

**CRWP-4908-2024****-1-****IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.****Sr. No.216****Case No. : CRWP-4908-2024****Decided On : September 10, 2024**

Ramvinay Kaji

.... Petitioner

vs.

State of Punjab and others

.... Respondent

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Ms. Malkit Kaur, Advocate
for the petitioner.

Ms. Avneet, AAG, Punjab.

Mr. Shubham Saini, Advocate
for the detenue – Amrita Kumari.Ms. Ankita Sambyal, Advocate
for respondent no.4.

* * *

GURBIR SINGH, J. :

1. The present petition has been filed under Article 226 of the Constitution of India for issuance of a writ in the nature of Habeas Corpus for appointment of Warrant Officer to raid the premises of respondents no.4 to 7 to recover detenue namely Amrita Kumari – daughter of the petitioner, from illegal confinement of respondents no.4 to 7 and for directing the official respondents to produce the detenue before this Court. Further prayer has been made to appoint a Warrant Officer to search the detenue and to take legal action against private respondents.

2. The brief facts, necessary for disposal of present writ petition, are

that the petitioner belongs to a very poor family. He is father of detenue

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Amrita Kumari, whose date of birth is 01.01.2004 and she is 21 years old. Respondent no.4 – Vishal is married with one Gitanjali Kumari, cousin of the detainee. Vishal as well as the detainee, both are missing from their respective houses since 06.04.2024. Vishal, in connivance with the other private respondents, kidnapped daughter of the petitioner with bad intention. Her life is in danger. The private respondents can also cause harm to the petitioner and her daughter. The private respondents are residing in Zirakpur. The petitioner visited the concerned Police Station at Zirakpur many times but the police refused to register the FIR, telling the petitioner for registering the FIR in Bihar.

3. Vide order dated 23.05.2024, passed by a Co-ordinate Bench of this Court while issuing notice of motion, respondent no.2 – Superintendent of Police, SAS Nagar (Mohali) was directed to ensure presence of the detainee before the Court of learned Chief Judicial Magistrate, SAS Nagar (Mohali), who would record her statement.

4. In the Reply, which was filed by way of Affidavit of Simranjeet Singh, PPS, Deputy Superintendent of Police, Zirakpur, District SAS Nagar (Mohali), on behalf of respondents no.1 to 3, it was stated that inquiry was conducted into the matter, wherein the petitioner has stated that in the month of February 2024, he went back to his village along with his daughter Amrita Kumari for attending a marriage. His daughter/detainee was taken away by respondent no.4 after inducing her for marriage and he got registered FIR No.5127047240035 dated 12.04.2024 under Sections 363, 366 IPC.

5. Learned counsel appearing for the detainee has submitted that vide

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order dated 30.08.2024, the learned Chief Judicial Magistrate, SAS Nagar (Mohali) was directed to record statement of the detenue whether she was residing with respondent no.4 out of her own sweet will and whether the statement made by the detenue was voluntary or under pressure. The statement so recorded was ordered to be sent to this Court. Pursuant thereto, Report from the learned Chief Judicial Magistrate, SAS Nagar (Mohali) has been received, which reads as under :-

“Most respectfully, it is submitted that vide order dated 30.08.2024 in CRWP-4908-2024 titled as Ramvinay Kaji Vs State of Punjab and ors., Respondent No.2 Senior Superintendent of Police, S.A.S. Nagar (Mohali) was directed to depute some responsible police official along with lady personal to produce detenue Amrita before the court of the undersigned for recording her statement on 02.09.2024 at about 12.00 O' Clock and this court was directed to record statement of detenue.

In pursuance to the said order, letter bearing No.818 dated 31.08.2024 was also issued to SSP, S.A.S. Nagar. Thereafter, on 31.08.2024, detenue Amrita was produced before the Court by ASI Rajesh Chauhan and LC Parneet Kaur at about 12.00 O' Clock. Thereafter, both police officials, petitioner Ramvinay Kaji and other persons come along with detenue and petitioner Ramvinay Kaji were directed to leave the court room in order to rule out any kind of influence by any of them upon detenue. When asked, detenue stated her name as Amrita. She was given private and safe environment and she was given access to water and washroom.

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Thereafter, her statement was recorded, in which she stated that she has produced the copy of her Adhaar Card and same is ExC1. She has no short name. Petitioner Ramvinay Kaji is her father and name of her mother is Jaimati Devi. Vishal Kumar son of Madhu is her brother in law (Jijaji). Vishal Kumar is married to Geetanjali, who is daughter of her uncle (Tayaji) namely Dinesh Kaji. She is now residing with Vishal Kumar in his house situated at Zirakpur with her free consent and free will. There is no pressure upon her by either Vishal or any other person for residing with him. Niaz son of Morham Mia, Akash Kumar and Salman i.e. respondents No.5 to 7 are friends of Vishal Kumar. They have also not put her under any kind of pressure for residing with Vishal Kumar. She does not want to go back to house of her parents. Ramvinay Kaji is present in the Court today and she does not want to go with him. She is making this statement with her own will and without any kind of pressure by any other person. There is no pressure on her by her family members. Shri Shubham Saini, Advocate has appeared on behalf of detenue Amrita Kumari.

As per the statement got recorded by detenue before the Court, she is residing with her own sweet will with respondent No.2 Vishal Kumar, who is husband of her cousin. She has suffered her statement voluntarily and without any pressure.

The report is submitted for the kind perusal, please.”

6. Learned counsel for the petitioner has argued that respondent no.4



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is already married with the cousin of the detainee. A married person has no choice to live with any other lady. The act on the part of respondent no.4 is punishable. So, the detainee be handed over to the petitioner. A criminal case i.e. FIR No.5127047240035 dated 12.04.2024, under Sections 363, 366 IPC is already registered against respondent no.4 and others in the Police Station Mataria, District Bettiah in the State of Bihar for kidnapping the detainee. Reliance in this regard has been placed on **Binder Kaur and another vs. State of Punjab and others – CRWP-9114-2023**, decided on 15.09.2023, **Reena Devi and another vs. State of Punjab and others – CRWP-10805-2023**, decided on 06.11.2023 and **Ritu Sethi and another vs. State of Punjab and others – CRWP-4018-2024**, decided on 24.07.2024.

7. The learned State counsel has submitted that the alleged detainee has made the statement that she was residing with Vishal Kumar – respondent no.4 with her consent and free will. She has further made statement that she did not want to reside with her parents. The counsel for respondent no.4 and alleged detainee have submitted that she is major and has every right to live her own life. She cannot be forced to live with parents or any other person against her will.

8. I have heard the arguments advanced by learned counsel for the parties and have also gone through the record.

9. The writ of Habeas Corpus takes its name from two mandatory words – Habeas Corpus, which means to obtain the production of an individual or produce the body. It is meant to provide expeditious and effective remedy against illegal detention. In other words, it is a powerful



tool designed to protect the individual's liberty against illegal detention. The scope of this writ is confined strictly to assess the legality of the detention.

10. In the case in hand, the alleged detainee is major and has unequivocally declared that she does not wish to return to the petitioner, her father. She, being major, has every right to live the way she likes. The parental love cannot be allowed to frustrate the right of adult to live as per her wish and will. In case **Shafin Jahan vs. Asokan K. M. & Ors.** reported as **2018 (16) SCC 368**, Hon'ble Supreme Court dealt in detail the right of adult girl to reside as per her wish or against the wish of any other person. The Hon'ble Court also considered the doctrine of parens patriae as well as social values and morals concerning this issue. Paras no.52 to 54 of the said judgment are as under :-

“52. Relying upon the aforesaid decisions, he emphasized on the concept that when the major is a vulnerable adult, the High Court under Article 226 of the Constitution of India can exercise the parens patriae doctrine which has been exercised in this case. The aforesaid judgments, in our considered opinion, are not applicable to the facts of the present case. We say so without any hesitation as we have interacted with the respondent No.9 and there is nothing to suggest that she suffers from any kind of mental incapacity or vulnerability. She was absolutely categorical in her submissions and unequivocal in the expression of her choice.

53. It is obligatory to state here that expression of choice in accord with law is acceptance of individual identity. Curtailment of that expression and the ultimate action emanating therefrom on the



conceptual structuralism of obeisance to the societal will destroy the individualistic entity of a person. The social values and morals have their space but they are not above the constitutionally guaranteed freedom. The said freedom is both a constitutional and a human right. Deprivation of that freedom which is ingrained in choice on the plea of faith is impermissible. Faith of a person is intrinsic to his/her meaningful existence. To have the freedom of faith is essential to his/her autonomy, and it strengthens the core norms of the Constitution. Choosing a faith is the substratum of individuality and sans it, the right of choice becomes a shadow. It has to be remembered that the realization of a right is more important than the conferment of the right. Such actualization indeed ostracises any kind of societal notoriety and keeps at bay the patriarchal supremacy. It is so because the individualistic faith and expression of choice are fundamental for the fructification of the right. Thus, we would like to call it indispensable preliminary condition.

54. Nonacceptance of her choice would simply mean creating discomfort to the constitutional right by a Constitutional Court which is meant to be the protector of fundamental rights. Such a situation cannot remotely be conceived. The duty of the Court is to uphold the right and not to abridge the sphere of the right unless there is a valid authority of law. Sans lawful sanction, the centripodal value of liberty should allow an individual to write his/her script. The individual signature is the insignia of the concept.”

11. In case **Lata Singh vs. State of U.P.**, reported as **(2006) 5 SCC**



throughout the country to take stern action against the persons who give threats or commit acts of violence against the persons who are major and have undergone the inter-caste or inter-religious marriage. In the light of law laid down by Hon’ble Supreme Court, the authorities cited by learned counsel for the petitioner are of no help to the petitioner. The registration of criminal case against respondent no.4 is no ground to hand over the custody of alleged detenue to the petitioner, her father. The criminal Court will decide the said case in accordance with law.

12. In the light of the above discussion, no ground is made out for issuance of a writ in the nature of Habeas Corpus. Accordingly, the present petition, being devoid of any merit, is hereby dismissed.

13. Pending applications, if any, shall stand disposed of along with the present petition.

September 10, 2024

monika

(GURBIR SINGH)
JUDGE

<i>Whether speaking/reasoned ?</i>	<i>Yes/No.</i>
<i>Whether reportable ?</i>	<i>Yes/No.</i>