

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.1350 of 2023

Arising Out of PS. Case No.-95 Year-2020 Thana- RAJEPUR District- East Champaran

KANCHAN KUMARI D/O Kailash Sah Resident of Village- NAKARDEVA,
P.S.- RAJEPUR, District- East Champaran at present residing in Balika Uttar
Raksha Grih, Gaighat, Patna

... .. Petitioner/s

Versus

1. The State of Bihar through Additional Chief Secretary, Home Department,
Bihar, Patna Bihar
2. Superintendent, Balika Uttar Raksha Grih, Gaighat, Patna Bihar
3. Kiran Devi Wife of Kailash Sah Resident of NAKARDEVA, P.S.- RAJEPUR,
District- East Champaran

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Naresh Chandra Verma, Adv.
For the Opposite Party/s : Mr.Nirmal Kumar Sinha, APP

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY

ORAL ORDER

2 16-02-2023 Heard learned counsel for the petitioner and the State.

This is an application for quashing of the order dated
20.3.2021 passed by learned Judicial Magistrate, 1st Class,
Motihari, East Champaran in Rajepur P.S. Case No. 95 of 2020,
G.R. No. 6397 of 2020.

On 20.8.2022, the mother of the minor girl (petitioner
herein) gave a written application that accused, Randhir Kumar
and his family members have kidnapped her for the purpose of
marriage. This led to lodging of Rajepur P.S. Case No. 95 of
2020 under Sections 366, 366(A) and 34 of the Indian Penal
Code.

Learned counsel for the petitioner submits that it was
not a kidnapping rather she was in love with the accused,



Randhir Kumar with whom, she solemnized marriage and is pregnant. Further, upon knowledge of the FIR, she came to Motihari and gave her statement in the Court.

As she was not ready to go with her parents, the learned Court sent her to the 'Balika Uttar Raksha Grih, Gaighat, Patna vide an order dated 20.3.2021 as stated, the victim girl is pregnant and is presently in 'Balika Uttar Raksha Grih, Gaighat, Patna.

The basis for giving direction to send the victim girl to 'Balika Uttar Raksha Grih, Gaighat, Patna by the Court of learned Judicial Magistrate, 1st Class, Motihari was very clear and the same has been discussed by the learned Court in the following way :

“Before deciding the issue, this court feels it necessary to discuss the case of

Miss 'X' [D/o- Ashok Pandey]

Versus

State of Bihar

[Criminal Writ Jurisdiction 1355 of 2019]

The Three Judges Bench of Honourable High Court, Patna made



following observations:

*Firstly, The determination of age of Juvenile in conflict with law shall be applied to the determination of age of victim of elopement till the Judgement. pronounced in **Jarnail Singh Versus State of Haryana [AIR 2013 SC 3467]** holds good.*

Secondly, the rule 12 (3) of JJ (care and protection of children) Rules, 2007 is applicable for determination of age of victim also. However, the state of Bihar has notified JJ (care and protection of children) Rules, 2017 and Rule 54(18XIV) of same provides that offences against children under the Act, the same procedure mandated for the Board and the committee under sections 94 of Act is to be followed.

Thirdly, if there is no document to support the age of the juvenile or victim then the court shall rely on medical opinion based on ossification test or other medical test.

*Fourthly, as far as observation made in **Jaya***



Mala versus Home Secretary, Government of J & K & ors [AIR 1982 SC 1297]
(margin of error in age ascertained by radiological examination is two years on either side in the case of determination of age of victim in case of elopement. The Honourable Patna High Court invoke concept of parens patriae. The Court took the view that the role of the court is to act as parens patriae of the victim girl and whatever decision it might take as to the assessment of the age of the victim, it needs to serve the best interests of the girl. Before reaching any conclusion, the court must consider the detrimental effects on girl child not only in terms of her physical or mental health but also in terms of her nutrition, education and her general well being, Fifthly, after Observation made in Independent Thought versus Union of India [2017 10SCC 800] by Honourable Supreme Court sexual intercourse or sexual



acts by a man with his own wife who is below 18 years of age is rape [Exception 2 to section 375 IPC]; The court cannot, being parens patriae, permit the minor girl to stay with her husband even she is 16-17 years old as per medical report.

*Sixthly, The view taken by division bench of Honourable High Court, Patna in **Sahebi Khatoon @ Sahebi Vs State of Bihar [CrWJCN No 991 of 2010]** is overruled. And now, the victim girl shall be sent to the Nari Niketan, Gai Ghat Patna if medical reports declares her as minor [below 18 years] and not to anywhere else if she does not offer herself to go with her parents.*

In the light of above observations, this court gives the priority of date mentioned in the school transfer (leaving) certificate and in the best interest of child the petition of mother of victim is rejected.

The victim who is minor as per section 94 of J.J. Act be send to the Nari Niketan, Gaighat



*Patna till she attains majority [05/05/2024]
or further order of the court.*

*The I.O. is directed to do the needful for the
compliance of this order.*

*The superintendent, Nari Niketan Gaighat
Patna is directed to take proper care and
medical facilities as per rules as the victim
is pregnant of 18 weeks and 5 days.”*

It is also important to take into account the later development inasmuch as the victim girl preferred Cr. Writ Jurisdiction Case No. 1068 of 2022 which was taken up by a Division Bench of this Court and after some argument, the learned counsel chose to withdraw which was allowed vide an order dated 21.10.2022 and the same is read as follows :

*“After some argument, learned
counsel for the petitioner seeks permission
to withdraw the present application in light
of the order passed in the case of **Shikha
Kumari Vs. The State of Bihar & Ors.**
(Cr.W.J.C. No. 1355 of 2019), reported in
MANU/BH/0180/2020 (FB) as the present
application is not maintainable in light of*



the aforesaid order since the petitioner is in custody by virtue of judicial order.”

The brief submissions of the learned counsel for the petitioner is that the Medical Board examined the girl and came to a finding that she is major where her age was opined to be 17.5-18.5 years. He as such submits that in that background, learned Court erred in not allowing the victim girl to stay with her husband.

Learned APP on the other hand has taken this Court again to the order of the learned Subordinate Court to show that the Admission Register was produced along with school record/transfer certificate which was examined and it was found that the date of birth of the victim girl is 6.5.2006 which means, she was around 15 years at that time and still less than 18 years. He further submits that as such, the Court was fully justified in passing the order directing the victim girl to stay in ‘Balika Uttar Raksha Grih, Gaighat, Patna, as she refused to go with her parents.

Having gone through the facts of the case, the detailed order/observation of the learned Judicial Magistrate, 1st Class, Motihari dated 20.3.2021 as also the Division Bench order dated 21.10.2022 (Annexure-1), the opinion of this Court is in line



with the observation made by the learned Judicial Magistrate, 1st Class, that when the school record/transfer certificate shows her date of birth is/was 6.5.2006, it will have primacy over and above any document/finding.

As the girl (Ms. 'X') was minor and as she chose not to go with her parents, in view of the decisions as recorded above, the learned Court rightly sent the victim girl to 'Balika Uttar Raksha Grih, Gaighat, Patna', where she will have to continue to reside till she attains adulthood.

Taking into account her date of birth as 6.5.2006, this Court does not find any error in the order of the learned Judicial Magistrate, 1st Class, Motihari and further do not find any merit in the present case which is accordingly dismissed.

Before parting, this Court directs the authorities of the 'Balika Uttar Raksha Grih, Gaighat, Patna', to take all care and attention of the girl (Ms. 'X') if she is pregnant and provide medical assistance to her as required. Any lapse in the matter shall be dealt with seriously.

Let a copy be sent to the Superintendent 'Balika Uttar Raksha Grih, Gaighat, Patna', forthwith.

Ajay Singh/-

(Rajiv Roy, J)

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