

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.662 of 2024

Arising Out of PS. Case No.-477 Year-2023 Thana- JAKKANPUR District- Patna

Sanjula Devi @ Sanjla Devi, W/o Mohan Maharaj ,Village Morwara Ward No
3 P.O & P.S Morwara District Samastipur, Bihar, Pin Code 848209

... .. Petitioner

Versus

1. The State of Bihar through Principal Secretary Home Government of Bihar, Old Secretariat, Patna Bihar
2. Department of Home, Govt. of Bihar through its principal Secretary, Old Secretariat Patna Bihar
3. The Director General of Police, Police Headquarter, Patel Bhawan, Patna, Bihar Bihar
4. The Senior Superintendent of Police, Patna Bihar
5. The City Superintendent of Police, Patna Bihar
6. The Station Head Officer, Jakkanpur Police Station, District Patna Bihar
7. Santosh Kumar, S/o Kedar Nath Singh, Resident of Village Mohabatpur, Post- Ranipur, P.S.- Paliganj, District- Patna

... .. Respondents

Appearance :

For the Petitioner/s : Mr. Niraj Kumar, Advocate
Mr. Deepak Maharaj, Advocate
For the Respondent/s : Mr. Prabhu Narayan Sharma, AC to AG

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE RAMESH CHAND
MALVIYA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 22-10-2024

Today, learned counsel for the petitioner, on
instruction, submitted that I.A. No. 01 of 2024 is not pressed.

2. Accordingly, I.A. No. 01 of 2024 stands disposed
of as not pressed.

3. In the instant petition, petitioner has prayed for



the following reliefs:

“(i) For issuance of an appropriate writ in the nature of Habeas Corpus and directing to the Respondent authorities/ Police Officials to produce Smt. Diya Raj (daughter of Respondent no.7) before this Hon'ble Court and also provide necessary protection for her life and liberty in accordance with law.

(ii) For issuance of direction to the Respondent no.7 namely Santosh Kumar to release the Daughter-in-Law of the petitioner namely Smt. Diya Raj in favour of the petitioner (Mother-in-law) in the interest of welfare of the girl and her unborn baby.

(iii) For issuance of direction to the Respondent authorities/ Police Officials not to extend threat and coercion to petitioner and her husband to give up the issue of welfare and protection of Smt. Diya Raj (daughter-in-law) and the unborn grandchild in her womb.

(iv) For any other relief/reliefs that the Hon'ble High Court may deem fit and appropriate



in the facts and circumstanced of the present case.”

4. The present Criminal Writ Jurisdiction Case is presented by Sanjula Devi @ Sanjla Devi, who is stated to be mother-in-law of ‘Y’. ‘Y’ and Barun Kumar Maharaj @ Barun Bhardwaj were alleged to have entered into love affair and later on resulted in marriage on 04.08.2023 at Jaipur. On 04.08.2023, 7th Respondent lodged complaint and it was registered for offences Under Section 366(A) and other related offences against Om Kumar & Ors., and it was registered at Jakkanpur P.S. Case No. 477 of 2023. Barun Bhardwaj had approached this Court in seeking Anticipatory Bail in the aforementioned F.I.R. and obtained Anticipatory bail on 20th August, 2024. Later on offence under Section 376 of I.P.C. and provisions of POCSO Act was incorporated. In this backdrop, Sanjula Devi @ Sanjla Devi presented this petition.

5. Prayer No.1 is concerned, we have already issued a number of interim directions to the concerned official Respondents and ‘Y’ is in the After Care Home, Gaighat, Patna, in view of the fact that she is alleged to be minor and she is not willing to join her parents.

6. Prayer No.2 is concerned, petitioner is not



entitled to custody of 'Y', since she is a minor.

7. Prayer No.3 is concerned, we have already rejected in our previous order dated 01.08.2024.

8. Learned counsel for the petitioner, vehemently, contended that petitioner mother-in-law can maintain the present Habeas Corpus petition, since her son Barun Bhardwaj is away from Patna. In this regard, learned counsel for the petitioner cited the following decisions:-

(a) Preeti and another vs. State of Haryana and others. (2020 SCC OnLine P&H 4952)

(b) Devu G Nair vs. The State of Kerla & Ors. (2024 INSC 228)

(c) Majji Jhansi and Ors. vs. The State of Telangana and Ors. (Para- 8 and 9) (2021 SCC OnLine TS 3701)

(d) Sh. Jitender Kumar Sharma vs. State & Another (Para-23 and 24) (2010 SCC OnLine Del 2707)

(e) X versus The Principal Secretary Health and Family Welfare Department & Anr. (2022 SCC OnLine SC 905)

9. The present petition is not maintainable on behalf of mother-in-law of 'Y', who is a minor, in the light of Full Bench decision of the Delhi High Court in the case of *Lajja Devi vs. State, 2012 SCC OnLine Del 3937* and Supreme Court decision in the case of *Independent Thought vs. Union of India, 2017 (10) SCC 800*. Accordingly, the cited decisions on



behalf of petitioner insofar as *Preeti and another vs. State of Haryana and others, Majji Jhansi and Ors. vs. The State of Telangana and Ors. and Sh. Jitender Kumar Sharma vs. State & Another* are distinguishable. Further, *Sh. Jitender Kumar Sharma vs. State & Another* case is in respect of petition under Section 482 of Cr.P.C. and not under Article 226 of Constitution for Habeas Corpus. Scope of Habeas Corpus petition is limited to the extent as to whether missing person is under illegal custody or not.

10. In view of the aforementioned decisions, we proceed to pass order that petitioner - Sanjula Devi @ Sanjla Devi, who is stated to be mother-in-law of 'Y' cannot maintain the present Writ petition for Habeas Corpus in the light of principles laid down by the Full Bench decision of the Delhi High Court read with the Hon'ble Supreme Court's decision viz., *Independent Thought vs. Union of India* cited supra. These two decisions have been taken note of by co-ordinate Bench of this Court in the case of *Nitish Kumar @ Nitish Ram @ Nitish Kumar Ram vs. The State of Bihar and Another* passed in *Criminal Writ Jurisdiction Case No. 880 of 2023* decided on 16.01.2024. Accordingly, the present Writ petition stands dismissed.



11. At this stage, learned counsel for the petitioner submitted that child (unborn) has been aborted in the womb of ‘Y’ by the concerned persons that is required to be examined and looked into and punish such of those persons, who are responsible for such exercise of abortion. This issue cannot be adjudicated in a Habeas Corpus petition. When we have already decided that petitioner-mother-in-law has no locus insofar as securing ‘Y’ custody in that event the aforementioned contention is also not maintainable on behalf of petitioner.

12. At this stage, learned counsel for the petitioner seeking liberty to file criminal petition. However, such liberty cannot be granted in Habeas Corpus petition, if petitioner has a fundamental right or legal or statutory right in that event, she has every right to approach or knock the door of this Court and in accordance with law.

(P. B. Bajanthri, J)

(Ramesh Chand Malviya, J)

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AFR/NAFR	NAFR
CAV DATE	N.A
Uploading Date	28.10.2024
Transmission Date	NA

