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

+ **W.P.(CRL) 3176/2025 & CRL.M.A. 29132/2025,**
CRL.M.A. 29133/2025

SWATI & ANR.

.....Petitioners

Through: Mr. R.K. Tarun, Mr.
Sharwan Shokeen, Mr.
Hemant Jain and Ms.
Khushi Gupta, Advs.
Ms. Aditi Shivadhatri,
Adv. (through VC)
P-1 & 2 in person.

versus

THE STATE OF NCT OF DELHI
& ANR.

.....Respondents

Through: Mr. Amol Sinha, ASC for
the State with Mr. Kshitiz
Garg, Mr. Ashvini Kumar,
Mr. Manan Wadhwa, Mr.
Anshul Sharma and Ms.
Komal Chauhan, Advs.
with SI Pravesh, PS
Mundka.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

% **25.09.2025**

1. The present petition is filed seeking quashing of FIR No. 410/2025 ('FIR') dated 16.08.2025, registered at Police Station Mundka, for the offence under Section 137(2) of the Bharatiya Nyaya Sanhita, 2023 ('BNS'), and all consequential proceedings arising therefrom.

2. The FIR was registered at the instance of Respondent No.2 (father of Petitioner No.1) alleging that Petitioner No.1, who is allegedly fifteen years of age studying in 8th class, had gone to a

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shop to get some goods on 11.08.2025, but has not returned home. It was alleged that even after searching everywhere and making necessary enquiries, Petitioner No.1 could not be traced.

3. It is the case of the petitioners that the FIR is an abuse of process of law and the ingredients of the alleged offence are not made out in the present case. It is argued that Petitioner No.1 had voluntarily joined the company of Petitioner No.2 as a means to escape abuse at the hands of her father and it has been wrongly asserted that she is a minor on the basis of school documents.

4. It is further argued that even if it is assumed that Petitioner No.1 is a minor, she has consensually solemnised her marriage with Petitioner No.2. It is argued that a minor girl's rightful guardian is her husband and Petitioner No.1's welfare can be best ensured with Petitioner No.2. It is further submitted that Respondent No.2 ill treated Petitioner No.1 and wanted to get her married to an aged man.

5. It is submitted that Respondent No.2 wants to forcibly take custody of Petitioner No.1 by portraying her as a minor and if the FIR is not quashed, she would be forced to Nari Niketan/ Nirmal Chhaya.

6. On the contrary, the learned Additional Standing Counsel for the State iterates that the registration form obtained from the school of Petitioner No.1 indicates that she was born on 20.11.2009, as per which, Petitioner No.1 is fifteen years old at this stage. He points out that the admission of Petitioner No.1 took place way back in the year 2022. He further submits that if Petitioner No.1 is found to be a minor, the marital relation between the parties would necessitate further action.



7. He submits that the investigation into the matter is at a nascent stage and even if Petitioner No.1 does not wish to return to her father– Respondent No.2, if she is a minor, appropriate steps will be taken in accordance in law to ensure her welfare. He further submits that the concerned police officials will be sensitised in this regard.

8. I have heard the counsel and perused the record.

9. At the outset, it is relevant to note that the scope of the present petition has been confined to seeking quashing of the FIR registered at behest of Respondent No.2. In the case of ***State of Haryana v. Bhajan Lal : 1992 Supp (1) SCC 335***, the Hon'ble Apex Court had illustrated the category of cases where the Court may exercise its writ jurisdiction or inherent jurisdiction to quash the proceedings. The relevant portion of the judgment is reproduced hereunder:

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under



an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

(emphasis supplied)

10. In the present case, the petitioners have pressed for quashing of FIR essentially on the ground that Petitioner No.1 is an adult and she left the custody of her father voluntarily. It is argued that she is happily married to Petitioner No.2, and even if she is assumed to be a minor, it is in Petitioner No.1's interest to remain with her husband as Respondent No.2 wished to forcibly marry her to an old man.

11. Before proceeding further, it is imperative to note that as per the documents obtained from the school of Petitioner No.1, she is merely fifteen years of age.



12. It is argued that the said documents cannot be used to discern the age of Petitioner No.1. Reliance has been placed on the case of ***Phaluta Bai v. Government NCT of Delhi & Ors. : 2024:DHC:8845-DB*** where the writ of *habeas corpus* filed by the parents of the girl was rejected after observing that they had failed to prove juvenility of their daughter as school record did not inspire confidence. It is pertinent to note that in the said case, the Aadhar card of the girl which depicted her to be an adult had been verified by UIDAI and found to be genuine.

13. No document has been placed on record to endorse that Petitioner No.1 has attained the age of majority apart from a representation made by her wherein she has asserted that at time of her admission, her father had reduced her age by three years.

14. Although school transfer certificate and extracts of admission register do not fall under any of the category of documents, as stipulated in Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015, which can be relied upon to undertake the process of age determination, however, it cannot be ignored that the investigation in the present case is at a nascent stage. The burden to prove the juvenility of a minor victim cannot be fastened upon the prosecution without conferring an adequate opportunity to carry out investigation. Even if no such document is found, the law provides for conduction of an ossification test and it cannot be presumed that Petitioner No.1 is an adult on the basis of bald assertions.

15. In the absence of any cogent and indubitable document to the contrary, it cannot be denied that the age of Petitioner No.1 is a contentious issue and the same is a matter of investigation.



16. It is relevant to note that if Petitioner No.1 is found to be a minor as asserted in the FIR, even if she left the custody of her guardian voluntarily, the averments made before this Court in regard to the petitioners having solemnised their marriage and cohabitating with each other like a married couple may invite further invocation of offences under the Protection of Children from Sexual Offences Act, 2012 ('**POCSO Act**') and Prohibition of Child Marriage Act, 2006 as Petitioner No.2 is admittedly twenty years of age. The marriage agreement placed on record cannot legitimise the action contrary to law.

17. Arguments have been made in relation to the validity of a marriage involving a minor girl. Reference has been made to the case of ***Jitender Kumar Sharma v. State & Anr. : 171 (2010) DLT 543 (DB)*** where this Court had quashed the FIR therein in similar circumstances by noting that the victim had left her home voluntarily. It was observed that insofar as the offence of rape is concerned, the same falls under exception to Section 375 of the IPC as the victim was more than fifteen years of age. In the opinion of this Court, reliance on the said case is unmerited as the offences therein took place *prior* to introduction of the POCSO Act. Moreover, it cannot be ignored that it has since been clarified that the marital status of a minor is immaterial in case of sexual intercourse [Ref. ***Independent Thought v. Union of India (UOI) and Ors. : 2017 INSC 1030***].

18. Although the said considerations would undoubtedly have no bearing if the victim is found to be an adult pursuant to investigation, however, when there is allegation in that regard by the father, this Court cannot legitimise the marriage and



cohabitation of a minor girl purported to be fifteen years of age with an adult man by quashing the proceedings in exercise of inherent jurisdiction at this stage. Undoubtedly, police will take all aspects that have been brought forth in the present petition in consideration while carrying out the investigation.

19. Moreover, although the remit of the present proceedings has been limited to the quashing of FIR, this Court is also sympathetic to the apprehension of Petitioner No.1. Certain unsubstantiated allegations have been made against Respondent No. 2 (Petitioner No.1's father) at this stage, who is Petitioner No.1's natural guardian. *Prima facie*, it appears that Petitioner No.1 is aggrieved on account of alleged ill treatment by Respondent No.2. It is alleged that Respondent No.2 wanted to get Petitioner No.1 married to an old man, due to which, she left her house. Much stress has been laid on the apprehension of Petitioner No.1 that she will be forced to return to her father as well. Concededly, no one can be forced to live with parents, even if they are minor. At the same time, Petitioner No.2 also at this stage cannot be granted the status of a guardian. As noted above, though the petitioners claim to have married, but they are not of marriageable age. In such circumstances, it is the duty of the State to ensure safety and welfare of the minor child by taking appropriate steps, which may include counselling or facilitating the stay of the minor child with the help of CWC.

20. As submitted by the learned ASC, prompt steps will be taken to sensitise the concerned IO and SHO in this regard for taking appropriate steps in accordance with law to ensure Petitioner No.1's welfare.



21. No further orders are required to be passed in this respect at this stage.
22. In view of the aforesaid discussion, the present petition is disposed of with the aforesaid directions.
23. Needless to say, the petitioners are at liberty to approach this Court in case any grievance remains in the future.

AMIT MAHAJAN, J

SEPTEMBER 25, 2025/ 'KDK'