

**CRWP-11016-2024****104****IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****CRWP-11016-2024****Date of Decision: 19.11.2024**

Muskan Khan and another

Petitioners

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MS. JUSTICE KIRTI SINGHPresent:-. Mr. Aadil, Advocate
for the petitioners

Mr. Anmol Malik, DAG Haryana

Mr. Afjal Hussain, Advocate
for respondents No. 4, 6, 7 and 8

KIRTI SINGH, J.(Oral)

This petition has been filed under Article 226/227 of the Constitution of India seeking a direction to the official respondents to protect the life and liberty of the petitioners from the hands of private respondents (arrayed in the petition) as they have solemnized marriage against the wishes of the family members.

2. Learned counsel for the petitioners submits that the petitioners have married against the wishes of respondents No.4 to 22. He further submits that petitioner No. 1 is 18 years of age and petitioner No. 2 i.e. boy is 17 years of age and they have solemnized their marriage on 11.11.2024 as per Muslim rites and ceremonies. They have placed on record copies of Aadhar Cards (Annexures P-1 and P-3) to substantiate their claim. The petitioners have also submitted a representation dated 11.11.2024 (Annexure P-5) to respondent No.2. Learned



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counsel for the petitioners has placed reliance upon judgments passed in **CRWP-11123-2023** titled as ***Iqbal and another vs. State of Haryana and others*** decided on 13.12.2023, **CRWP-733-2021** titled as ***Shoukat Hussian and another vs. State of Punjab and others*** decided on 25.01.2021 and **CRWP-493-2024** titled as ***Sube Khan and another vs. State of Haryana and others*** decided on 16.01.2024.

3. In the case of "***Yunus Khan v. State of Haryana, 2014 (3) RCR (Criminal) 518***", a minor Muslim girl, who had attained puberty, voluntarily married a Muslim man according to Muslim rites, contrary to her father's wishes. The father filed a writ petition alleging that the minor girl was being unlawfully detained. The Court examined the provisions of the Prohibition of Child Marriage Act, 2006 in conjunction with the Muslim Personal Law (Shariat) Application Act, 1937 and the Principles of Mohammedan Law by Sir Dinshah Fardunji Mulla. The Court noted, as per Article 195 of the Principles of Mohammedan Law (10th Edition, 1933), that any Muslim of sound mind who has attained puberty is competent to enter into a contract of marriage. This Court then held as under:

"Keeping in view the above, it is obvious that even taking 15 years to be the age of puberty and not prior to that, the present applicant, i.e., Sanjeeda is well above the said age by appearance and even by admission of all parties concerned. As such, unless her marriage can be shown to have been not validly performed for any other reason, she has, even ex-facie, without any evidence to the contrary having been shown, performed a valid marriage with her consent. The wishes of her father would be, therefore, inconsequential, in law."

4. In this regard, it would be useful to reproduce what is stated in the Principles of Mohammedan Law by Sir Dinshah Fardunji Mulla, in Article 195 thereof, (10th Edition of 1933): -

"195. Capacity for marriage.-(1) Every Mahomedan of sound mind, who has attained puberty, may enter into a contract of marriage."



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(2) Lunatics and minors who have not attained puberty may be validly contracted in marriage by their respective guardians.

(3) A marriage of a Mahomedan who is sound mind and has attained puberty, is void, if it is brought about without his consent.

Explanation.- *Puberty is presumed, in the absence of evidence, on completion of the age of fifteen years."*

(This Article is shown as Article 251 in Mulla's Principles of Mahomedan Law, 19th Edition, by M. Hidayatullah).

5. The same principle is also reproduced in Article 27 of Muslim Law by Faiz Badruddin Tyabji, which is also reproduced herein under:-

"27. Age of competence to marry.-With reference to the age of competence to marry, it is presumed in the absence of evidence of attainment of puberty, that males attain puberty at the age of 15 years, and females at the age of 9 years."

6. A similar issue arose before this Court in **"Gulam Deen & Anr. v. State of Punjab and Ors., 2022(3) Law Herald 1848"**, where a runaway Muslim couple sought protection for their life and liberty under Article 21 of the Constitution of India. In this case, the girl was above 16 but under 18 years of age, while the boy was 21 years old. The Court held that the marriage of a Muslim girl is governed by Muslim Personal Law, which allows her to marry a person of her choice upon attaining puberty. Consequently, the petitioners were deemed to be of marriageable age as per personal law. The Court also referred to the cases of **"Kammu v. State of Haryana, 2010(4) RCR (Civil) 716," "Yunus Khan v. State of Haryana, 2014 (3) RCR (Criminal) 518,"** and **"Mohd. Samim v. State of Haryana, 2019 (1) RCR (Criminal) 685."** It relied on the principle that, under Muslim law, puberty and majority are considered synonymous, with a presumption

that a person attains majority at the age of 15. The Court further noted that a



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Muslim boy or girl who has reached puberty is free to marry a person of their choice, and the guardian has no authority to interfere in such matters.

7. This Court in ***Gulam Deen (supra)***, after referring to the aforesaid authorities and Article 195 from the book of Principles of Mohammedan Law by Sir Dinshah Fardunji Mulla held as under:

"The law, as laid down in various judgments cited above, is clear that the marriage of a Muslim girl is governed by the Muslim Personal Law. As per Article 195 from the book 'Principles of Mohammedan Law by Sir Dinshah Fardunji Mulla', the petitioner No.2 being over 16 years of age was competent to enter into a contract of marriage with a person of her choice. Petitioner No.1 is stated to be more than 21 years of age. Thus, both the petitioners are of marriageable age as envisaged by Muslim Personal Law. In any event, the issue in hand is not with regard to the validity of the marriage but to address the apprehension raised by the petitioners of danger to their life and liberty at the hands of the private respondents and to provide them protection as envisaged under Article 21 of the Constitution of India. Article 21 of the Constitution of India provides for protection of life and personal liberty and further lays down that no person shall be deprived of his or her life and personal liberty except as per the procedure established by law. The Court cannot shut its eyes to the fact that the apprehension of the petitioners needs to be addressed. Merely because the petitioners have got married against the wishes of their family members, they cannot possibly be deprived of the fundamental rights as envisaged in the Constitution of India."

8. In any case, the matter before this Court does not pertain to the validity of the marriage but rather to the petitioners' apprehensions regarding threats to their life and liberty from the private respondents. This Court is duty-bound to address such concerns and ensure the protection of their fundamental



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overlook the legitimate apprehensions raised by the petitioners, which require due consideration. The mere fact that the petitioners have entered into marriage against the wishes of their family members does not, and cannot, justify the deprivation of their fundamental rights as guaranteed under the Constitution of India.

9. It goes without saying that the protection of life and liberty is a fundamental right emanating out of Article 21 of the Constitution of India and the scope of the present petition is only regarding protection of life and liberty of the petitioners.

10. Without commenting on the validity of the marriage allegedly performed by the petitioners and entering upon an exercise to evaluate the evidentiary value of the documents placed on the file, I dispose of this petition with direction to respondent No.2 to decide the representation of the petitioners (Annexure P-5) within a period of two weeks from the date of receipt of a certified copy of this order and grant them protection, if there is any threat to their life and liberty.

11. However, it is made clear that this order may not be construed as expression of an opinion on legality and validity of the marriage of the petitioners.

12. In case any criminal case is pending against petitioner No.2, this order shall not be any hindrance for the Investigating agency to proceed according to law.

(KIRTI SINGH)
JUDGE

19.11.2024
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No