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IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CRM-M-29091-2023  
Date of Decision:02.06.2023

Teresa Soren  
..... Petitioner

Vs.

State of Punjab  
..... Respondent

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CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA  
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Present      Mr. Rajeev Dev Sharma, Advocate for the petitioner.  
                 Mr. J.S. Bhandari, AAG, Punjab.

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SANJEEV PRAKASH SHARMA, J.(Oral)

Present petition has been filed under section 482 Cr.P.C. for quashing of the order dated 04.05.2023 (Annexure P-4) passed by learned Additional Sessions Judge, Pathankot whereby the application for releasing the petitioner from the Children Home, Gandhi Vanita Ashram, Jalandhar has been dismissed, arising out of proceedings under FIR No.0145 dated 14.12.2022 under sections 363, 376 IPC and section 4 of POCSO Act, registered at Police Station Division No.1, Pathankot.

The petitioner was produced before Ilaqa Magistrate who sent her to Gandhi Vanita Ashram, Children Home for Girls, Jalandhar. Her mother-in-law had appeared to get her custody but she was not granted the custody and her ossification test was conducted by the doctor who has mentioned that the age of the victim-petitioner is approximately 25 years, with a margin of 2 years plus or minus.

The petitioner moved an application for releasing her from the Children Home where she was being kept in custody. The learned Additional Sessions Judge, Pathankot, one Kulbhushan Kumar, has surprisingly and shockingly passed an order refusing to release her from the custody, based on her earlier statement that she is comfortable in the Children Home. It is shocking to note that the learned Additional Sessions Judge mentions and admits that she is major, but she belongs to Jharkhand State and nobody from her parental side has ever claimed her custody, and therefore the application is being dismissed.

It is settled law that a major girl has a right to stay anywhere she wants. It has also come on record that the petitioner is 25 years of age, plus or minus 2. Thus she knows her rights. There is no occasion to keep her in custody as she has not committed any crime. She has also not sought any protection, thus there was no occasion to place her in custody. The action amounts to illegal confinement.

The order passed by the learned Additional Sessions Judge, Pathankot fails to take notice of the basic fundamental right of an individual under Article 21 of the Constitution of India, which is extremely saddening.

Since the Apex Court has observed that no comments should be made against judicial officers without giving them an opportunity of hearing, I restrain myself from making any comments on the conduct of the concerned Additional Sessions Judge, Pathankot.

Leaving it to that, the order dated 04.05.2023 (Annexure P-4) is hereby quashed. The authorities at the Children Home, Gandhi Vanita

Ashram, Jalandhar are directed to immediately release the petitioner from custody and let her go free.

Accordingly, this Petition is allowed.

Copy of this order be sent to Hon’ble the Chief Justice for taking administrative action, if any, against the concerned Additional Sessions Judge.

(SANJEEV PRAKASH SHARMA)  
JUDGE

June 02, 2023  
*Mohit goyal*

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|-------------------------------|--------|
| 1. Whether speaking/reasoned? | Yes/No |
| 2. Whether reportable?        | Yes/No |