

CRWP-10851-2022

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

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CRWP-10851-2022

Decided on : 29.05.2023

Saddam Hussain

... Petitioner(s)

Versus

State of Haryana and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Intizar-Ul-Hasan, Advocate for
Mr. Saleem Ahmad, Advocate
for the petitioner(s).

Mr. Pawan Kumar Jhanda, DAG, Haryana.

Mr. Afjal Hussain, Advocate
for respondent No.5.

SANJAY VASHISTH, J. (Oral)

1. In the present *Habeas Corpus* petition, on 20.02.2023, following order was passed:-

“ Mr. Afjal Hussain, Advocate, has put in appearance on behalf of respondent No.5 and filed his Vakalatnama in Court today, which is taken on record. Office to tag the same at appropriate place.

By way of instant petition, petitioner – Saddam Hussain, aged 29 years, approached this Court, for seeking a writ in the nature of Habeas Corpus, directing respondents No.1 to 3 to produce and to get released the detenue ‘Muskan’ d/o Javed, and w/o Saddam Hussain, who is illegally detained by respondents No.4 to 7.

In response to the order dated 17.11.2022, status report dated 22.11.2022 was filed on behalf of respondents No.1 to 3, which was taken on record on 23.11.2022. Thereafter, on 19.12.2022, following order was passed by this

Court:-

“Respondent points out to the statement dated 21.10.2022 (Annexure R-I) of the alleged detenue-Muskan.

Counsel for the petitioner submits that conduct of the police is not fair because said detenue who is major by age, had performed Nikah with the petitioner on 25.07.2022 and was taken away by her parents and thereafter, parents of the detenue took her along to their house. It is further submitted that as per statement recorded by the police she is staying with Sagoon since 13.10.2022 after solemnizing the marriage with him. Counsel submits that it is a clear case, where she has been forced to stay with other person i.e. Sagoon against her wishes by separating her away from the company of petitioner.

Counsel further requested that let her statement be recorded before some independent authority and then additional affidavit be filed by the learned State counsel.

In the backdrop of the aforementioned circumstances, let detenue be produced before the Judicial Magistrate of the area and her (Muskan) statement be recorded on 09.01.2023 or any other date convenient to the Court. Learned Area Magistrate would also ensure that statement given by the detenue is exhaustive and clear and same is with her free will and wish without there being any pressure of any person. Thereafter, additional affidavit be filed by learned State counsel on or before the next of hearing fixed before this Court.

Adjourned to 20.02.2023.”

Today again, an additional affidavit dated 12.02.2023, of Deputy Superintendent of Police, HQ Nuh, on behalf of respondents No.1 to 3, has been filed in Court, which is taken on record. Office to tag the same at appropriate place. A copy thereof has been handed over to the counsel for the petitioner.

In compliance to order dated 19.12.2022, statement of detenue ‘Muskan’ was recorded on 06.01.2023 (Annexure R-1) by Ld. JMJC, Punhana, which says as under:-

“DDR No. 22 dated 6.1.23

Statement of Muskan, age-18 year, D/o Javed w/o Sagoon, R/o Silkhoh, Tauru.

On SA

Q. Are you giving statement at your own free will.

Ans- Yes, Sir.

Q- Tell me what you want to say.

Ans- I went with Sagoon in previous year of the month of 10th with my free will, on that day we went and same day have solemnized Nikah at village Jhimrawat. After that, I am residing with my matrimonial family. I want to live with my husband. Saddam is harassing me. Due to his fear I am not going in my village. He has threatened that he will kill me. I have apprehending danger from him.

Q- Do you have anything else to say?

Ans- No.

RO& AC

Identify by me

Manju SI

*Neetika Bhardwaj
JMIC/Camp Court, Punhana
6.1.23.*

RTI

Muskan

It is certified that statement is recorded after being satisfied that same is made voluntarily.

*Neetika Bhardwaj
JMIC/Camp Court, Punhana
6.1.23”*

Para Nos.2 & 3 of additional affidavit dated 06.01.2023, are also reproduced herein-below:-

“2. That the present additional affidavit is being filed in pursuance of the aforesaid order. While complaining with the directions issued by the Hon'ble Court, statement of alleged detainee under section 164 Cr.P.C. has got been recorded by producing her before the Ld. Court of Illaqa Magistrate, JMIC Camp Court, Punhana on dated 06.01.2023, A Copy of the said statement is annexed as Annexure R-1.

3. It would be significant to mention here that the alleged detainee has specifically & categorically stated in her 164 Cr.P.C. statement that she is apprehending danger from the petitioner and she further deposed that she is willing to stay with her husband.”

In normal course, such petition could have been disposed of being infructuous because in the statement recorded by the Police as well as recorded by Ld. Magistrate, under Section 164 Cr.P.C., detainee ‘Muskan’ has chosen to stay in the company of respondent No.5 - Sagoon s/o Idreesh, r/o village Seelkho, Tauru, District Nuh. But the circumstances before

this Court are different than the status report/affidavit filed by the respondent – State.

Muskan (detenue), is present in-person today in Court, who has been identified by the petitioner – Saddam Hussain. On being confronted by the Court, she stated that she wants to get her statement recorded afresh. On her request, statement on oath has been recorded separately today in the Court, which is annexed as Annexure ‘A’ with this order. “She had performed Nikah with Saddam Hussain (petitioner). She states that after Nikah I started living with Saddam Hussain in village Jhimrawat, Mewat, Distt. Nuh. By Panchayat members, they were separated in September 2022, and was thereafter handed over to Sagoon forcefully against her wishes. This way, detenue states that she has been illegally confined by private respondents No.5 to 7 in village Seelkho, Tauru, Distt. Nuh. She further states that by running away from the clutches of private respondents, she succeeded in reaching to this Court today.” Broadly speaking, detenue apprehended danger to her life if she goes out of this Court room..

In view of the circumstances, this is obligatory for this Court to provide protection to Muskan (alleged detenue). For the said purpose, In-charge Beat, High Court, who is present in the Court premises, is directed to make all arrangements for providing police protection to Muskan for sending her to Village Jhimrawat, Mewat, District Nuh, after making coordination with Anti Human Trafficking Unit, Sector 17, Chandigarh Police, Chandigarh, as also with concerned police authorities of Haryana Police. Superintendent of Police, Nuh would ensure complete security of life and liberty of the detenue ‘Muskan’.

Adjourned to 17.04.2023 for further consideration.

After examining the circumstances of the case, appropriate action be taken as per law and a fresh status report/affidavit in the matter, on or before the next date of hearing be filed by State of Haryana.

Copy of this order along with copy of the statement of Musksan (detenue) recorded today, be handed over to Mr. Gaurav Jiv Singh Behl, Advocate for Mr. Akashdeep Singh, Addl. PP, UT Chandigarh, who is present in Court, for its further transmission to the In-charge Beat High Court, under the signatures of the Bench Secretary of this Court.”

2. Learned State counsel has filed the status report dated 21.05.2023, by way of affidavit of DSP, Punhana, on behalf of respondents No.1 to 3 in Court today, which is taken on record, subject to all just exceptions. Office to tag the same at appropriate place.

A copy thereof has been handed over to the counsel for the petitioners.

3. Learned State counsel submits that in view of the fact that petitioner and detenue were provided shelter in the Safe House, Nuh, and thereafter, on 06.04.2023, petitioner and the detenue were set free on their wish, in fact, they wanted to stay in the house of Mustkeem (brother-in-law/jija of the petitioner). Relevant part of the aforesaid status report i.e. para Nos. 2 to 8 are reproduced here-under:-

“2. That after issuing the directions by this Hon ble Court for providing the protection to the petitioner as well as the prosecutrix, both of them were taken to Nuh on 23.02.2023 from Panchkula Safe House by P/SI Sudhir and L/Ct. Ritu, under police protection.

3. That on 24.02.2023, the petitioner and the prosecutrix made a request to the Superintendent of Police, Nuh to keep them in the Safe House, Nuh. The said request was acceded by the Superintendent of Police, Nuh. From 24.02.2023, the petitioner and the prosecutrix were residing at Safe House, Nuh under the supervision of the police, as per directions issued by this Hon'ble Court.

4. *That on the request of the petitioner and the prosecutrix, their statement was recorded by P/SI Sudhiron 02.04.2023. In their statements, both of them desired to leave the safe house and also stated that they do not require any police protection as they do not have any danger now. The petitioner further stated that he will withdraw the petition. They further stated that they want to live in the house of Mustkeem (brother-in-law / jija of the petitioner). The other persons namely Abdul, Sahun and Javed also re-iterated the above statements made by the petitioner and the prosecutrix.*
5. *That on the application moved by Rabina (sister of the petitioner) and on the basis of the above statement recorded by P/SI Sudhir, the Superintendent of Police, Nuh, vide order no. 7934-40 dated 06.04.2023, passed the orders to release the petitioner and the prosecutrix from the Safe House, Nuh with immediate effect.*
6. *That however, the petitioner and the prosecutrix were duly informed that if any police help is required by them, they may contact the local SHO or the Police Control Room. Copy of the above mentioned order dated 06.04.2023 is attached herewith as Annexure R-1 for kind perusal of this Hon'ble Court.*
7. *That now, the petitioner and the prosecutrix are residing in the house of Mustkeem (brother-in-law / ilja of the petitioner) at Village Tapkan, P.S. Sadar, Distt. Nuh. Till date, no request for police protection from the side of the petitioner or the prosecutrix has been received by the local police, which goes to show that both of them are residing happily and they have no apprehension of danger from anyone.*
8. *That as and when any request for protection is received by the local police from the petitioner or the prosecutrix, the police protection will be provided to them immediately.”*

4.

Counsel for the petitioner submits that since the petitioner has

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already given statement for withdrawal of present petition, and there being no grievance as of now, he seeks withdrawal of the present petition.

5. Dismissed as withdrawn.

(SANJAY VASHISTH)
JUDGE

May 29, 2023
J.Ram

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No