

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1294 of 2023

Arising Out of PS. Case No.-88 Year-2021 Thana- ISLAMPUR District- Nalanda

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UPENDRA KUMAR SON OF SRI YODHI THAKUR RESIDENT OF
VILLAGE MAKRAUT PS CHIKSAURA DISTRICT NALANDA

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Collector, Nalanda At Biharsharif, Dist- Nalanda Bihar
3. Child Protection Home, Gaya (BAL Grih, Gaya) Bihar
4. The Superintendent Of Police, Nalanda At Biharsharif Bihar
5. The Officer-In-Charge, Islampur Police Station, Dist- Nalanda Bihar
6. Mithilesh Ram S/O Ramdhani Ram R/O Vill - Brahmgawan, P.S. - Islampur, Distt. - Nalanda
7. The Principal Uttaramit Madhyamik Vidalaya, Brahmgawan, Anchal - Islampur, Distt. - Nalanda Bihar

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Upendra Prasad, Advocate Ms.Veena Kumari Jaiswal, Advocate Mr.Sunil Kumar, Advocate
For the Respondent/s	:	Ms.Saroj Sandiya, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

5 19-03-2024 1. The petitioner claims to be husband of one Rani Kumar. Their marriage was solemnized on 19th of December, 2020. They married according to their own wish, as a result of love affair between them. The father of the wife of the petitioner was not satisfied due to her marriage with the petitioner as it was an inter-caste marriage. Therefore, he lodged an FIR, on the basis of which, Islampur P.S. Case No. 88 of 2021, dated 11th of February, 2021 was registered under Sections 366A and 34 of



the Indian Penal Code. The said case results in institution of G.R. Case No. 300 of 2021 and POCSO Case No. 22 of 2021. It is alleged that the daughter of the informant, Rani Kumari, was minor when she was eloped and the petitioner kidnapped her illegally for the purpose of marriage. On 18th of February, 2021, both the petitioner and said Rani Kumari were arrested, as per the allegation made in the FIR. Rani Kumari was sent to Remand Home on 10th of July, 2021. Since then, she is residing in the Observation Home. On 27th of September, 2021, Rani Kumari gave birth to a male child. The petitioner was released on bail on 3rd of January, 2023. Medical report of the victim was submitted, wherefrom it is ascertained that the age of Rani Kumari on the date of medical test was 19 years. Rani Kumari filed a petition for release on her bail before the Court of learned Additional 7th-cum-Special Judge, POCSO Act, Nalanda at Biharsharif on 16th of May, 2023. However, her prayer was rejected.

2. In the instant writ petition, the petitioner has prayed for issuance of writ in the nature of Certiorari, calling for the records and to release Rani Kumari to the petitioner. The petitioner has also prayed for a direction to the effect that Rani Kumari being major, the Observation Home or Juvenile Justice



Board or the Special Court under the POCSO Act have no right to detain her in the Remand Home. She has also prayed for other consequential reliefs.

3. During the course of hearing, Respondent No. 4, the Superintendent of Police, Nalanda at Biharsharif has filed a counter affidavit, annexing a certificate issued by the Headmaster, Utkramit Madhya Vidyalaya, Brahmgawan to the effect that Rani Kumari was a student of her school and in the school register her date of birth was recorded as on 14th of January, 2007. The alleged incident of kidnapping and marriage took place on 19th of December, 2020 when the victim girl was aged about 13 years and 11 months. On 11th of January, 2024, the Respondent No. 7 has filed another counter affidavit annexing the certified copy of the school register of Utkramit Madhyamik Vidyalaya, Brahmgawan from where it is ascertained that Rani Kumari was admitted to the said school on 15th of April, 2011 and her date of birth was recorded as on 14th of January, 2007. Thus, she took admission in the school at the age of 4 years. Subsequently, Rani Kumari left her education and again on 16th of April, 2020, she was admitted to Class IX. In the said admission register also her date of birth was recorded as on 14th of January, 2007.



4. It is submitted by the learned Advocate for the petitioner that in the admission register which has been lastly filed by the Respondent No. 7, there was lot of interpolations. The name of Rani Kumari was inserted in the admission register by striking down the name of Soni Kumari. The father of the victim girl, namely, Mithlesh Ram put his signature in the admission register as Mithlesh Sharma but it was also interpolated and Sharma has been converted to Ram. Therefore, this Court has no occasion to rely on the admission register for the year 2020-21. The petitioner, however, did not say anything about the admission register, dated 15th of April, 2011, when the victim girl took her admission in the school.

5. Therefore, there are two different dates available from the records. One is the record of the admission register relating to birth of the victim girl and another is the medical examination (Ossification Test) report conducted on 24th of April, 2023 where the Medical Officer stated that the age of the victim was on the date of Ossification Test 19 years.

6. Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015, is the relevant provision which runs thus:

“94. (1) Where, it is obvious to the Committee or the Board, based on the appearance of



the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry under section 14 or section 36, as the case may be, without waiting for further confirmation of the age.

(2) In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining —

(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;

(ii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board:

Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.

(3) The age recorded by the Committee or the Board to be the age of person so brought before it shall, for the purpose of this Act, be deemed to be



the true age of that person.”

7. In the case of **Ashwani Kumar Saxena vs. State of M.P.**, reported in **(2012) 9 SCC 750**, making an inquiry in regard to the claim of juvenility under 2007 Rules, was stipulated as hereunder:

“32. “Age determination inquiry” contemplated under Section 7-A of the Act read with Rule 12 of the 2007 Rules enables the court to seek evidence and in that process, the court can obtain the matriculation or equivalent certificates, if available. Only in the absence of any matriculation or equivalent certificates, the court needs to obtain the date of birth certificate from the school first attended other than a play school. Only in the absence of matriculation or equivalent certificate or the date of birth certificate from the school first attended, the court needs to obtain the birth certificate given by a corporation or a municipal authority or a panchayat (not an affidavit but certificates or documents). The question of obtaining medical opinion from a duly constituted Medical Board arises only if the abovementioned documents are unavailable. In case exact assessment of the age cannot be done, then the court, for reasons to be recorded, may, if considered necessary, give the benefit to the child or juvenile by considering his or her age on lower side within the margin of one year.”

8. “Age Determination Inquiry” contemplated under Section 7A of the Act read with Rule 12 of the 2007 Rules, enables the Court to seek evidence, and in that process, the



Court can obtain the matriculation or equivalent certificates, if available only in the absence of any matriculation or equivalent certificate, the Court needs to obtain the date of birth certificate from the school first attended by the juvenile other than a play school. Only in the absence of matriculation or equivalent certificate or date of birth certificate from the school first attended, the Court needs to obtain the birth certificate given by a corporation or a municipal authority or a panchayat (not an affidavit certificate or document). The question of obtaining a medical opinion from a duly constituted Medical Board arises only if the above-mentioned documents are unavailable. In case, an exact assessment of the age cannot be done, then the Court, for reasons to be recorded, may, if considered necessary, give benefit to the child or juvenile by considering his or her age on the lower side within the margin of one year.

9. In the instant case, if the provision of Section 94 is taken into consideration, then the date of birth certificate from the school, or the matriculation certificate or equivalent certificate from concerned examination Board, if available, is for the purpose of the Juvenile Justice (Care and Protection) Act, 2015 to be deemed to be the true age of that person. The Ossification Test Report cannot be a guiding factor in



determination of age when there is birth certificate recorded in the admission register of the school.

10. Learned Advocate for the petitioner refers to a decision of the Allahabad High Court in the case ***Monish vs. State of U.P & Ors***, decided on ***9th of February, 2023***, granting bail to the victims on the following grounds:-

(i). The prosecution case set out in the FIR states that the age of the victim is 15 years.

(ii). The victim in her statement under Section 161 Cr.P.C. has stated that she is 16 years of age. As per the transfer certificate issued by the school her age is 13 years and 3 months.

(iii). There are material inconsistencies in the age related evidence relied on by the prosecution which discredits the prosecution case.

(iv). The victim has been falsely shown as minor only to aggravate the offence and cause the imprisonment of the applicant under the stringent provisions of the POCSO Act.

(v). The victim is in fact a major. Medical examination to determine the correct age of the victim as per the latest scientific and medical protocol by eminent doctors from a reputed institution was not got done (*SIC*) as it would falsify the prosecution case.

(vi). The applicant and the victim were intimate.

(vii). The F.I.R. is a result of an opposition



of the victim's parents to her relationship with the applicant.

(viii). The statement of the victim is tutored and made at the behest of her parents only to deflect attention from the conduct of the victim and to save the failing prosecution.

(ix). No medical evidence corroborates forceful assault.

(x). There is no evidence of forceful entry in the house of the victim. The victim was a consenting party.

(xi). The applicant does not have any criminal history apart from the instant case.

11. All these are good grounds of bail but the aforesaid judgement does not relate to the issue of age determination.

12. The learned Advocate for the petitioner has also referred to a decision of Division Bench of this Court in the case of ***Subhash Kumar vs. State of Bihar (Criminal Appeal (DB) 588 of 2022)*** decided on ***18th of December, 2023***. The observation made by the Division Bench of this Court regarding the age of the victim also does not apply to this case.

13. In the instant case, the stand-alone document is certificate and admission register of the victim girl where her date of birth was recorded as 14th of January, 2007. The said document is to be relied.



14. Therefore, I do not find any merit in the instant writ petition and the petitioner is not entitled to get any relief.

15. In such view of the matter, the instant writ petition is dismissed.

16. However, there shall be no order as to costs.

(Bibek Chaudhuri, J)

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