

Sr. No. 132

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRWP-8710-2023 (O&M)

Date of Decision: 04.09.2023

Shaweta Kumari and another

...Petitioners

Vs.

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGAPresent: Mr.Rahul Garg, Advocate,
For the petitioners.

Mr. Dhruv Dayal, Additional A.G., Punjab.

ARUN MONGA, J. (ORAL)

Petition herein, *inter alia*, is for issuance of a writ in the nature of mandamus directing the respondents to protect the life and liberty of petitioners as they apprehend threat at the hands of private respondents No.4 to 11.

2. Learned counsel for the petitioners submits that petitioners want to marry each other. However, parents/relatives of petitioner No.1 i.e. respondents No.4 to 9 forcibly want to marry her with a boy in other community.

3. Notice of motion.

4. On advance service of copy of the petition, learned State counsel appears and accepts notice on behalf of the respondent-State of Punjab.

5. Given the nature of order being passed, there is no necessity to seek any return by the official respondents or even to serve the private respondents No.4 to 11.

6. Facts, as pleaded in the petition, succinctly are that petitioner No.1 born on 01.01.2002 and petitioner No.2, born on 23.01.2004 (a major boy but of non-marriageable age of 19 years and 07 months), are purportedly in

love with each other. They have been living together in relationship for last twenty days.

7. Petitioners have decided to get married when petitioner No.2 attained the marriageable age and approached their parents, but parents of petitioner No.1 were against their marriage. Ever since they started staying together in a live-in relationship, private respondents No.4 to 11 have been threatening them with dire consequences. Apprehension is that parents may even will kill both petitioners by tracing them from wherever they are.

8. In the circumstances, the petitioners approached respondent No.2 (Senior Superintendent of Police, Hoshiarpur) and submitted a representation dated 28.08.2023 (Annexure P-3) seeking to safeguard their life and liberty, but no action is being taken on the same. Hence, the instant petition.

9. The petitioners state that they are living in constant danger as they have every apprehension that private respondents will catch them and carry out their threats and may go to the extent of even committing their murder. The petitioners are, therefore, running here and there and unable to find any safe place to live in the absence of protection of their life and liberty. Hence the present writ petition seeking appropriate directions to the official respondents to provide protection *qua* their life and liberty.

10. Controversy that needs adjudication now thus is whether an appropriate writ/direction or order is warranted to allay the apprehensions of the petitioners for granting protection to them for enforcement of their fundamental rights under Article 21 of the Constitution of India. The issue in hand, however, is not marriage of the petitioners, but the deprivation of fundamental right of seeking protection of life and liberty. I have no hesitation to hold that Constitutional Fundamental Right under Article 21 of Constitution of India stands on a much higher pedestal. Being sacrosanct under the

Constitutional Scheme it must be protected, regardless of the solemnization of an invalid or void marriage or even the absence of any marriage between the parties.

11. It is the bounden duty of the State, as per the Constitutional obligations casted upon it, to protect the life and liberty of every citizen. Right to human life is to be treated on much higher pedestal, regardless of a citizen being minor or a major. Mere fact that petitioners are not of marriageable age in the present case would not deprive them of their fundamental right, as envisaged in Constitution of India, being citizens of India.

12. Reference may be had, in the aforesaid context, to a judgment rendered in CRWP No. 4725 of 2021 titled “**Seema Kaur and another v. State of Punjab and others**”, wherein, speaking for this court, Sant Parkash, J. (as he then was in this Court) , opined as under :-

*“This Court in the past and also recently has allowed protection to those runaway couples, even though they were not married and were in a live-in relationship, and in cases where the marriage was invalid (as one of the parties though a major, was not of age as per Section 5 of the Hindu Marriage Act). Reference in this regard can be made to the judgment rendered by the Division Bench in **Rajwinder Kaur and another Versus State of Punjab, 2014 (4) RCR (Criminal) 785** where it was held that marriage is not a must for security to be provided to a runaway couple. The police authorities were directed to ensure that no harm was caused by any one to the life and liberty of the couple. Similar views have been taken by the Coordinate Benches in the case of **Rajveer Kaur Versus State of Punjab, 2019 (3) RCR (Civil) 478** and in **Priyapreet Kaur Versus State of Punjab, 2021 (1) RCR (Civil) 604** amongst others. Different High Courts too have allowed protection to runaway couples who are not married. Again reference can be made to a recent judgment rendered by the Allahabad High Court in **Kamini Devi vs. State of UP, 2021(1) RCR (Civil) 421** and in **Bhagwan Dass v. State (NCT of Delhi), (2011) 6 SCC 396**.*

The concept of a live in relationship may not be acceptable to all, but it cannot be said that such a relationship is an illegal one or that living together without the sanctity of marriage constitutes an offence. Even under The Protection of Women from Domestic Violence Act, 2005, a woman who is in a 'domestic relationship' has been provided protection, maintenance etc. It is interesting to note that the word 'wife' has not been used under the said Act. Thus, the female live-in-partners and the children of live-in couples have been accorded adequate protection by the Parliament.

*Article 21 as enshrined in the Constitution of India provides for its citizen to a right to life and personal liberty, with a stipulation that they shall not be deprived of it except according to a procedure established by law. In the case of **Shakti Vahini Versus Union of India and others, 2018 (5) R.C.R (Criminal) 981**, the Supreme court has held "The right to exercise Assertion of choice is an insegregable facet of liberty and dignity. That is why the French philosopher and thinker, Simone Weil, has said:-"Liberty, taking the word in its concrete sense consists in the ability to choose." At this stage, one cannot also lose sight of honour killings which are prevalent in northern parts of India, particularly in parts of States of Punjab, Haryana, Rajasthan and Uttar Pradesh. Honour killing is a result of people marrying without their family's acceptance, and sometimes for marrying outside their caste or religion. Once an individual, who is a major, has chosen his/her partner, it is not for any other person, be it a family member, to object and cause a hindrance to their peaceful existence. It is for the State at this juncture, to ensure their protection and their personal liberty. It would be a travesty of justice in case protection is denied to persons who have opted to reside together without the sanctity of marriage and such persons have to face dire consequences at the hands of persons from whom protection is sought. In case such a course is adopted and protection denied, the courts would also be failing in their duty to provide its citizens a right to their life and liberty as enshrined under Article 21 of the Constitution of India and to uphold to the Rule of law".*

I am in respectful agreement with the views expressed in the judgement
ibid.

13. As an upshot, the Senior Superintendent of Police, Hoshiarpur is directed to verify the contents of the petition, particularly the threat perception of the petitioners, and thereafter, provide necessary protection *qua* their life and liberty, if deemed fit.

(ARUN MONGA)
JUDGE

04.09.2023

vandana

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