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(Through Video Conferencing)

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

CRWP-5412-2024

Date of Decision: 06.06.2024

Akbari Khatil (Minor) through Suraj Kumar

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Dheeraj Kumar, Advocate
for the petitioner (through video conferencing).

Mr. Kunwarbir Singh, AAG, Punjab.

HARSH BUNGER J. (ORAL)

Petitioner – Akbari Khatil (minor) has filed this writ petition through one Suraj Kumar, seeking a writ in the nature of Mandamus to protect her life and liberty from the hands of private respondents No.4 to 8 (family members of the minor petitioner). A further prayer has been made to direct respondents No.2 and 3 to decide representation dated 03.06.2024 (Annexure P-2).

2. Succinctly, petitioner (minor), aged about 15 years, is stated to

be staying with her friend Suraj Kumar, who came to her rescue when the

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private respondents were trying to marry her (minor) with an old aged man without her consent.

2.1 Petitioner (minor) is stated to have opposed her marriage with an old man chosen by her parents; whereupon, she was given beatings and was pressurized to marry by the private respondents. Upon getting an opportunity, petitioner (minor) is said to have run away from her parental house on 02.06.2024 and since then she is running from pillar to post to save her life and has lastly taken refuge at the house of aforesaid Suraj Kumar. It is claimed that the petitioner (minor) was taken to local Police Station for help, however, of no avail. It is alleged that the private respondents raided the house of Suraj Kumar and threatened his family members; and thereafter, they also gave threats to implicate any person who helps the petitioner (minor) in a false criminal case. It is next submitted that the petitioner (minor) through her friend Suraj Kumar had filed representation dated 03.06.2024 (Annexure P-2) to the concerned Senior Superintendent of Police as well as the Station House Officer, seeking protection of their lives and liberties at the hands of private respondents No.4 to 8, however, no action has been taken thereupon, so far.

2.2 In the backdrop of the aforementioned facts and circumstances, the petitioner has filed the instant petition before this Court.

3. Learned counsel for the petitioner submits that the petitioner is a minor and an uneducated girl, who belongs to a poor strata of society. It is contended that the parents of the petitioner (minor) want to marry her away to an old man, which is opposed by the petitioner, whereupon she was given

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beatings and threats. It is further contended that the petitioner (minor) has taken refuge at the house of Suraj Kumar and the private respondents upon learning about the aforesaid fact, have raided the house of Suraj Kumar; however, when Suraj Kumar and also the minor were not found at the house, the private respondents threatened the family members of Suraj Kumar. It is further submitted that in somewhat similar circumstances, a co-ordinate Bench of this Court while passing a common judgment dated 28.03.2022 in *CRWP No.2139 of 2022, CRWP No.2140 of 2022 and CRWP No.2250 of 2022*, granted protection to the minor(s), who approached this Court through their next friend(s)/next relative(s); coupled with adequate measures taken under the statutory scheme in the best interest of the minor(s). It is accordingly prayed that the life and liberty of the petitioner as well as Suraj Kumar and his family members be protected, which is threatened at the hands of the private respondents.

4. Notice of motion at this stage only to the official respondents, i.e. respondents No.1 to 3, is being issued.

5. Mr. Kunwarbir Singh, Assistant Advocate General, Punjab, who is present in Court, accepts notice on behalf of respondents No.1 to 3/State.

6. Given the nature of the order being passed, there is no necessity to seek any response by the official respondents or even to serve the private respondents No.4 to 8.

7. Learned State counsel submits that respondent No.2 – Senior Superintendent of Police, Ferozepur shall look into representation dated 03.06.2024 (Annexure P-2) submitted by the

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petitioner (minor) and necessary action shall be taken thereupon in accordance with law.

8. I have heard learned counsel for the parties and perused the paper book with their able assistance.

9. In the instant case, the petitioner being a minor has approached this Court seeking protection of her life and liberty, which is stated to be threatened at the hands of the private respondents, who are none other but the family members of the petitioner.

10. It is the bounden duty of the State as per the Constitutional obligations casted upon it to protect the life and liberty of every citizen. Right to human life is to be treated on much higher pedestal, regardless of a citizen being minor or a major. The mere fact that the petitioner is minor in the present case would not deprive her of the fundamental right as envisaged in Constitution of India, being citizen of India.

11. In a batch of writ petitions (*CRWP No.2139 of 2022, CRWP No.2140 of 2022 and CRWP No.2250 of 2022; decided on 28.03.2022*), a co-ordinate Bench of this Court has considered the question relating to striking a balance between the constitutional right to life as enshrined under Article 21 as well as statutory obligation cast under the Juvenile Justice (Care and Protection of Children) Act, 2015, in a case where a minor claims to have abandoned her guardian and approaches the Court through a self proclaimed next friend/guardian. The relevant extract of the aforesaid judgment, would read as under:-

“24. The enunciation of statutory framework in the nature of



Juvenile Justice (Care and Protection of Children) Act 2015 and Protection of Children from Sexual Offences Act does not run contrary to the provisions enshrined under Article 21 of the Constitution of India. Protection of life and liberty guaranteed to a citizen necessarily ensures that the Court of law, when approached, would step into the shoes as a guardian of such minor and take all such steps as are essential to protect the life and liberty of such a minor. It would be incomprehensible to contend or to suggest that the protective scheme and procedure formulated under the Juvenile Justice (Care and Protection of Children) Act 2015 is not in furtherance of protection enshrined under Article 21 of the Constitution of India. The said Acts are intended to ensure advancement of Article 21. The Court of law, while issuing any directions to follow the procedure provided for under the Juvenile Justice (Care and Protection of Children) Act 2015, does so with an object to ensure safety and protection of a minor, who the law does not recognise as having acquired the wisdom and knowledge to take best decisions for himself/herself. The decision so taken by the competent authority with respect to the minor as per the procedure prescribed in law, cannot be deemed as violative of Article 21 of the Constitution of India with on a ground that such a decision will not be in conformity with the interest which such a minor conceives to be in his/her best interest. The Court cannot be oblivious to the duty cast upon it as a repository of the best interest of the minor and there can be no presumption that once a minor conveys his/her desire to stay with any person and that such person claims to be the next friend/de facto guardian, the same would actually and in reality be in furtherance of the best interest of the minor. Determination of what would be in the best interest of the minor has to be done by the Court as per the procedure known to law.

25. The Court, thus, has to take upon itself the responsibility to



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ensure that the fundamental right of such a minor to claim protection of his/her life and liberty is made available and also to ensure that in the said process, the protection of the statute is not violated.

CONCLUSION:

26. In view of the above, the petitions are partly allowed with directions as under:-

I. The minor in all these cases happen to fall within the definition of child in need of care and protection as provided under section 2(14)(vii)(xii) of Juvenile Justice (Care and Protection of Children) Act, 2015. The Senior Superintendent of Police/Superintendent of Police of the respective districts shall depute a Child Welfare Police Officer to produce the minor/child before the Committee constituted under the Juvenile Justice (Care and Protection of Children) Act 2015.

II. The respective Committee shall conduct enquiry contemplated under Section 36 of the Juvenile Justice (Care and Protection of Children) Act 2015 and pass an appropriate order under section 37 of the said Act, by associating all the stakeholder, and to ensure that the objects of the Juvenile Justice (Care and Protection of Children) Act 2015 are well served.

III. The Child Welfare Committee shall take appropriate decisions with respect to the boarding and lodging of the minor and also to conduct enquiry on all issues relating to and affecting safety and well-being of the child/minor.

IV. During the pendency of such adjudication and passing of orders as contemplated under Section 37 of the Juvenile Justice (Care and Protection of Children) Act 2015, the committee shall also take appropriate interim/decisions as regards placement of a child/custody of the child in need of care and protection.

V. The concerned SSPs/SPs shall also take appropriate steps as warranted by law against the threat perception to the minor as



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well as to their next friend, through whom the minors have approved this Court and to ensure that the respective petitioners are protected from any physical harm at the instance of the respondents in respective cases.

VI. The petitioners are directed to appear in the office of SSP/SP of the respective Districts within a period of 03 days from today, failing which the concerned SSP/SP shall depute a Child Welfare Police Officer to produce the minor before the Child Welfare Committee within a period of 01 week thereafter.

VII. The Child Welfare Committee constituted under the Juvenile Justice (Care and Protection of Children) Act 2015, shall send a compliance report to this Court.”

12. Considering the peculiar facts and circumstances of the present case and also keeping in view the observations made by a co-ordinate Bench of this Court in judgment dated 28.03.2022 passed in **CRWP No.2139 of 2022, CRWP No.2140 of 2022 and CRWP No.2250 of 2022**, I deem it appropriate to dispose of the present petition with the following directions:-

I. The minor (Akbari Khatil) shall appear or be produced by her friend Suraj Kumar in the office of Senior Superintendent of Police, Ferozepur within a period of three days from today, failing which, the concerned Senior Superintendent of Police shall depute a Child Welfare Police Officer to produce the minor/child before the Committee constituted under the Juvenile Justice (Care and Protection of Children) Act, 2015 within a period of one week thereafter.

II. The Committee shall conduct an enquiry contemplated under



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Section 36 of the Juvenile Justice (Care and Protection of Children) Act, 2015 and pass an appropriate order under Section 37 *ibid* by associating all the stakeholders and ensure that the objects of the Juvenile Justice (Care and Protection of Children) Act, 2015 are well served.

- III. The Child Welfare Committee shall take appropriate decisions with respect to the boarding and lodging of the minor and also to conduct enquiry on all issues relating to and affecting safety and well being of the child/minor.
- IV. During the pendency of such adjudication and passing of orders as contemplated under Section 37 of the Juvenile Justice (Care and Protection of Children) Act, 2015, the Committee shall also take appropriate interim measures/decisions as regards placement of a child/custody of the child in need of care and protection.
- V. The Senior Superintendent of Police, Ferozepur shall take appropriate steps as warranted by law in respect of the threat perception to the petitioner (minor) as well as to her friend (Suraj Kumar), through whom she has approached this Court and to ensure that the petitioner (minor), Suraj Kumar and his family members are protected from the physical harm at the instance of private respondents No.4 to 8.
- VI. The Child Welfare Committee constituted under the Juvenile Justice (Care and Protection of Children) Act, 2015, shall

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send a compliance report to this Court.

13. The instant writ petition is accordingly disposed of.
14. Registry is directed to send a copy of this order along with the petition and annexures to the Senior Superintendent of Police, Ferozepur, for necessary compliance.
15. All pending application(s), if any, shall also stand closed.

06.06.2024*Apurva***(HARSH BUNGER)
JUDGE**

1. Whether speaking/reasoned : Yes/No
2. Whether reportable : Yes/No