

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

205

CRWP-928- 2023 (O&M)
Decided on : 26.05.2023

Gourav Saini and Another

. . . Petitioner(s)

Versus

State of Haryana and others

. . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Shiv Kumar Rana, Advocate
for the petitioner.

Mr. Pawan Kumar Jhanda, DAG, Haryana.

Mr. J. S. Mohri, Advocate for respondents No. 7 and 8.

SANJAY VASHISTH, J. (Oral)

1. After hearing the present petition on 02.02.2023 this Court passed the following order:

*“Present: Mr. Shiv Kumar Rana, Advocate
for the petitioners.*

By way of filing this petition, petitioners have approached this Court for issuance of direction to respondents No.2 and 3 to protect their lives and personal liberty and restrain private respondents No.4 to 8 not to harass them or interfere in their peaceful lives. Both the petitioners from the same sex, who are male persons by gender, wants to live together.

Learned counsel for the petitioners has relied upon the observations made in paras 170 to 172 of the judgment passed by a Constitution Bench of the Hon'ble Apex Court in Navtej Singh Johar and others Vs. Union of India through Secretary, Ministry of Law and Justice 2018 (5) R.C.R. (Criminal) 547, which are reproduced here below:-

“170. The constitutional framers could have never intended that the protection of fundamental rights was only for the majority population. If such had been the intention, then all provisions in Part III of the

Constitution would have contained qualifying words such as 'majority persons' or 'majority citizens'. Instead, the provisions have employed the words 'any person' and any 'citizen' making it manifest that the constitutional courts are under an obligation to protect the fundamental rights of every single citizen without waiting for the catastrophic situation when the fundamental rights of the majority of citizens get violated.

171. Such a view is well supported on two counts, namely, one that the constitutional courts have to embody in their approach a telescopic vision wherein they inculcate the ability to be futuristic and do not procrastinate till the day when the number of citizens whose fundamental rights are affected and violated grow in figures. In the case at hand, whatever be the percentage of gays, lesbians, bisexuals and transgenders, this Court is not concerned with the number of persons belonging to the LGBT community. What matters is whether this community is entitled to certain fundamental rights which they claim and whether such fundamental rights are being violated due to the presence of a law in the statute book. If the answer to both these questions is in the affirmative, then the constitutional courts must not display an iota of doubt and must not hesitate in striking down such provision of law on the account of it being violative of the fundamental rights of certain citizens, however minuscule their percentage may be.

172. A second count on which the view in Suresh Koushal (supra) becomes highly unsustainable is that the language of both Articles 32 and 226 of the Constitution is not reflective of such an intention. A cursory reading of both the Articles divulges that the right to move the Supreme Court and the High Courts under Articles 32 and 226 respectively is not limited to a situation when there is violation of the fundamental rights of a large chunk of populace.”

Counsel has also submitted that the petitioners have submitted a representation dated 24.01.2023 (Annexure P-3) to the Superintendent of Police, Ambala, District Ambala (respondent No.2), wherein, all the apprehensions qua their lives and liberty has been expressed but no action thereon has been taken to protect their lives and personal liberty.

Notice of motion.

On the asking of the Court, Mr. Vikas Bhardwaj, AAG, Haryana, who is present in Court, accepts notice on behalf of respondents No.1 to 3.

Remaining respondents be served for 16.03.2023.

Meanwhile, Superintendent of Police, Ambala, District Ambala (respondent No.2) is hereby directed to look into the representation dated 24.01.2023 (Annexure P-3) and in case any truth is found in regard to the apprehension of lives and liberty of the petitioners, appropriate steps in accordance with law would be taken. Respondent No.2 would also ensure that the decision to live in a live-in relationship together, is a voluntary decision of both of them.

State is directed to file status report on the next date of hearing. ”

2. Learned State counsel while referring to paragraphs No. 4 to 6 of the status report dated 28.04.2023 filed on behalf of respondents No. 1 to 3, which is available on record, submits that as per the statement recorded by the police, family members of both the sides have agreed and accepted the decision of staying together of the petitioners and thus, there being no apprehension to the live-in relationship of the petitioner, no cause survives with the petitioners in the present petition, thus, same requires to be dismissed.

Said paragraphs No. 4, 5 and 6 Says as under:

“4. That in pursuance of order dated 16.03.2023 passed by this Hon'ble Court, SHO PS Ambala Sadar was directed to look into the matter. Upon which, on 23.03.2023, ASI Guru Ram, PS Ambala Sadar reached at village Anandpur Jalbehra, PS Sadar, Ambala and joined the petitioner namely Gourav Saini son of Late Sh. Ranjit Singh and recorded his statement in

which apart from the other facts, he has stated that he has done diploma in fashion designing from NIFT and from last 5/6 years he is doing the work of boutique in village Anandpur Jalbehra. His elder brother Neeraj Saini is married and that with his growing age homosexual qualities had come in his body, about which he knew, due to shame and fear in the society, he did not tell anyone in his house and that about 3 years back he got friendship with Jiwan son of Bhag Singh r/o village Mohri, District Ambala. His friend Jiwan used to come at their house. Jiwan also had homosexual qualities in his body, which increased their friendship when they both met. His family members and Jiwan's family knew about his life and Jiwan's friendship and homosexuality. About three months back, he had shown homosexuality in his body in Civil Hospital, Ambala Cantt. He wants to spend his life with his friend Jiwan. He is wise enough to take the decision of his life. He had filed a petition for protection in the Hon'ble Punjab & Haryana OTAR SALA (HR 11407 High Court. He is living with his family. He do not face any danger, trouble or objection from his family or any other relatives. He wanted to spend his life with Jiwan. Copy of statement of Gourav Saini is annexed as Annexure R-1.

5. *That thereafter, on the same day. ASI Guru Ram, PS Ambala Sadar, joined Neeraj Saini son of Late Sh. Ranjit Singh (elder brother of the petitioner) and Smt. Amarjit Kaur (mother of the petitioner) wife of Ranjit Singh both resident of Anandpur Jalbehra, PS Sadar, Ambala and recorded their statements, in which apart from the other facts, they have stated that they know about the homosexuality of Gourav and they also knows about the friendship of Gourav and Jiwan and they have no objection if they both wanted to live together and spent their life. Copy of statement of Neeraj Saini (elder brother of the petitioner) and Smt. Amarjit Kaur (mother of the petitioner) is annexed as Annexure R-2.*
6. *That thereafter, on 25.03.2023, ASI Guru Ram, PS Ambala Sadar reached at village Mohri, PS Sadar, Ambala and joined the petitioner namely Jiwan Singh son of Sh. Bhag Singh and recorded his statement in which apart from the other facts, he is having Barber shop near the bus stand of village Mirjapur*

and that about 3 years back he got friendship with Gourav Saini son of late Sh. Ranjit Singh NOTAR VED PARKASHsident of Anandpur Jalbehra, PS Sadar, Ambala and that ADVOCATE Recu.No 1140 EXP DT 14/9/2025 thereafter, they both used to visit each other's house. After this they both started living together, they both did the work of milk diary together, and that in this work, they did not get benefit, so they stopped the work of milk diary. After this their friendship became even strong. His friend Gaurav Saini has homosexual qualities in his body and they both have a mutual relationship that they have decided to live together. Earlier their family members were not happy with their this decision, therefore, he and Gourav had filed a writ petition against our respective family members in the Hon'ble Punjab & Haryana High Court, Chandigarh. But now both of their families have agreed and agreed on their this decision, now both of their families have no objection in living both of they live together, that now he do not face any kind of fear or danger from his family members and they do not need any kind of security. Copy of statement of Jiwan Singh is annexed as Annexure R-3”

3. In view of the stands taken by the family members and as has been highlighted in the reply filed by the State, counsel for the petitioners does not press the present petition and thus, requests for its disposal being not pressed.

4. Accordingly, present petition stands disposed of, being not pressed, at this stage.

(SANJAY VASHISTH)
JUDGE

26.05.2023

Riya

<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
<i>Whether Reportable:</i>	<i>Yes/No</i>