, who is claiming that she has attained majority, who has been kept in Balika Grih Nishant, Gai Ghat, Patna, since 10.07.2021 in connection with Bypass P.S. Case No. 211



of 2021 dated 15.06.2021, registered for offence alleged under Section 366 (A) / 34 of the Indian Penal Code.

It appears from perusal of record that father of victim girl lodged First Informant Report alleging that his daughter/victim girl taken away from his house by one Sumit Kumar, Son of Sri Ram Nath Mahto. It is further alleged thereof that her daughter went away with Aadhar Card and cash of Rs. 1,000/-, as informed by her mother. It is also alleged thereof that occurrence was supported by parents, *Mausa* and *Mausi* of said Sumit Kumar. It further appears that victim appeared before the learned Magistrate, on her own, and her statement under Section 164 of the Cr.P.C. was recorded, where it has been stated that she left her house on 14.06.2021 on her own will and went for Banaras, where, she spent 20 days and when no money left with her, she returned and appeared before learned Court below, except this she has nothing to say about this occurrence, she categorically stated before learned Court below that she did not want to live with her parents, as she has all reason to believe that parents may kill her, consequent upon, the petitioner was sent Balika Grih Nishant, Gai Ghat, Patna.

On the perusal of order dated 28.09.2022, it appears that the victim press a petition before the court of Ld. ACJM-VI,



Patna City that as now she attained majority as per her birth certificate therefore she must released from remand home, but same was refused by Ld. Court with direction to move an application before appropriate forum as the learned Court cannot release victim in favour of respondent No.6, with whom she wants to solemnize her marriage. Hence, the present criminal writ petition.

Learned counsel for the petitioner submitted that learned Court below vide impugned order dated 28.09.2022 ignored the right of victim girl. It is submitted that even after acknowledgment of the victim as major, the learned Court below, denied the prayer of victim to release from Balika Grih Nishant, Gai Ghat, Patna.

Learned APP while assisting this Court submitted that petitioner is now major and capable of taking her decision as per her own will.

Having regard to the facts and circumstances of the case and after perusal of the records, this Court finds substance in the submissions of learned counsel for the petitioner.

It appears from the statement of victim as recorded under Section 164 of the Cr.P.C. that victim not even whispered a single word about respondent No.6, who appears to be main



accused as per FIR.

It is also appears that petitioner born on 31.08.2014 at Nalanda Medical College and Hospital, Patna and same date of birth was entered into Birth Certificate of the petitioner issued under Birth and Death Registration Act. It is also submitted that age of petitioner on 15.09.2022 was appears to be 18 years and 15 days, when the application was made before Balika Grih Nishant, Gai Ghat, Patna.

It appears that despite of accepting petitioner a major girl, the learned Court below vide its order dated 28.09.2022, refused to release her and ordered to send petitioner to observation home for after care, against her desire and will, which is not acceptable on its face.

Considering the abovementioned facts and circumstances, it is not disputed that the petitioner is a major girl and is entitled to set free. In this connection the Court reminds itself with the judgment of Hon'ble Division Bench of this Court in the case of **Based on the News item uploaded on the website of News App Bar and Bench Vs. The State of Bihar & Ors.** reported in **2018 SCCOnline Pat 1179**. In the said case the Hon'ble Division Bench has quoted extensively the relevant part of the judgment of the Hon'ble Apex Court in



the case of **Shafin Jahan Vs. Asokan K.M.** reported in **AIR 2018 SC 1933**. In view of the judgment of the Hon'ble Supreme Court in the case of Shafin Jahan (supra) the Hon'ble Division Bench of this Court observed as under:-

“..... If we analyze the aforesaid judgment in the backdrop of facts and circumstances of the present case, even though we are conscious of the fact that the parents have various reasons to resist the wishes of their daughter, but once the daughter in categorical term on two occasions when she appeared before us, i.e. today and earlier to that on 26.06.2018, expressed her desire to have her own way of life and exercise her fundamental right, we have no hesitation in allowing her to go the way she desires and exercise the constitutional right available to her. She is a free citizen and no one even her parents have a right to curtail or withhold the freedom available to her under the Constitution.....”

For the reasons stated above, this Court sets-aside the order dated 28.09.2022 passed by the learned Additional Chief Judicial Magistrate-VI, Patna. Accordingly, respondents particularly respondent No.2 is directed to release the petitioner, without any delay, to lead her life as per her desire, with chosen



path, by exercising her fundamental right, as granted by Constitution of this country, being a major citizen.

It will be equally open to respondent no. 5, who is father of the petitioner, to persuade petitioner to live with the family but the respondent no. 5 shall not indulge in applying any force and would not adopt any extra-judicial method to pressurize this petitioner in any manner whatsoever.

Accordingly, the present criminal writ application stands allowed and disposed of.

(Chandra Shekhar Jha, J)

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