

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No. 230 of 2024

Arising Out of PS. Case No.-80 Year-2022 Thana- MOHAMMADPUR District- Gopalganj

SONI KUMARI Wife of Sri Nitish Kumar, D/o Harmesh Ray Resident of
Village-Kabirpur, P.S.-Mohammadpur, District-Gopalganj.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Home Affairs, Government of Bihar Patna
2. The Director General of Police, Bihar, Patna Patna
3. The Inspector General of Police, Saran Region, Bihar, Patna. Bihar, Patna
4. The Superintendent of Nari Niketan, Gaighat, Patna. Patna
5. The Deputy Inspector General of Police, Saran Region, Saran at Chapra. Saran at Chapra.
6. The Superintendent of Police, Gopalganj Gopalganj
7. The Deputy Superintendent of Police, Gopalganj Gopalganj
8. The Officer Incharge, Mohammadpur Police Station, District Gopalganj Gopalganj
9. The Investigation Officer, Mohammadpur Police Station, District-Gopalganj. Gopalganj
10. NITISH KUMAR Son of Yogendra Ray Resident of Village Kabirpur, P.S.- Mohammadpur, District-Gopalganj.
11. GYANTI DEVI Wife of Harmesh Ray Resident of Village Kabirpur, P.S.- Mohammadpur, District-Gopalganj.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Naresh Prasad
For the Respondent/s : Mr.A.G.

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 13-03-2024

Learned State counsel was asked simple question in

Habeas Corpus petition as to what is the date of recovery of

corpus he is unable to apprise this Court. On the other hand, he



keep on arguing the matter that once she has been recovered and produced before the jurisdictional court and when she was a minor, she was sent to Nari Niketan by virtue of her 164 statement on 30.08.2022.

2. Learned counsel for the respondent-State submitted that petitioner has questioned the validity of sending the victim to Nari Niketan, therefore, it is not necessary to apprise this Court date of recovery of the corpus and submitted that present petition is not maintainable before the Division Bench in view of the roster allotted to this Bench, whereas roster allotment to DB-IV among other group the present case is in respect of group 53 X) Cr. W.J.C. (DB)- BCC Act, Habeas Corpus & others.

3. Learned counsel for the respondent-State submitted that 'and others' is required to be understood to the extent that arising out of BCC Act, Habeas Corpus and other than these two subjects DB cannot hear the matter. Whereas the present case falls under other than BCC Act and Habeas Corpus. Such a submission is not acceptable in view of the language employed in the aforementioned list 53. 'Others' has not been expanded, therefore, learned State counsel cannot contend that other than BCC Act and Habeas corpus, the present DB roster



has no roster to decide like the present matter. The same is hereby rejected.

4. It is to be noticed that victim was initially missing person and to that extent case was registered, thereafter, she was recovered and she was produced before the jurisdiction magistrate for recording 164 statement on 30th august 2022 and the jurisdiction court has found prima facie that victim girl was stated to be minor and she has been sent to Nari Niketan Home. In not providing date of recovery of the victim, the learned counsel for the State argued the aforementioned issue. The same is hereby rejected.

5. The respondents while furnishing counter affidavit or affidavit in a matter like the present one crucial material information has not been apprised to the extent that what is the date of recovery of corpus. In other words, affidavit and counter affidavit are filed in a very casual manner without providing factual aspects like dates and events from time to time. Having regard to the relief sought in the present case date of recovery of corpus is very much relevant. Even though petitioner has sought for quashing of the order dated 31.08.2022 read with 15.12.2023 of the ACJM-VI, Gopalganj. However, it was necessary to take note of date of recovery of corpus and same has not been



furnished in their counter affidavit and it is deprecated.

6. On merits, the petitioner has not made out the case having regard to the fact that victim was a minor. The petitioner has not produced any authenticated documents to show that she was major as on 31.08.2022 so as to interfere with the order of the ACJM-VI, Gopalganj dated 31.08.2022 read with 15.12.2023.

7. Accordingly, the present petition stands dismissed reserving liberty to the petitioner to invoke appropriate remedy as and when fresh cause of action arose.

8. Copy of this order shall be communicated to the Additional Chief Secretary, Home department.

9. At this stage, learned counsel for the petitioner relying on co-ordinate bench decision in the case of ***SAHEBI KHATOON @ SAHEBI VS. STATE OF BIHAR & ORS*** decided on 23.09.2010 passed in C.W.J.C. No. 991 of 2010 to the extent that if a person is at the verge of major in such an event relief is required to be granted. The same has been deprecated in view of the later decision of the Hon'ble Supreme Court. Hon'ble Supreme Court in case of POCSO matter the principle has been taken note of as to how and by what material date of birth is required to be determined one of the requirement



is with reference to school register and not opinion of the medical(doctor). Accordingly, the petitioner’s version stands rejected.

10. At this stage, learned counsel for the State submitted that case of ***SAHEBI KHATOON @ SAHEBI VS. STATE OF BIHAR & ORS*** stands overruled by full bench in the case of ***Shikha Kumari Vs. The State of Bihar through Principal Secretary, Home (Police) Deptt. & Ors reported in (2020) 2 PLJR 15***. The same would assist the State-respondent.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

vashudha/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19.03.2024
Transmission Date	NA

