

2023:PHHC:119864

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

121

CRWP No.8838 of 2023
Date of decision: 06.09.2023

Vikram Kumar and another
V/s
....Petitioners

State of U.T. Chandigarh and others
....Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. Sachin Kalia, Advocate for the petitioners.

Mr. Tarunvir Singh Lehal, Addl. P.P. (UT), Chandigarh.

VIKAS SURI, J. (Oral)

1. The present criminal writ petition has been filed under Article 226 of the Constitution of India for issuance of directions to respondent Nos.1 to 3 to protect the life and liberty of the petitioners threatened at the hands of respondent Nos.4 to 7.
2. The petitioners have not attained marriageable age. Petitioner No.1 claims to be about 19 years of age whereas petitioner No.2 is a minor aged 16 ½ years. It is pleaded that petitioner No.1 was born on 02.02.2004 and petitioner No.2 on 08.01.2007. It is stated that the petitioners are living in live-in relationship and want to marry each other against the wishes of their respective parents i.e. petitioner Nos.4 to 7. Reliance is placed upon the decision by a coordinate Bench of this Court, passed in CRM-M-38667-2016 titled *Baljeet Kaur and another vs. State of Punjab and others*, 2017(3) HLR 107.
3. Apprehending threat to their life and liberty the petitioners have submitted a representation dated 03.09.2023 (Annexure P-1) to the Senior Superintendent of Police, Chandigarh (respondent No.2) as well as to the S.H.O. Police Station I.T. Park, Chandigarh (respondent No.3), but to no avail.

4. Notice of motion to respondent Nos.1 to 3 only, at this stage.
5. Mr. Tarunvir Singh Lehal, Addl. P.P. (UT), Chandigarh appears and accepts notice on behalf of respondent Nos.1 to 3 and waives service. She submits that on the basis of advance copy of the petition having been served, a preliminary inquiry was made at the address given in the petition. Respondent Nos.6 and 7 have informed that petitioner No.1 is not living with them at the given address and as he was keeping bad company he was disowned by them long time ago. It is further submitted that petitioner No.1 has wrongly described himself as guardian of petitioner No.2 and as such the petition on behalf of the said petitioner could not have been filed through petitioner No.1.
6. Heard learned counsel for the parties.
7. Article 21 of the Constitution of India stipulates protection of life and liberty to every citizen and that no person shall be deprived of his life and personal liberty except in accordance with procedure established by law. As per the Constitutional mandate it is the bounden duty of the State to protect the life and liberty of every citizen. Mere fact that the petitioners are not of marriageable age or that petitioner No.2 is still a minor, would not deprive the petitioners of their fundamental rights as envisaged in the Constitution, being citizens of India.
8. A Division Bench of this Court in **LPA-769-2021** titled ***Ishrat Bano and another vs. State of Punjab and others***, decided on 03.09.2021 held as under:-

“The aspect which we are considering and dealing with is with regard to the threat to the life and liberty to the appellants as has been asserted by them. No doubt, in case a criminal case is registered against any of the parties, the law should take its own course, however, the life and liberty of any person who has approached the Court with such a grievance need to be taken care of and the protection be provided as permissible in law. No person can be

permitted or allowed to take law in his hands and therefore, keeping in view the said aspect, we dispose of the present appeal by observing that the Senior Superintendent of Police, Maler Kotla, shall take into consideration the representation dated 17.08.2021 (Annexure P-5) submitted by the appellants and if some substance is found therein, take appropriate steps in accordance with law to ensure that the life and liberty is not jeopardized of the appellants at the hands of the private respondents. This direction shall not be construed in any manner to restrain the official respondents to proceed against the appellants in case there is some criminal case registered against them. The law shall take its own course and it shall be open to the authorities/investigating agency to proceed against the appellants, if required in law and in accordance thereto.”

9. In similar circumstances of a person who was minor and had approached this Court expressing her intention to marry and seeking protection of life and liberty, a coordinate Bench of this Court in ***Jobanpreet Singh and another vs. State of Punjab and others, 2022 (3) RCR (Civil) 890***, held as under:

“19. The enunciation of statutory framework in the nature of Juvenile Justice (Care and Protection of Children) Act 2015 and Protection of Children from Sexual Offences Act does not run contrary to the provisions enshrined under Article 21 of the Constitution of India. Protection of life and liberty guaranteed to a citizen necessarily ensures that the Court of law, when approached, would step into the shoes as a guardian of such minor and take all such steps as are essential to protect the life and liberty of such a minor. It would be incomprehensible to contend or to suggest that the protective scheme and procedure formulated under the Juvenile Justice (Care and Protection of Children) Act 2015 is not in furtherance of protection enshrined under Article 21 of the Constitution of India. The said Acts are intended to ensure advancement of Article 21. The Court of law, while issuing any directions to follow the procedure provided for under the Juvenile Justice (Care and Protection of Children) Act 2015, does so with an object to ensure safety and protection of a minor, who the law does not recognize as having acquired the wisdom and knowledge to take best decisions for himself/herself. The decision so

taken by the competent authority with respect to the minor as per the procedure prescribed in law, cannot be deemed as violative of Article 21 of the Constitution of India with on a ground that such a decision will not be in conformity with the interest which such a minor conceives to be in his/her best interest. The Court cannot be oblivious to the duty cast upon it as a repository of the best interest of the minor and there can be no presumption that once a minor conveys his/her desire to stay with any person and that such person claims to be the next friend/de facto guardian, the same would actually and in reality be in furtherance of the best interest of the minor. Determination of what would be in the best interest of the minor has to be done by the Court as per the procedure known to law.

20. The Court, thus, has to take upon itself the responsibility to ensure that the fundamental right of such a minor to claim protection of his/her life and liberty is made available and also to ensure that in the said process, the protection of the statute is not violated.

21. Considering the above said circumstances and the fact that the aforesaid minor has approached the Court, it becomes incumbent upon the Court in its capacity as parens patriae to examine what is in the best interest of the minor and it is desirable to direct as under:

I. The minor in this case happen to fall within the definition of child in need of care and protection as provided under section 2(14)(vii)(xii) of Juvenile Justice (Care and Protection of Children) Act, 2015. The Senior Superintendent of Police/Superintendent of Police/Commissioner of Police of the respective district shall depute a Child Welfare Police Officer to produce the minor/child before the Committee constituted under the Juvenile Justice (Care and Protection of Children) Act 2015.

II. The respective Committee shall conduct an enquiry contemplated under Section 36 of the Juvenile Justice (Care and Protection of Children) Act 2015 and pass an appropriate order under section 37 of the said Act, by associating all the stakeholder, and to ensure that the objects of the Juvenile Justice (Care and Protection of Children) Act 2015 are well served.

III. The Child Welfare Committee shall take appropriate decision with respect to the boarding and lodging of the minor

and also to conduct enquiry on all issues relating to and affecting safety and well-being of the child/minor.

IV. During the pendency of such adjudication and passing of orders as contemplated under Section 37 of the Juvenile Justice (Care and Protection of Children) Act 2015, the committee shall also take appropriate interim/decisions as regards placement of a child/custody of the child in need of care and protection.

V. The concerned SSPs/SPs/CPs shall also take appropriate steps as warranted by law against the threat perception to the minor as well as to her next friend, through whom the minor has approached this Court and to ensure that the respective petitioners are protected from any physical harm at the instance of the respondents mentioned in the petition.

VI. The petitioners are directed to appear in the office of SSP/SP of the respective Districts within a period of 03 days from receipt of this copy, failing which the concerned SSP/SP shall depute a Child Welfare Police Officer to produce the minor before the Child Welfare Committee within a period of 01 week thereafter.

VII. The Child Welfare Committee constituted under the Juvenile Justice (Care and Protection of Children) Act 2015, shall send a compliance report to this Court.”

10. A similar view was taken in ***Khuspreet Singh and another vs. State of Punjab and others***, 2022 (3) RCR (Civil) 988, and in ***Akash and another vs. State of Punjab and others***, 2023 (3) RCR (Civil) 372.

11. In ***Baljeet Kaur's case*** (supra) there was a conflict in date of birth of both the Aadhaar Cards of petitioner and accordingly, both the Aadhaar Cards were sent to Central Forensic Science Laboratory to ascertain their authenticity and for reporting as to which of them is genuine/forged document. However, after receipt of the report, when the matter was taken up for further hearing before this Court, petitioner No.1 had completed 18 years of age by then and it was held that she could not be treated to be minor. The said judgment would not be applicable in the present case as such. The relevant discussion reads as under:-

“6. As per report sent by Central Forensic Science Laboratory dated 30.01.2017, it has been communicated that there were no genuine

sample copy of the Aadhaar Card for comparison of the disputed Aadhaar Cards No.“457535391574” with date of birth 12.02.1998 on the Aadhaar Card marked 'X' and date of birth 01.01.1999 on the Aadhaar Card Marked 'Y'. Details of both the Aadhaar Cards marked 'X' and 'Y' were sent to the Unique Identification Authority of India (UIDAI) by the Director, CFSL, Chandigarh on 19.12.2016 for the verification of details of both the Aadhaar Cards from the data base available with the UIDAI. The authority in its letter dated 18.01.2017 has stated that Aadhaar Card No.“457535391574” was generated vide enrollment on 02.08.2011 in the name of Baljeet Kaur with date of birth 01.01.1999. Later on, the person concerned got her Aadhaar Card updated on 27.09.2016 with date of birth 12.02.1998 in the name of Baljeet Kaur by using PDS Photo Card as Proof of Identity (POI) and Certificate of Address issued by village Panchayat Head as proof of address. Therefore, UIDAI found both the Aadhaar Cards to have been generated by UIDAI.

7. The controversy in terms of age as of now becomes in consequential in view of the fact that age of petitioner No.1 is computed even from both the date of birth of petitioner No.1 proves to be above 18 years of age as of now. Petitioner No.1 cannot to be treated to be minor now.”

12. Without expressing any opinion on the merits of the matter or commenting thereon and in particular the legality of the alleged relationship, the present petition is disposed of with a direction to Senior Superintendent of Police, Chandigarh-respondent No.2 to consider the aforesaid representation dated 03.09.2023 (Annexure P-1) made by the petitioners and in case there is any threat perception to the petitioners at the hands of private respondents, to act in accordance with law and if need be, to provide them interim protection.

13. Further considering the aforesaid circumstances and the fact that petitioner No.2 is a minor and has approached the Court, it becomes incumbent upon the Court in its capacity as *parens patriae* to examine what is best in the interest of the minor and it is deemed appropriate to direct respondent No.2 as well

as the Child Welfare Committee to take all steps detailed in the directions contained in *Khuspreet Singh's case* (supra), noticed above, in the present case as well.

14. The petitioners are directed to appear before the Senior Superintendent of Police, Chandigarh within a period of 3 days from receipt of a copy of this order, failing which respondent No.2 shall depute a Child Welfare Police Officer to produce the minor before the Child Welfare Committee within a period of one week thereafter. The Child Welfare Committee constituted under the Juvenile Justice (Care and Protection of Children) Act 2015, shall send a compliance report to this Court.

15. Registry of this Court is directed to send a copy of this order along with the petition and annexures to the respondent No.2-Senior Superintendent of Police, Chandigarh, as well as to the concerned Child Welfare Committee of the Union Territory, Chandigarh, for necessary compliance.

16. A compliance report be furnished by the Child Welfare Committee to this Court within a period of two months from the receipt of a copy of this order.

17. It is made clear that this order shall not be taken to validate the alleged relationship between the petitioners or protect them from legal action for violation of law, if any, committed by them.

18. The petition is disposed of.

(VIKAS SURI)
JUDGE

September 06, 2023
Parveen Kumar

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