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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(CRL) 3632/2024 & CRL.M.A. 34812/2024**

RUKHSANA KHATOON

.....Petitioner

Through: Ms. Mumtaz Ahmed, Adv.
versus

STATE OF NCT OF DELHI & ORS.

.....Respondents

Through: Mr. Sanjay Lao, Standing Counsel
(Criminal) with Ms. Priyam Agarwal
& Mr. Abinav Kumar Arya, Adv.
Insp. Sunil Kumar, PS Jait Pur.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE AMIT SHARMA

ORDER

% **28.11.2024**

1. This hearing has been done through hybrid mode.
2. The present petition has been filed under Article 226 of the Constitution of India read with Section 482 of the CrPC and Section 528 of the BNSS by the mother – Ms. Rukhsana Khatoon seeking writ of *habeas corpus* for the production of her minor daughter who is studying in 9th Standard.
3. The Petitioner states in the petition that the marriage/*nikah* of the Petitioner's daughter was solemnized on 16th February, 2024 with one Mr. Sarfaraz Ansari. However, the understanding between the two families was that she would return to parents' house after the marriage, and after three years, upon attaining the age of majority *i.e.*, 18 years, she would go to her matrimonial home after the ceremony called '*gauna/vidai*'. According to the petitioner, the girl was forcibly taken back by the husband and his family to



their house. Hence, this petition.

4. On behalf of the State, the status report dated 28th November 2024 was handed over in Court today which states that she was found residing at Jagmal Enclave, Near C.S. School, Roshan Nagar, Agwanpur, Faridabad, Haryana in her matrimonial home. Further the girl's statement has also been recorded and attached with the report In which she states that she does not wish to continue her studies and also denied any allegation of kidnapping or exercise of force by her husband's family. The said status report also confirms that the girl is happily married and residing in her matrimonial home.

5. The Petitioner, the girl and the boy to whom she is married have appeared before this Court. The Court has had in-chamber interaction with all of them. As per the interaction, it has been revealed that the marriage was solemnized on 16th February, 2024 at 10:00 PM. In the said original marriage certificate, the age of the bridegroom is shown as 22 years and the bride as 19 years. The girl has clearly stated that she wishes to go with her husband which is opposed by the mother/Petitioner. As per the mother, since her daughter is a minor, below 18 years, she should be given custody of her daughter.

6. With respect to the age of the girl, the school certificate produced by the IO as a part of the status report, shows her date of birth to be 13th February, 2008. Other documents to this effect have also been produced before this Court.

7. However, Id. Counsel for the boy has submitted that in terms of *Mohammedan* law, the majority age is not 18 years. Ms. Priyam Aggarwal, Id. Counsel appearing for the Id. Standing Counsel (Criminal) has placed reliance on the judgment passed by this Court in ***Fija & Anr. v. State Govt. of NCT of Delhi & Ors***, wherein it has been taken note that a muslim girl has



the right to reside with the husband even if she is less than 18 years of age.

The relevant extract of the said order is set out below: -

“12. Petitioner No. 1 eloped with the petitioner No.2 out of her own free will and consent and got married on 11.03.2022.

13. I have heard learned counsel for the parties.

14. The High Court of Punjab and Haryana at Chandigarh in CRWP 5744/2022 titled ‘Gulam Deen and another vs. State of Punjab and others’ has held: -

*“In the case of **Yunus Khan** (supra) it has been noted that the marriage of a Muslim girl is governed by the personal law of the Muslims. Article 195 from the book ‘Principles of Mohammedan Law by Sir Dinshah Fardunji Mulla’ has also been reproduced in the said decision which Article reads as under:*

*‘195. Capacity for marriage –
(1) Every Mohomedan of sound mind, who has attained puberty, may enter into a contract of marriage.*

(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.**”*



15. It if thus clear that as per Mohammedan Law girl who had attained the age of puberty could marry without consent of her parents and had right to reside with her husband even when she was less than 18 years of age and thus otherwise minor girl."

8. This Court has also confirmed that even as per the school records, the age of the girl is more than 15 years. The extract of the order above clearly records the principles of *Mohammedan* law that a *Mohammedan* who is of a sound mind and has attained puberty can enter into a contract of marriage and puberty is assumed, as per the explanation, at the age of 15 years. The girl has categorically stated that she wishes to stay with her husband at her matrimonial home. In view of the fact that the boy and girl being Muslims/Mohammedans, the girl is permitted to accompany her husband.

9. On behalf of the Mother, it is also prayed that the girl may be given counselling as she is too young to make a decision with respect to marriage. Accordingly, if the girl and the boy wish to avail counselling, they are free to approach the Delhi High Court Mediation and Conciliation Centre.

10. Petition is accordingly disposed of in these terms.

PRATHIBA M. SINGH, J

AMIT SHARMA, J

NOVEMBER 28, 2024

Rahul/Am