

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRWP-12562-2023 (O&M)
DECIDED ON: 14.06.2024

KAJAL

.....PETITIONER

VERSUS

STATE OF HARYANA AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Vishal Sharma, Advocate
for the petitioner.

Mr. Baldev Raj Mahajan, Advocate General, Haryana with
Mr. B.S. Virk, Sr. DAG, Haryana.

Mr. Gurminder Singh, Advocate General, Punjab with
Mr. Rajiv Verma, DAG, Punjab.

Mr. Sanjay Jain, Amicus Curiae
for respondents No.4 and 5.

Mr. Amit Jhanji, Sr. Standing Counsel with
Mr. Manish Bansal, PP, U.T., Chandigarh.

Mr. Varun Issar, Sr. Standing Counsel
for respondent-UIDAI.

Mr. Prateek Gupta, Advocate
for CBI.

SANDEEP MOUDGIL, J (ORAL)

1. The instant petition involves peculiar facts whereby jurisdiction of this Court has been invoked under Article 226 of the Constitution of India seeking the Writ of Habeas Corpus for a direction to the State through Secretary, Department of Home Affairs and Justice, Haryana along with Deputy Commissioner of Police, District Panchkula and Station House Officer, Police

Station Chandimandir Panchkula to ensure release of alleged detainee Babli being in forced confinement of respondents No.4 and 5 at their house or any other place.

2. The petitioner claiming her age to be 22 years with her date of birth as 22.01.2002 as is evident from Aadhaar Card placed on record at Annexure P-1, claimed herself to be in love with alleged detainee Babli asserting that she can't live without her showing her date of birth as 15.06.2004 (17 years+ at the time of filing the present petition) as per the Aadhaar Card (Annexure P-2).

3. It was asserted on behalf of the petitioner that she had already made an attempt to commit suicide once but was saved with the grace of almighty and on the other hand the age of alleged detainee Babli was disputed after the respondents No.4 and 5 put in appearance and State filed its reply.

4. From the reply filed by way of an affidavit of Rajneesh Kumar, HPS, Assistant Commissioner of Police, Panchkula, it was revealed that the date of birth of alleged detainee Babli was forged at the behest of petitioner along with other persons in a group which was otherwise verified through Primary School Certificate issued by the School Authorities as 25.08.2007 (Annexure R-4) and in one Aadhaar Card produced by the parents of alleged detainee Babli i.e. respondents No.4 and 5 showing the date of birth as 15.06.2007 meaning thereby the alleged detainee Babli was below the age of 18 years in any case if the date of birth is considered as per school certificate.

5. Glaringly one more aspect came to the light from the said affidavit/status report dated 05.03.2024 i.e. the application was made for change of date of birth of alleged detainee Babli in her Aadhaar Card on 28.11.2023 through a Web Portal at New Delhi when Kajal-petitioner abducted Babli alongwith 2-3 other persons.

6. During the said sequence of events, FIR No.526 dated 01.12.2023 was also got registered at Police Station Chandimandir, under Section 346 IPC by parents of alleged detainee Babli i.e. prior to filing of the present petition.

7. Though there are allegations and counter-allegations between the parties during numerous hearings before this Court including that alleged detainee Babli is over and above the age of 18 years and her parents are forcefully marrying her with some person against her wishes and of like nature that she is being given beatings by her parents etc etc, this Court started the proceedings vide order dated 27.12.2023, called upon the respondent-State to produce the alleged detainee Babli in Court on 04.01.2024 along with her parents i.e. respondents No.4 and 5.

8. Since respondents No.4 and 5 showed financial restraints to meet legal expenses, Mr. Sanjay Jain, learned Advocate was appointed to represent them whose fee was ordered to be borne by Haryana State Legal Services Authority vide an order passed by this Court dated 04.01.2024.

9. Being conscious of the sensitivity of the issue involved suspecting involvement of a group supporting Lesbian relationship, this Court also called upon Commissioner of Police, Panchkula as well as Ministry of Electronics and IT, Government of India, Unique Identification Authority of India, Regional Office, Chandigarh to examine and provide details qua two different Aadhaar Cards issued in the name of alleged detainee Babli since three different date of births has emerged before this Court.

10. This Court was also seized with an important question as to whether alleged detainee Babli could be termed in illegal confinement of her own biological parents i.e. respondents No.4 and 5 who was found to be a minor after getting tested the different documents reflecting varying date of birth.

11. The alleged detainee Babli was produced on 15.01.2024 in Court along with her parents who were duly assisted legally by Mr. Sanjay Jain, learned Amicus Curiae appointed by this Court. The further custody of Babli was allowed to be continued with respondents No.4 & 5 who assured that no harm would be caused to her.

12. On 06.03.2024 during the course of hearing, it was revealed that alleged detainee Babli approximately aged 16 years was though given to her parents-respondents No.4 and 5, but again she has been abducted by present petitioner on 04.02.2024 from her native place i.e. Unnao, Uttar Pradesh. The father of alleged detainee namely Des Raj-respondent No.4 was categorical to say that the petitioner Kajal came alongwith three other male persons in a white car and took Babli forcefully when he was out for doing work and a complaint was also made to the Police Station at Unnao who refuse to take action in the matter since police proceedings are already going on with the Police Station Chandimandir, Haryana. The Court called upon The Commissioner of Police, Panchkula through Mr. B.S. Virk, Sr. DAG, Haryana for submitting an action taken report within a period of one week, failing which it may contemplate handing over the thorough investigation into the matter to the Central Bureau of Investigation (CBI).

13. On 07.03.2024, the adjourned date, the State counsel sought more time to apprise the Court with regard to the investigation which was stated to be underway and matter was accordingly posted for 13.03.2024.

14. Interestingly in these twisting facts and circumstances, Ms. Anjali Sheoran, learned Advocate appearing for the petitioner withdrew her Power of Attorney and this Court permitted her to do so directing that Mr. Vishal Sharma,

learned Advocate will now assist the Court on her behalf. This order was passed in Pre-lunch Session but things took a new turn as at 02:00 p.m.-Post Lunch Session, Kajal-petitioner put in appearance with minor girl Babli who narrated the whole sequence since 04.02.2024, the day as alleged by respondent No.4-father of Babli how she had been abducted. Such stand was found to be contrary to the statement made by the petitioner Kajal before this Court on 07.03.2024, who denied having any knowledge about Babli and denied with all force the allegations of abducting Babli along with three other male friends.

15. At the same time the alleged detainee Babli also produced a copy of School Certificate dated 11.03.2024 issued by Principal, Rani Shahab Lal Inter College, Madhapur, Unnao, Uttar Pradesh showing her date of birth as 15.06.2006 meaning thereby even according to this certificate she is minor at the time the present petition was filed on 26.12.2023.

16. Mr. Virk, Sr. DAG, Haryana on 13.03.2024, on instructions from Inspector Prithvi Singh, Police Station Chandimandir told that now even the petitioner is absconding and her mobile phone is found to be switched off. After recording the concern for safety of alleged detainee minor girl-Babli, this Court issued notice to the Central Bureau of Investigation and Mr. Prashant Puri, Advocate for Mr. Prateek Gupta, Advocate accepted notice in Court and sought one day time to get necessary instructions and simultaneously Deputy Superintendent of Police, Panchkula who was supervising the investigation in the matter Ms. Himadri Kaushik, IPS was also directed to come present on the next date of hearing i.e. 14.03.2024.

17. The affidavit dated 05.04.2024 filed by Mukesh Malhotra, HPS, Deputy Commissioner of Police (Crime), Panchkula depict that the petitioner was

arrested on 13.03.2024 whose disclosure statement was got recorded at Annexure R-1 which reads as under:-

State through- Deshraj son of Hemchal resident of village Heerakheri PS Fatehpur-84 District Unnao, U.P currently residing on rent at Madanpur Sector 26 Panchkula.

Versus- Kajal daughter of Lala Ram resident of village Dalipur PS Sirohi District Bareilly U.P currently residing on rent near Gurdwara village Madanpur Sector 26 Panchkula.

FIR- 526 dated 01.12.2023 under section 365, 467, 468, 471, 474, 201 of IPC PS Chandimandir, Panchkula.

Disclosure statement of accused Kajal

In the presence of the following witnesses accused Kajal daughter of Lala Ram resident of village Dalipur PS Sirohi District Bareilly U.P currently residing on rent near Gurdwara village Madanpur Sector 26 Panchkula after contradicting from her earlier statement stated that on dated 19.11.2023 without informing anyone I abducted my friend Babli and left from here. When I get to know that father of Babli namely Deshraj has got registered a complaint against me then I returned back along with Babli to Panchkula. Then my statement and statement of Babli was got recorded by Police before the Judicial Magistrate and thereafter police has handed over us to our parents. That I wanted to live with Babli in any situation therefore at that time also I requested to police many times to handover Babli to me but they didn't gave any heed. Then thereafter I get to know that parents of the Babli have taken her to her native village Heerakheri District Unnao U.P. That the Babli was minor, so someone has told me that if I changed the date of birth of Babli and make her major then nobody will stop us for living together and in-fact law will also help us. Thereafter, I, took the Babli to the Barsera and got prepared the fake birth certificate of Babli with the help of the operator of S. K. Internet Jan Seva Kendra, Barsera,

who'sname I did not know along with one boy. That for fabricating the birth certificate of Babli we gave Rs. 2000/- to that boy. That thereafter he prepared the birth certificate of Babli after showing Medical and Health department certificate, village Fatehpur-84, Unnao and changed the date of birth as 15.06.2004 and also got updated the same on the website of E-Aadhar after attesting the Aadhar card number of Babli 884600672164 with the above mention birth certificate and got updated the date of birth to 15.06.2004 instead of 15.06.2007. That I have got demarcated the shop of S.K Internet Jan Seva Kendra, Barsera District Bareilly. That after using the above mention fake Aadhar card and showed the Babli as major, I have filed a petition in the Hon'ble Punjab & Haryana High Court in which I have tried to show the Babli as major. When the Hon'ble Court has caught my lie and after handing over Babli to her parents by the Court, I, on dated 4.2.2024 again abducted Babli from her native village Heerakheri U.P. and my mother Geeta and Sunil thekedar have also helped me in this. That the fake Aadhar card and birth certificate has been caught by this Hon'ble Court. Again when I abducted Babli and took her in my village then in between of train journey I toned the original Aadhar card and birth certificate of Babli and through it at some isolated place to disappear the evidence. That the statement of the accused was got recorded. On which the accused person denied to sign. Witnesses have signed.”

18. Since Babli the minor girl showed unwillingness to join the company of her father, was sent to Ashiyana, Sector 16, Panchkula, a protection home till the next date of hearing.

19. Subsequently, proceedings were conducted by this Court on various dates i.e. 14.03.2024, 05.04.2024, 19.04.2024, 01.05.2024 and 09.05.2024 and during this period minor Babli was kept at above stated protection home only.

20. Mr. Vishal Sharma, learned Advocate appearing for the petitioner and Mr. Sanjay Jain, Amicus Curiae have stated that they jointly put in efforts to interact with minor girl Babli and as an outcome informed this Court that she is inclined having good bond with her brother namely Rajan and is ready to go with him instead of staying at Ashiyana, Sector 16, Panchkula though was reluctant to go with her parents i.e. respondents No.4 and 5.

21. Rajan-brother of alleged minor detainee-Babli was already present in Court alongwith respondents No.4 and 5 who agreed to take her along with him and accordingly direction was issued by this Court on 09.05.2024 in that regard. The arrangement was made in the light of the fact that respondents No.4 and 5 (parents of minor detainee Babli) had to go to their native place for a marriage in their family and Rajan and Babli will stay together at Panchkula during that period.

22. On the deferred date of hearing i.e. 20.05.2024, Mr. Sanjay Jain, learned Amicus Curiae informed the Court that there is noticeable change in the behaviour of alleged detainee Babli, who was found to be happy in the company of her family members.

23. Interestingly, Mr. Virk, Sr. DAG, Haryana on instructions from ASI Abhishek also told the Court that during this period minor detainee Babli with her own will had gone to her native place i.e. village Heera Kheda, Police Station Fatehpur Chaurashi, District Unnao, Uttar Pradesh on account of unfortunate demise of her grandmother who was accompanied by her brother-Rajan and is residing there only since then.

24. This Court though sought the presence of Babli on the next date of hearing while deferred the matter to 28.05.2024 to ensure her wish and consent with a view to verify the information provided by ASI Abhishek.

25. In compliance to the above said order, the alleged detainee Babli was produced in Court on 28.05.2024 who came along with her father Des Raj and brother-Rajan.

26. On the asking of this Court, minor detainee Babli in categorical words stated that she is along with her parents at native place after the date of joining the company of her brother on 09.05.2024 where she also attended the marriage in the family and thereafter rituals on account of sudden demise of grandmother.

27. This Court found see change in the behaviour of alleged detainee Babli and that too happened with the hard work and able assistance of Mr. Vishal Sharma, Advocate and Mr. Sanjay Jain, learned Amicus Curiae who worked at random staying in constant touch with alleged detainee Babli while ensuring her well-being at Ashiyana, Sector 16, Panchkula.

28. The minor detainee Babli also got reduced her statement in Court as well as her father namely Des Raj. Thereafter according to the desire and wishes of alleged detainee Babli and having satisfied with the conduct of respondents No.4 and 5 in particular, the prayer made for release of minor detainee-Babli at the behest of petitioner-Kajal is declined. The issue came to an end with the joining of company with her family by alleged detainee Babli. No further proceedings were required to be conducted in the matter as far as writ of Habeas Corpus is concerned. Accordingly, the alleged detainee namely Babli joined the company of her parents-respondents No.4 & 5 along with brother Rajan who left together from the Court for their home.

29. However, there was another aspect which crept in during strenuous hearings made in the instant petition whereby at times multiple criminal writ petitions were clubbed together but in the intervening time, were disposed of one by one after the issues were settled therein.

30. On one of the date of hearing i.e. 23.01.2024, this Court has considered another factor which has come to light that the High Court is flooded with protection matters by run away couples and like the facts of the instant petition which are at an average of 80 to 90 petitions a day. The nature of dispute projected in those petitions is either they have solemnized marriage after running from home or they are willing to stay in a live-in-relationship irrespective of their earlier marital status or want to stay in live-in-relationship since one of them has not yet attained the age of marriage and desire to marry each other after attaining the age as per statute to get married but allege threat to their life and liberty and seek protection as per Article 21 of the Constitution of India.

31. This precarious situation needs to be dealt with and require a proper mechanism considering the apprehension of young run away couples with the allegation of facing threat to their life and liberty at the hands of their own family members including parents. Though they are representing to the police authorities but rush to the High Court invoking the writ jurisdiction under Article 226 of the Constitution of India seeking protection to their life as guaranteed under Article 21 of Constitution. In almost every case it is noticeable that the representations are made to the police authorities on the same day either via email or through speed post i.e. the date of filing of petitions in the High Court without waiting for the outcome of representation so made before the police authorities.

32. No doubt the Law Enforcing Agency is expected to act swiftly but it also needs atleast some reasonable time to inquire into the matter and to take appropriate action as per law. It is worth noticing here that this High Court while dealing with such petitions also has no occasion to test the veracity and correctness of allegations leveled in the petition being dispute of facts which can be inquired into by the police authorities alone at the first instance. As such these petitions are disposed of with a direction to the authorities, to whom the representation is made, to look into the representation and decide the same as per law.

33. It is also left at the liberty of the police authorities to provide due protection, if so required, after conducting an inquiry into the allegations leveled by the representationist-petitioners against their own family members.

34. In some cases, this Court has made an endeavour to call for the status report asking the State to inquire into and file an affidavit. In response to that direction, the affidavit comes on record from the State that police has investigated and recorded the statements of petitioners as well as that of private respondents against whom the allegations of causing threat to life and liberty are made and consign the same to record on the basis of such statements after it is stated that the respondents do not have any objection to the relationship of the petitioners and petitioners also come on record to state before the police authorities that there is no threat perception existing to their life and liberty.

35. All this exercise turns out to be a futile one tantamounting not only to wastage of precious time of Court while dealing with such petitions in a day i.e. alarming figure of almost 90 criminal writ petitions but consumes manpower and substantial expenses as well from the administration of High Court. Assuming if 3

minutes are consumed in a single petition at an average, its 270 minutes (more than 4 hours) in total of the days working of the High Court for which there can be an alternative mode of adjudicating these disputes otherwise by and large culminating with the finding that there is no such threat perception to the life and liberty of the petitioners.

36. The time so consumed of the High Court comes to more than 4 hours per day which is calculated on minimal side, is substantial time of whole days work spread over Benches dealing with such matters. These 7 hours can be used in disposal of other important matters which could not see light of the day and are pending for more than 5 years involving more important questions with life of convicts against whom appeals are pending after conviction or pending trial regular bails are being sought. Otherwise also it is the primary and essential duty of Law Enforcing Agency under the directive principles as enshrined in the Constitution of India through the State to provide care and protection to each and every individual and if such an application/representation is received by the Competent authorities it need to be dealt with utmost urgency and with caution.

37. This Court is sanguine about the Constitutional Guarantee of Life and personal liberty under Article 21 of the Constitution of India that forms the Bedrock of our countries democratic structure, enshrining the State's obligation to provide congenial atmosphere free from fear making them to feel protective. The concept of life and liberty transcends mere animal existence and encompasses the right to live life with dignity and honour without any kind of coercion or undue interference from any quarters.

38. At the same time, the State is also bound having solemn duty to garb the constitutional values ensuring that such right under Article 21 is not rendered

illusory by executive or administrative inefficiency or empathy as well as on account of procedural delays.

39. Wherein an individual's life and liberty is under threat the constitutional Courts are duty bound to step-in ensuring protection to such right. However, at the same time while exercising extraordinary powers under writ jurisdiction envisaged vide Article 226 of the Constitution it should not be allowed to become the first port of call for every apprehension of threat. The doctrine of subsidiarity demands that the State authorities being the first responders must act with swiftness, efficiency and with impartiality to address this grievance and failure to do so on their part not only burdens the judiciary with preventable litigation but also dilutes the effectiveness of constitutional remedies.

40. In the backdrop of such factual aspects, this Court called upon the learned Advocate General Punjab, learned Advocate General Haryana, Senior Standing Counsel, U.T., Chandigarh to assist the Court for giving out with the suggestions to put in place an alternate mode for resolution. All the three States showed the positive response and work in consonance with the suggestion put by this Court who undertook to come out with some system as a draft before the Court.

41. State of Haryana Sh. Mahavir Kaushik, Special Secretary to Government, Haryana Home Department filed an affidavit dated 05.03.2024 with a proposed Standard Operating Procedure stating that though there is already one in place for providing shelter/security to the run away couples in the light of directions issued in an earlier CRWP No.2428 of 2021 titled as ***“Lovepreet Kaur versus State of Punjab and Others”*** but to decide the representations made by such run away couples was not there. UT, Chandigarh has also forwarded a copy

of an order dated 05.03.2024 that they will initiate action immediately in continuation to earlier SOP dated 22.12.2023 and on similar lines the State of Punjab by way of an affidavit of Sarbjit Singh PPS, Assistant Inspector General of Police, Ludhiana, Bureau of Investigation, Punjab has put on record memorandum dated 12.07.2018. The said affidavit do consist of circular dated 16.09.2021 issued in compliance of an order dated 31.08.2021 passed by this Court in CRM-M-23537-2020 titled as “***Ravi Kumar versus State of Haryana***” and others connected case whereby certain directions were issued to the State Government, to the police as well as State Legal Services Authorities, Punjab, Haryana and U.T., Chandigarh which would read as under:-

“1. Directions to State Governments

Governments of Punjab and Haryana and U.T. Chandigarh Administration are directed to appoint Committees consisting of Home Secretary, Finance Secretary, Additional Director General of Police, Legal Remembrancer and Member Secretary of the State Legal Services Authorities, Punjab, Haryana and U.T. Chandigarh at the State level within one month which shall examine all the relevant issues of compliance with the directions issued by Hon'ble Supreme Court and this Court and submit their reports with their recommendations within three months and Governments of Punjab and Haryana and U.T. Chandigarh Administration shall consider recommendations so made and take policy based action for implementing the recommendations considered appropriate/necessary for giving effect to the directions given by Hon ble Supreme Court and this Court from time to time. The Committee shall also periodically monitor the issue of compliance with such directions in the States of Punjab and Haryana and U.T. Chandigarh.

2. Directions to the police:-

The Director Generals of Police, Punjab, Haryana and U.T. Chandigarh are directed to (1) create a Special Cell in each Districts which shall collect and maintain information and prepare the data base in respect of couples who approached this Court or the District and Sessions Judges in the States of Punjab, Haryana and U.T., Chandigarh for protection and call for reports regarding assessment of threat perception to them and take appropriate action/issue necessary instructions and (ii) set up 24 hour helpline or enable any of the helplines already set up to receive and register request for protection and to coordinate with the concerned police officers/officials for providing necessary assistance/advice/protection to such couples.

The Director Generals of Police, Punjab, Haryana and U.T. Chandigarh are further directed to issue instructions to the Commissioners of Police/Senior Superintendents of Police/Superintendents of Police in the States of Punjab and Haryana and U.T., Chandigarh for ensuring that

(i) in case of reporting of any violence against inter caste or inter religion marriage or honour killing, FIR is immediately registered and upon registration of FIR, intimation is simultaneously given to the concerned Deputy Superintendent of Police who, in turn, shall ensure that effective investigation of the crime is done and taken to its logical end with promptitude within the period of 60/90 days as the case may be as far as possible.

(ii) Additionally, immediate steps are taken to provide security to the couple/family and, if necessary, to remove them to a safe house within the same district or elsewhere keeping in mind their safety and threat perception.

(iii) Any failure by any police officer/official to comply with the aforesaid directions be considered as an act of misconduct for which departmental action be taken under the service rules.

3. Directions for expeditious trial: -

(1) All the Sessions Judges in the States of Punjab, Haryana and U.T. Chandigarh are directed to ensure that cases of Honour Killing are assigned to the designated Court/Fast Track Court/one jurisdictional court.

(ii) Such Courts concerned are directed to ensure expeditious disposal of such cases preferably within the period of six months as directed by Hon'ble Supreme Court in Shakti Vahini's case (supra). This direction shall apply even to pending cases with modification of applicability from the date of receipt of a copy of this order.

*(iii) In view of the observations made by Hon'ble Supreme Court in **Doongar Singh Vs. State of Rajasthan 2018 (1) RCR Criminal 256, State of U.P. Vs. Shambhu Nath Singh and others, 2001 (2) R.C.R. (Criminal) 390, Hussain and another Vs. Union of India 2017(2) RCR Criminal 312 and Thana Singh Vs, Central Bureau of Narcotics 2013(1) R.C.R(Criminal) 861** the concerned Courts shall conduct trial on day to day basis as far as possible by allocating block of dates for the trial as directed by Hon'ble Supreme Court and by issuing coercive process for securing presence of the witnesses, if so required.*

(iv) In case of non-appearance of any of the witnesses, the concerned Court shall take appropriate action against the concerned witness absenting without any lawful excuse by filing complaint under Section 174 of the Indian Penal Code, 1860 or taking proceedings under Section 350 of the Cr.P.C. against him.

(v) In cases where the trial is not concluded within the period of six months, the concerned Court shall submit the progress report to this Court seeking extension of time specifically mentioning the period within which the trial is likely to be concluded.

4. Directions to the State Legal Services Authorities:-

The State Legal Services Authorities, Punjab, Haryana and V.T. Chandigarh are directed:

(i) to prepare a scheme for providing legal aid to couples seeking protection and also legal aid to the complainant for representing him in cases of violence against inter caste/inter religion marriage and honour killings and properly presenting the case before the trial Court for award of compensation to the victims of violence against inter caste/inter religion marriages and dependents of victims of honour killings against accused in the eventuality of their conviction;

(ii) to further strengthen through para legal volunteers, Anganwadi Workers, National Social Service Volunteers, Saksham Yuva, Students of Law Colleges and School/College Legal Literacy Clubs their public awareness programmes against the social evils of violence against inter caste/inter religion marriages and honour killing; and

(iii) to take appropriate steps for award of appropriate interim/final compensation to the victims of inter caste/inter religion marriage and dependants/legal heirs of victims of honour killing under the Victim Compensation Scheme including the steps of issuance of appropriate directions by this Court, if so required."...

The directions to the police are contained in sub-para 2 of para 29 of the abovesaid judgment dated 31.8.2021, which are required to be complied with by all the field units in letter and spirit.

2. In this regard, also please find enclosed herewith copies of the following:-

(i) Copy of Memo No. 5/208/10-5H4/3358-3360 dated 12.7.2018, regarding-Revised policy to prevent the honour Killing and Khap Panchayats issued by Department of Home Affairs and Justice, Government of Punjab, in compliance with order passed by the Hon'ble Supreme Court of India in Writ

Petition (Civil) No. 231 of 2010, titled as 'Shakti Vahini Vs. Union of India and other.

(ii) Copy of order dated 10.3.2021, passed by Hon'ble Punjab and Haryana High Court in CRWP No, 2428 of 2021, titled as Lovepreet Kaur Vs. State of Punjab' and copy of Memo No. SPL. 2 dated 19.3.2021, regarding urgent measures for mitigation of threat to runaway couples issued by the office of Advocate General, Punjab, in compliance of aforesaid order dated 10.3.2021 passed by Hon'ble Punjab and Haryana High Court in aforementioned case.

(iii) Copy of Memo No. 3019-3080/CAWC dated 15.7.2021, issued by Community Affairs Division, Punjab Police Complex, Phase-7, Mohali, in compliance with aforesaid Order dated 10.3.2021, passed by Hon'ble Punjab and Haryana High Court in CRWP No. 2428 of 2021, titled as 'Lovepreet Kaur and Another Vs State of Punjab and Others'.

3. In view of the directions given in the abovesaid judgment dated 31.8.2021 cited in the subject above, all the field units are directed to ensure the following:-

(i) Create a Special Cell in each Districts which shall collect and maintain information and prepare the data base in respect of couples who approached this Court or the District and Sessions Judges in the States of Punjab, Haryana and U.T., Chandigarh for protection and call for reports regarding assessment of threat perception to them and take appropriate action/issue necessary instructions, and

(ii) Ensure that 181 helpline already designated for the purpose to receive and register requests for protection and to coordinate with the concerned police officers/officials for providing necessary assistance/ advice/ protection to such couples promptly. Wide publicity may be given about the helpline.

(iii) In case of reporting of any violence against inter caste or inter religion marriage or honour killing, FIR is

immediately registered and upon registration of FIR, intimation is simultaneously given to the concerned Deputy Superintendent of Police who, in turn, shall ensure that effective investigation of the crime is done and taken to its logical end with promptitude within the period of 60/90 days as the case may be as far as possible.

(iv) Immediate steps are taken to provide security to the couple/family and, if necessary, to remove them to a safe house within the same district or elsewhere keeping in mind their safety and threat perception.

(v) Any failure by any police officer/official to comply with the aforesaid directions be considered as an act of misconduct for which departmental action be taken under the service rules.”

42. Such orders and circulars placed before this Court by all the three States though provide for giving shelter and setting up of 24 hour helpline apart from maintaining record of such representations and complaints received as well as to take swift action in case of any violence is reported in these matters including registration of FIR which shall be effectively investigated and be taken to its logical end with promptitude within a period of 60-90 days as the case may be as far as possible.

43. However, none of these suggest the mode of alternate method of expediting the adjudication on receipt of representation by the run away couples or any such person raising apprehension of threat to their life and liberty.

44. After having given a thoughtful consideration on the issue and examination of it threadbare, I deem it just and proper that each and every person who has represented to the police authorities before approaching this Court by way of criminal writ petition/civil writ petition with a prayer of seeking protection

to their life and liberty under Article 21 of the Constitution of India, shall be dealt with expeditiously with utmost urgency and tested within the time frame.

45. This Court was ably assisted by Mr. Gurminder Singh, learned Advocate General, Punjab, Mr. Baldev Raj Mahajan, learned Advocate General, Haryana and Mr. Amit Jhanji, learned Senior Standing Counsel for U.T., Chandigarh who also suggested to frame guidelines in an endeavour to put in place an effective procedure fixing the accountability of the Officer concerned who is entrusted with the representation to be inquired into within the stipulated time. Apart from it, there shall be an Appellate Authority to redress the grievance in case any of the parties is aggrieved against such adjudication of the representation. It is only after the decision by the Appellate Authority in case any appeal is preferred, against that order, the aggrieved person may approach the Court of law challenging that order to establish a case for grant of protection, if any.

46. This Court is of the considered and firm view that after such test of representations and decision thereupon, would indicate a finding on facts and thereafter before the High Court the petitions would have some substance for consideration before deciding writ petitions. In such eventuality, there is strong probability of final and effective settlement of such matters at the first stage itself and in very few cases where actually there is seriousness in the allegations, person would approach the Court of law including the High Court under Article 226 of the Constitution of India. All this exercise would not only save the precious time of the Courts but all the aggrieved persons as well from litigation expenses and other humiliation and harassment caused to each other within the family.

47. It is need of the hour that a mechanism needs to be framed by the States with the aim for expeditious inquiry consisting of facts finding and adjudication of the dispute at the administrative level which are primarily in the nature of dissent of elders in a family to the wishes and desire of younger ones due to multifacet reasons which need not to be gone at this stage by this Court.

48. Hence, the following guidelines are hereby framed which shall be a procedure to be followed from stage of receipt of a representation made by an individual or a run away couple alleging threat to their life and liberty in such like matters which shall read as under:-

(i) The State Government shall appoint one Nodal Officer at each District Head Quarter who shall be made accountable for ensuring strict compliance to these guidelines as per the time frame stipulated hereinbelow.

(ii) The State Government shall appoint one Police Officer at every police station not below the rank of Assistant Sub-Inspector to inquire and look into the representation in accordance with law. Such police officer shall be either reporting at his own to the Nodal Officer of his District or said Nodal Officer may monitor stepwise dealing of such representations to ensure that the grievance is addressed efficaciously without any violation to the time frame being provided in these guidelines.

(iii) The Officer to whom the representation is addressed by the protection seekers shall mark the same to the Nodal officer who shall forward the same to the police officer in whose police station the relevant territory falls on that very day itself without any delay for investigation and appropriate action.

(iv) Such Police Officer shall decide the said representation after calling upon and providing opportunity of hearing to the representationists as well as the

persons against whom the allegations of causing threat have been made, after conducting an inquiry within a period of three days from the receipt by him.

The Police Officer so entrusted to decide the representation at the first instance as per Clause (i) shall have the power to take all necessary steps at the preliminary stage itself to provide shelter and protection if so required by the representationist immediately at the time of receipt of such request if he is prima facie of such opinion so that during the conduct of such proceedings no harm is caused to the representationist who have approached the police authorities under alleged threat perception.

(v) The order so passed by such Officer shall be well-reasoned and speaking which is to be communicated to all the parties to the dispute free of cost on that very day.

(vi) There shall be an Appellate Authority appointed by the State Government who shall be an Officer not below the Rank of Deputy Superintendent of Police in each district.

(vii) The aggrieved person against the order passed by the Police Officer at the first instance may prefer an appeal before such Appellate Authority within a period of three days, if so desired, failing which the order passed by the Officer at the first instance under Clause (iv) shall attain finality.

(viii) The Appellate Authority shall also take the decision on the appeal preferred before him after granting an opportunity of hearing to the parties in person or through their Advocates within the next seven days from the date of filing of such appeal who shall pass a detailed order with reasons and shall also issue such direction for immediately to protect life and liberty of the aggrieved if he is satisfied and deems necessary under the circumstances. A copy of such order shall

also be supplied to the parties free of cost within one day from the date of decision.

(ix) If either of the parties is still aggrieved of an order passed by the Appellate Authority, may approach the High Court or any other Court of law of competent jurisdiction as available under law.

(x) In addition to above, there shall be a dedicated helpdesk at every district police office manned 24X7 to address representations concerning such threat to life and liberty which shall maintain an electronic record qua the movement of each representation specifying time and date of receipt, name of Officer assigned, the stage of hearing and the status of the inquiry.

(xi) A quarterly review meeting shall be conducted by the Senior Superintendent of Police/Commissioner of Police, as the case may be that is to say District Head of Police and a report of same should be forwarded to the Director General of Police.

(xii) The Director General of Police shall also access the compliance of these guidelines at quarterly intervals maintaining electronic record in his office as well.

49. This structured approach to deal with these matters with sense of accountability would be a corner stone of good governance and the Rule of law. It would ensure not only transparency in decision-making but will also instill public faith in the State's ability to safeguard constitutional rights. The creation of an Appellate Authority would not only reinforce the accountability but will offer an intermediate layer of scrutiny before invoking the extra-ordinary jurisdiction of this Court.

50. These measures, when implemented in letter and spirit, will not only ensure the protection of constitutional rights but also foster a culture of efficiency

and compassion within the administrative machinery and in this backdrop, this Court is of the firm opinion that once this procedure is followed, it is only such petitions would come to the High Court or before any other Court of law wherein there is seriousness and severity in the allegations of threat to the life and liberty of the representationist or any other party to the lis.

51. Registrar (Judicial)/Registrar General is directed to send a copy of this order to the Chief Secretary, Government of Punjab, Director General of Police, Punjab, Secretary, Home Department, Government of Punjab, learned Advocate General Punjab, Chief Secretary, Government of Haryana, Director General of Police, Haryana, Secretary, Home Department, Government of Haryana, learned Advocate General Haryana, Secretary Home Department, U.T., Chandigarh, Director General of Police, U.T., Chandigarh and Senior Standing Counsel,U.T., Chandigarh for necessary compliance.

52. All the three States are directed to frame a mechanism on the lines of above enunciated guidelines and circulate the same within a period of 30 days from the receipt of the certified copy of this order and a compliance report be filed within one week thereafter.

53. A copy of this order shall also be conveyed to all the Sessions Division who shall ensure that any such litigant has first got addressed their representation in the manner as detailed hereinabove via guidelines framed by this Court.

(SANDEEP MOUDGIL)
JUDGE

14.06.2024

Poonam Negi

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