

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRWP-1833-2023

Date of Decision: 27.02.2023

LEYAKAT ALI

...Petitioner

Versus

STATE OF PUNJAB AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Ashish Rana, Advocate
for the petitioner.

Mr. Subhash Godara, Addl. A.G., Punjab.

Mr. Prashant Bansal, Advocate
for respondent No.4.

HARSH BUNGER, J. (ORAL)

The present petition has been filed by petitioner-Leyakat Ali under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973, seeking issuance of a writ in the nature of Habeas Corpus directing respondents No.2 and 3 to get the detenue namely, Anwari released from the illegal confinement of respondent No.4 and his other accomplices and also to take legal action against respondent No.4.

A perusal of '*Memo of Parties*' of this petition would show that respondent No.4-Mohammad Sadiq, is described as 'father of the detenue'.

While issuing notice of motion in this case on 23.02.2023, keeping in view the assertions made in the petition, respondent No.3-Station House Officer, Police Station Banur, District Mohali, was directed to produce the detenue namely, Anwari as well as respondent No.4 in the Court today i.e. 27.02.2023.

Today, respondent No.3-Station House Officer, Police Station Banur, District Mohali, has produced the alleged detainee namely, Anwari along with respondent No.4-Mohammad Sadiq.

Mr. Prashant Bansal, Advocate, appears and files his '*Power of Attorney*' on behalf of respondent No.4 in the Court today, which is taken on record, subject to all just exceptions.

Learned counsel for respondent No.4 submits that the petitioner has given misleading information in this petition inasmuch as respondent No.4-Mohammad Sadiq, is not the father of Anwari (alleged detainee) but her husband. He further submitted that from the said wedlock between respondent No.4-Mohammad Sadiq and Anwari (alleged detainee), there is a minor girl child also, who is 2½ of age, who has been abandoned by Anwari. He further submits that petitioner has misled Anwari and after filing this petition, the petitioner had taken Anwari along with him and Anwari was not in illegal detention of either respondent No.4-Mohammad Sadiq or her parents/brother.

During the course of hearing, Anwari (alleged detainee) along with her husband-Mohammad Sadiq, her father and brother were sent to the Mediation and Conciliation Centre of this Court, wherein, Dr. Garima Sharma, held a session of counseling with Anwari and other above said persons and has submitted the following report, which is annexed as '*Mark A*' :-

“Anwari (24) and Mohd. Sadik (27) married in 2019. Separated since 19 Feb 2023. They have one daughter out of this wedlock. Presently mother resides with Leyakat Ali

in live in relationship. During counseling session Anwari stated that she wants to reside with Leyakat Ali. She doesn't want to reside with husband and daughter. While residing with him she undergoes physical and mental torture. She stated that no one understand her situation where some questions regarding her daughter were asked where she stated that she don't want her custody. While interacting with father he stated that he is ready to accept her daughter. Anwari's brother tried to convince her but she reuse to interact with them.

His brother also given in written that she will be safe and they will take care of her.

OBSERVATION & RECOMMENDATION

- 1. Anwari needs to understand that her decision directly affect her daughter's life.*
- 2. She should resides with her parents or nari niketan at least to understand what actually going on.*
- 3. Written statement of brother enclosed with Report.*
- 4. Further counseling session required to resolve her issues regarding marital discord, Mental health issues etc."*

From the perusal of the petition, it is manifest that petitioner- Leyakat Ali has given misleading information inasmuch, as the husband of Anwari i.e. respondent No.4- Mohammad Sadiq has been depicted as father of Anwari and in this process, husband of Anwari has been made to appear in this Court by petitioner i.e. so called live-in-partner of Anwari.

To say the least, the aforementioned circumstances depict a very Sorry State of Affairs.

This Court is of the considered opinion that the petitioner has intentionally tried to mis-lead this Court by mis-representing wrong facts that respondent No.4 is father of detainee, whereas, in reality, he is the husband of Anwari (alleged detainee).

It is well settled that a person approaches the Court by invoking its extra-ordinary jurisdiction, it is expected that he will approach the Court not only with clean hands but also with clean mind, clean heart and clean objectives.

Accordingly, the present petition is dismissed with cost of Rs.25,000/- to be deposited with “***Punjab and Haryana High Court Bar Association Lawyer’s Family Welfare Fund Account No.41564846387, SBI High Court Branch***’ for misleading the Court and the said cost shall be recovered from the present petitioner-Leyakat Ali.

So far as the alleged illegal detention of Anwari by respondent No.4 is concerned, she has been produced before this Court by respondent No.3-Station House Officer, Police Station Banur, District Mohali and on her request, her statement on oath has been recorded separately in Court, which is annexed as Mark ‘B’ with this order and the same reads as under :-

“Statement of Anwari, aged about 23 years, daughter of Shri Mehardeen resident of Haweli Bassi, Banur, SAS Nagar (Mohali).

On S.A.

States that I am major being 23 years of age and married with Mohammad Sadiq. Out of the said wedlock, we have a daughter namely, Inayat, about 2½ years of age. I can take decisions as per my free will. I do not want to stay with my parents or my husband- Mohammad Sadiq. I will take re-course to my legal remedies in respect of divorce and regarding custody of my child. I may be allowed to live according to my own choice and volition. I do not wish to undertake any counseling sessions and in case, I feel any threat to my life and liberty, then I shall take re-course to my

legal remedies by filing appropriate complaint/application before the concerned police authorities.

I have made this statement today i.e. 27.02.2023 in Court on my own free will and without any pressure or coercion from anybody.”

This Court has had an interaction with Anwari (alleged detainee), however, she has stated that she is major and does not wish to reside either with her parents or husband/daughter and in support of the age proof, she has produced a copy of ‘Aadhar Card’, which is taken on record subject to all just exceptions and is marked as ‘Mark C’. She was also asked as to whether she would prefer to undergo counseling sessions as indicated in the report of the counselor; however, she has refused for the same and has stated that she may be set free.

It would be apposite to state here that the Constitution of India guarantees liberty to a citizen and if she or he is a major then she or he should have a right to choose their place of residence and nothing should stand in the way of this fundamental right of liberty. Anwari is undoubtedly a girl, aged above 18 years and she must have the liberty to choose her place of residence and the Court may not stand on the way of her movement, giving any direction against her wishes. At the same time, it is the bounden duty of the State to protect the life and liberty of every citizen as enshrined under Article 21 of the Constitution of India as right to human life is to be treated on much higher pedestal.

Further, a perusal of the petition would reveal that no representation/letter has been attached therewith to any authority indicating

threat perception to Anwari.

Keeping in view the afore-mentioned facts and circumstances, it is observed that Anwari is free to reside according to her choice and volition as stated by her in Court and as expressed by her in the above extracted statement. Considering the statement of Anwari before this Court, by way of abundant caution, it is directed that as and when, Anwari submits any representation/complaint expressing threat perception to her life and liberty to the concerned police authorities, the same be looked into and necessary action in that regard be taken.

It is clarified that this order shall not be treated as a stamp of this Court qua the assertion made in this petition regarding live-in relationship.

This order shall also not be taken to protect the petitioner and Anwari from legal action for violation of law, if any, committed by them and will have no effect on any civil or criminal action, which could be initiated in the matter in accordance with law.

Disposed of in above-said terms.

An amount of Rs.5,000/-, be paid by the High Court Legal Service Authority to the counselor as her fee.

February 27, 2023
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No