

(2008) 06 CAL CK 0007

Calcutta High Court

Case No: C.R.R. No. 439 of 2008

Puspita Maity alias Puspita Jana

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision: June 27, 2008

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 164
- Juvenile Justice (Care and Protection of Children) Act, 2000 - Section 2(d)(iv), 2(k), 7
- Penal Code, 1860 (IPC) - Section 34, 363, 366, 366A, 368

Citation: (2008) 3 CALLT 550 : (2008) CriLJ 4630

Hon'ble Judges: Ashim Kumar Roy, J

Bench: Single Bench

Advocate: Ganesh Srivastava and Mr. Sukanta Roy, for the Appellant; Swapan Kumar Mullick for State, for the Respondent

Judgement

Ashim Kumar Roy, J.

Aggrieved by an order passed by the Learned Additional Chief Judicial Magistrate, Contai, Purba Medinipore in connection with G.R.(E) Case No.68 of 2007, arising out of Patashpur Police Station Case No.17 of 2007 under sections 363/366/366A/368/34 of the Indian Penal Code rejecting the prayer of the present petitioner, the victim girl for her release on personal bond she moved the instant criminal revisional application.

The present petitioner being allegedly kidnapped by the accused Pradip Kumar Jana and two others out of keeping of her lawful guardian without their consent, a complaint was lodged to the police by her father Pradip Kumar Maity, whereupon the Patashpur Police Station Case No.17 of 2007 under sections 363/366/366A/368/34 of the Indian Penal Code was registered against the petitioner and two others and same gave rise to G.R.(E) Case No. 68 of 2007 and is now pending before the Learned Additional Chief Judicial Magistrate, Contai, Purba

Medinipore. The aforesaid case has already ended in charge-sheet for the self-same offence as against all the three accused persons.

In connection with the aforesaid case after the petitioner being recovered by the police as she refused to go to the custody of her parents the Learned Court below sent her to rescue home for safe custody. Subsequently the present petitioner moved an application for her release on personal bond and since her such prayer was turned down by the Learned Court below, hence the instant criminal revision.

2. Heard the learned advocates appearing on behalf of the parties. Perused the impugned order as well as the other materials on record and the Case Diary.

3. It appears from the impugned order that the Learned Magistrate rejected the petitioner's prayer for release on her personal bond on the ground that on her Ossification Test held by the Department of Forensic and State Medicine, Medical College Hospital, Kolkata she was found to be aged about 16/17 years as well as according to the Registration Certificate issued by the West Bengal - Board of Secondary Education, her date of birth was April 2, 1992.

4. Mr. Ganesh Srivastava, the learned advocate appearing on behalf of the petitioner vehemently contended before this Court that the impugned order whereby the Learned Magistrate rejected the petitioner's prayer for her release on personal bond is absolutely illegal and without jurisdiction. He further submitted that there is no law which empowers and authorises the Learned Magistrate to detain the victim girl, the petitioner herein, who is not an accused against her will at any rescue home even when she is found to be minor. In this connection he relied on the decision of our High Court in the case of *Saroj Singh @ Rabi Singh v. State of West Bengal & Ors.*, reported in 2004 Cal Cri LR 392 as well as the decision relating to the case of [Krishna Prasad Paul Vs. State of West Bengal](#),

5. On the other hand, Mr. Swapan Kumar Mullick, the learned counsel, appearing on behalf of the State strongly opposed and resisted the petitioner's prayer for her release on personal bond. According to Mr. Mullick, as the petitioner is aged below 17 years the Learned Magistrate very rightly rejected her prayer for her release on personal bond as she refused to go to the custody of her parents, otherwise she would have been in the clutches of the accused persons against whom police has already submitted charge-sheet and their trial is likely to commence very shortly.

6. I have given my anxious and thoughtful consideration to the rival submissions of the parties as well as to the grounds on which the Learned Magistrate rejected the petitioner's prayer for her release on personal bond. It appears from the materials on record she is aged about 16 years and one month and according to the Registration Certificate issued by the West Bengal Board of Secondary Education her date of birth is April 2, 1992. Whereas according to the Ossification Test held by the Department of Forensic and State Medicine, Medical College Hospital, Kolkata she is aged about 16/17 years. It further appears that she is the victim of a kidnap for

unlawful purposes by one Pradip Jana and three others against whom police has submitted charge-sheet and as such when she refused to go to the custody of her father Pradip Kumar Maity, the Learned Magistrate very rightly rejected her prayer for release on personal bond.

7. Now the only question arises for consideration whether there is any law which permits a Court to keep a minor girl, a victim of penal offences in safe custody at rescue home against her wish. According to the materials on record it is found the age of the present petitioner is not more than 17 years. Thus not having completed her 18th years of age she is a "child" within the meaning of section 2(k) of the Juvenile Justices (Care and Protection of Children) Act, 2000. It further appears from perusal of the materials on record including the statement of the victim girl the present petitioner herein, recorded u/s 164 of the Code of Criminal Procedure that she left her parent's home with the accused Pradip Jana without the consent of her parents on her own. After her recovery she was taken to her parents home and from there she was again taken to the house of one of her aunt at Calcutta by her father and from there she once again fled away without the consent of her guardian. Thus, it is evident that her parents are unfit and incapacitated to exercise control over the present petitioner, a child within the meaning of section 2 (k) of the Juvenile Justices (Care and Protection of Children) Act, 2000 being below the age of 17 years. Since it appears from the materials on record her parents are unfit and incapacitated to exercise control over the present petitioner a child, it must be held that she is a "child in need of care and protection" within the meaning of section 2 (d) (iv) of the Juvenile Justices (Care and Protection of Children) Act of 56 of 2000, as such the Juvenile Justices Board is the competent authority to decide the question of her custody in terms of the provisions of Juvenile Justices (Care and Protection of Children) Act of 56 of 2000. Thus, I am unable to accept the contention of Mr. Srivastava that there is no law which empowers and authorizes a Court to pass an order as regards to the custody of a minor victim girl, against her wishes, who is a child in need of care and protection in terms of the provisions of the Juvenile Justices (Care and Protection of Children) Act of 56 of 2000.

8. As it is found the petitioner is a "child in need of care and protection" as defined in section 2 (d)(iv) of the aforesaid Act of 56 of 2000 in terms of provisions of section 7 thereof she should be forwarded to the concerned Juvenile Board for passing necessary order as regards to her custody.

9. Accordingly, the Learned Magistrate is directed to take immediate steps for her production before the concerned Juvenile Justices Board within two days from receipt of communication of this order. When the concerned Juvenile Justices Board shall pass the order as regards to the custody of the present petitioner in accordance with law.

The office is directed to communicate this order at once. Urgent xerox certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible.