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Kajal Parvin Vs State Of Bihar

Criminal Writ Jurisdiction Case No. 1244 Of 2021

Court: Patna High Court

Date of Decision: March 10, 2022

Acts Referred:
Constitution Of India, 1950 â€" Article 19, 21, 226

Citation: (2022) 03 PAT CK 0058

Hon'ble Judges: Ashwani Kumar Singh, J; Rajeev Ranjan Prasad, J

Bench: Division Bench

Advocate: Upendra Kumar Singh, Prabhu Narayan Sharma

Final Decision: Disposed Of

Judgement

1. The petitioner in the present writ application prays for her release from the After Care Home/Remand Home, Gaighat, Patna City, Patna. She has

claimed her release mainly on the ground that she is major. The petitioner is looking for her release to enable her to settle in life.

2. The writ petitioner has disclosed that her own father and mother died. Her step father and mother wanted to sell her, so she left her house on

10.11.2011 and reached Kishanganj. A man, whose name has been disclosed in the writ application, wanted to marry her but she raised an alarm, he

was booked and sent to jail and the petitioner was sent to the Remand Home, Kishanganj because no one was ready to keep her in his house.

3. She further narrates that she travelled several Remand Homes from Kishanganj to Araria and then finally she was transferred to Remand Home,

Patna City on 10.07.2020, since then she is in Gaighat Patna City, Patna. She has expressed her desire to marry and live a proper life.

4. In the writ application though it is stated that she has married to the deponent but in course of the court proceeding it has transpired that she has yet

not married with the deponent but she certainly desires to marry him.

5. On the previous dates, after noticing the case of the petitioner, this Court decided to interact with the deponent in order to know his identity and the

genuineness of his claim that he knows the petitioner. We, accordingly, directed Mr. Upendra Kumar Singh, learned counsel for the petitioner to make

the deponent of the case, namely, Mr. Shravan Kumar appear before the Court. On 24.02.2022 the matter was kept in the Chambers. Mr. Shrawn

Kumar, who is deponent of the writ application, appeared in person and after interacting with him, this Court recorded the following order:-

Ã¢â‚¬Å“Heard Mr. Upendra Kumar Singh, learned counsel for the petitioner and Mr. Prabhu Narayan Sharma, learned AC to learned AG for the

respondent.

Mr. Shravan Kumar, who is the deponent of the writ application is also present in person and we have interacted with him.

The background in which the present writ application has been moved is briefly stated in our order dated 26.11.2021. In order to satisfy ourselves with

the averments made in the writ petition, vide order dated 23.12.2021, we directed the deponent of the writ application to be present in person.

Mr. Shravan Kumar, who is the deponent has made statement in presence of the learned counsel for the petitioner as well as learned AC to learned

AG, which are briefly recorded hereinafter.

According to the deponent, he is the only son of one Upendra Ram of village- Saraiya, P.O.- Saraiya, P.S.- Bounsi, District- Banka. His father is

working as a mason at Delhi. The deponent has got five sisters out of whom three who are elder to him are married whereas two others, who are

younger sisters, are unmarried. In the childhood, he had gone with his father to stay at Delhi for sometime, but after sometime he came to Kishanganj

with someone, whose name he does not remember at this stage. At Kishanganj, he was earning the livelihood by selling fruits in the campus of

Kishanganj Hospital where he claims to have met the petitioner, who used to come there for her treatment. The deponent has further informed that

over the period he developed relationship with the petitioner, but after sometime the petitioner was transferred to Remand Home at Patna. For last one

and a half years, the deponent is residing at Patna and somehow he went to the Remand Home at Gaighat, Patna in search of the petitioner and

thereafter having come to know that the petitioner is staying there in the remand home and she has become major and further that the petitioner wants

to marry with him, he decided to file the present writ application for her release.

In presence of learned counsel for the petitioner and learned AC to learned AG, he has categorically stated that till date, no marriage has been

performed between the petitioner and the deponent. To this extent, he submits that the statements made in the writ application are not correct and

those have not been made on his instruction rather those statements have been mistakenly made. We have found from the aadhar card which he has

produced bearing No.954814084591 that his address mentioned in the affidavit tallies with the address present in the aadhar card.

Having interacted with the deponent and upon noticing that the statements made with regard to marriage with the petitioner are not correct, we would

have straightway rejected the writ petition. But at this stage, we have noticed that the petitioner is said to be major and about her parentage and

correct address inquiries are being made by the Chairman of the Child Welfare Committee, Kishanganj. In this regard, the statements made in

paragraph nos. Ã¢â‚¬Ëœ7Ã¢â‚¬â„¢ and Ã¢â‚¬Ëœ8Ã¢â‚¬â„¢ of the counter affidavit filed on behalf of respondent no.5 would show that last communication made by the

answering respondent with the Chairman of the Child Welfare Committee, Araria is contained in memo no.559 dated 29.11.2021 (Annexure

Ã¢â‚¬ËœCÃ¢â‚¬â„¢). Response of the Child Welfare Committee is affidavited.

The counter affidavit of respondent no.5 categorically states in paragraph Ã¢â‚¬Ëœ8Ã¢â‚¬â„¢ that the petitioner gave an information to the answering

respondent, vide letter dated 28.11.2021 that she has not solemnized the marriage with the deponent. Annexure Ã¢â‚¬ËœDÃ¢â‚¬â„¢ to the counter affidavit of

respondent no.5 is the communication made by the petitioner to the Superintendent of the Remand Home, Gaighat.

In the circumstances stated above, for the present, being a Constitutional Court dealing with the matter under Article 226 of the Constitution of India,

we think it just and proper to call upon the petitioner to be physically present in Chambers on 10th of March, 2022 at 1:00 p.m.

Before the next date, respondent no.5 shall call upon the Chairman of the Child Welfare Committee, Kishanganj and other agencies about whom Mr.

Sharma, learned AC to AG may find from the record available with him to submit their report with regard to correct name, parentage and address of

the petitioner.

The Superintendent of Police, Banka is directed to submit a report after thorough verification of the name, parentage and address and other relevant

factors with regard to the dependent Mr. Shravan Kumar.

The report in this regard must be placed before this Court within ten days from today.

List accordingly.Ã¢â‚¬â€‹

6. Pursuant to the order dated 24.02.2022, the petitioner has appeared in Chambers today. Ms. Vandana Gupta, Superintendent of Remand Home,

Gaighat, Patna City, Patna has been accompanying her. In presence of learned counsel for the petitioner, Shri Prabhu Narayan Sharma, learned AC

to learned AG and the Superintendent of Remand Home, Gaighat, Patna City, we have interacted with the petitioner. She has repeatedly taken a stand

that she is major and in proof of that a duly attested copy of the Aadhar Card showing her date of birth as 01.01.2001 has been produced before us

and the same is being taken on the record. The petitioner seems to be confident about her acquaintance with Mr. Shravan Kumar who is the deponent

of the writ petition. She has stated that she wants to move out of the Remand Home and live a life of her own choice. On query made by this Court,

she has stated that she has learnt the skill of stitching and given an opportunity she can do that job. She understands the alphabets and can put her

signature in Hindi.

7. Mr. Prabhu Narayan Sharma, learned AC to learned AG has produced before this Court a copy of the Letter bearing No. 44 dated 03.03.2022

written by the Superintendent of Police, Banka addressed to the learned Advocate General. By this letter, the Superintendent of Police, Banka has

certified that upon verification of the name and address of the deponent, the same has been found correct. There is no criminal antecedent of the

deponent in the records of the local police station.

8. A supplementary counter affidavit has been filed on behalf of Superintendent of Remand Home at Gaighat, Patna. It has been sworn by the

Respondent no. 5. She has drawn the attention of the Assistant Director, District Child Protection Unit, Araria for providing complete information with

regard to the parentage of the petitioner. She has also referred to the telephonic call made to the Assistant Director, District Child Protection Unit,

Kishanganj and the Chairperson/Member of the Child Welfare Committee, Kishanganj on 05.03.2022 itself calling for the records of the case in

compliance of the order of this Court but according to Respondent no. 5 no record at all has been made available to her by either of the authorities. On

record, we find Annexure 4, 5 & 11 to the writ application which are the correspondences from the Child Welfare Committee, Bihar and the Assistant

Director, District Child Welfare Unit, Araria in which the parentage and address of the parents of the petitioner has been disclosed.

9. Sensing the stand of the petitioner and the admitted position that she is above 21 years of age as on today, Mr. Prabhu Narayan Sharma, learned

AC to learned AG submits that in such circumstance where the petitioner is major and wants to live life of her own choice, she must be set at free.

The Superintendent, After Care Home/Remand Home, Gaighat Patna has no difficulty in setting the petitioner free at this stage when she has become

major.

10. After hearing all the stackholders as noted hereinabove, this Court finds that there is no iota of doubt as to the fact that the petitioner has attained

majority. Her medical certificate which is attached with the counter affidavit of Respondent no. 5 supports her claim of being major. The Aadhar Card

duly attested by the Superintendent of the Remand Home shows her date of birth as 01.01.2001, therefore, she is more than 21 years as on today. The

petitioner has repeatedly submitted before this Court that she has good acquaintance with the deponent and she wants to come out of the Remand

Home and live with him her further life.

11. This court has made it clear to the petitioner that the Court is not going to form any opinion as to her choice with whom she wants to live or not to

live. It is for her to decide if she wants to live with the deponent.

12. At this stage, this Court is reminded of the judgment of the HonÃ¢â‚¬â„¢ble Supreme Court in the case of Shafin Jahan V. Asokan K. M. reported in

AIR 2018 SC 1933 where the HonÃ¢â‚¬â„¢ble Supreme Court was dealing with a habeas corpus petition decided by the HonÃ¢â‚¬â„¢ble High Court of

Kerala. In the said case a 23 years old woman wanted to live with a particular person of her own and in that case there were serious allegations

agaisnt the conduct of the boy, his family and certain religious activities were alleged agaisnt the boy. After evaluating the entire facts and

circumstances and upon knowing the wishes of the corpus who was 23 years aged girl, the HonÃ¢â‚¬â„¢ble Supreme Court laid down the following

principles with regard to exercise of jurisdiction in a Habeas Corpus Petition:-

Ã¢â‚¬Å“27. Thus, the pivotal purpose of the said writ is to see that no one is deprived of his/her liberty without sanction of law. It is the primary duty of the

State to see that the said right is not sullied in any manner whatsoever and its sanctity is not affected by any kind of subterfuge. The role of the Court

is to see that the detenue is produced before it, find out about his/her independent choice and see to it that the person is released from illegal restraint.

The issue will be a different one when the detention is not illegal. What is seminal is to remember that the song of liberty is sung with sincerity and the

choice of an individual is appositely respected and conferred its esteemed mstatus as the Constitution guarantees. It is so as the expression of choice

is a fundamental right under Articles 19 and 21 of the Constitution, if the said choice does not transgress any valid legal framework. Once that aspect

is clear, the enquiry and determination have to come to an end.Ã¢â‚¬â€‹

13. The aforesaid principles were followed by this Court in the case of Based on the News Item Uploaded On the Website of News App Bar And

Bench Versus The State of Bihar & Ors. reported in 2018 SCC Online Pat 1179.

14. No doubt, in the case before the HonÃ¢â‚¬â„¢ble Supreme Court as well as this HonÃ¢â‚¬â„¢ble Court were one of illegal restraint of the corpus. In the

present case the petitioner has been staying in the Remand Home since the year 2011, she was transferred from Remand Home at Kishanganj to

Patna City, Patna in the year 2020 by the order of the competent authority. The case of the petitioner would thus, not be a case of illegal restraint but

this Court is of the considered opinion that the fact that the petitioner is major, aged more than 21 years and at this stage, she wants to come out of the

Remand Home and live her own life as per her own choice would be the most crucial fact.

15. The ratio of the judgments of the HonÃ¢â‚¬â„¢ble Supreme Court as well as that of this Court are to the effect that the expression of choice is a

fundamental right under Articles 19 and 21 of the Constitution and so long as that choice does not transgress any valid legal frame work and once that

aspect is clear, the choice of individual must be respected and the constitution guarantees it. This Court is, therefore, of the considered opinion that the

freedom of the petitoiner allowing her to leave Remand Home at Gaighat and live her life in terms of her own choice is the Ã, only way out to uphold

the constitutional values and the guarantees conferred upon her.

16. This Court, therefore, allows the writ application. The Superintendent of After Care Home/Remand Home, Gaighat, Patna City, Patna shall allow

the petitioner to leave the Remand Home and ensure that she goes forthwith without any hindrance.

17. Let a copy of this order be handed over to Mr. Prabhu Narayan Sharma, learned AC to learned AG who will make availbale the same to the

Superintendent, After Care Home/Remand Home, Gaighat, Patna City, Patna for compliance.

18. This writ application stands disposed of accordingly.