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IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.Writ Petition No.2 of 2021

Date of Decision : February 19, 2021

Sanjeev Kumar

....Petitioner

Versus

Sate of H.P. and others

....Respondents.

Coram:

The Hon'ble Mr. Justice Vivek Singh Thakur, Judge.

Whether approved for reporting? Yes.

For the Petitioner : Mr. Rakesh Chauhan, Advocate.

For the respondents : Mr. Dinesh Thakur, Additional Advocate General, for respondents No.1 & 2 – State.

Mr. Ramakant Sharma & Mr. Arun Raj, Advocates, for respondent No.3.

Petitioner Sanjeev Kumar, alongwith his sister Smt. Pooja Devi wife of Shri Mukesh Kumar, resident of Village Jalari Sokheyam, P.S. Nadaun, District Hamirpur, Himachal Pradesh, in person.

Ms Komal Parmar alongwith LC Reena No.1584, Police Station Dhalli and LC Babita No.649, Police Post Mashobra.

Shri Ashwani Kumar, respondent No.3, in person. (Father of Ms Komal Parmar)

Vivek Singh Thakur, Judge

This petition has been preferred by petitioner Sanjeev Kumar with submissions that he and Ms Komal Parmar, for the last many years, are friendly and are having liking towards each other and ultimately they have decided

to marry each other but for the reason that they belong to different castes, as petitioner belongs to a Scheduled Caste family whereas Ms Komal Parmar belongs to a Rajput family, an application under Section 5 of the Special Marriage Act, 1954 was presented by the petitioner and Ms Komal Parmar, supported by their respective affidavits, before Special Marriage Officer, on 1.2.2021. It is also pleaded on behalf of the petitioner that application and affidavits were prepared on 29.1.2021 but for non-availability of Special Marriage Officer on that day as well as on 30.1.2021, the application was presented before the concerned authority on 1.2.2021, because 31.1.2021 was a Sunday and immediately after submission of application, petitioner and Ms Komal Parmar had decided to live together, but for opposition to inter-caste marriage; family, relatives and friends of Ms Komal Parmar had become furious and had started extending threats and, in such circumstances, petitioner and Ms Komal Parmar left Hamirpur and took a shelter at Palampur on 1.2.2021. On the same day, respondent No.3 Ashwani Parmar, father of Ms Komal Parmar, alongwith other persons went to the village of petitioner and seized the house of petitioner to mount pressure, and family of petitioner was threatened and maltreated and even threat was extended to abduct

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the sister of petitioner in lieu of Ms Komal Parmar. After knowing about such incident, petitioner and Ms Komal Parmar had decided to come back from Palampur to Hamirpur, however, when they reached near Jawalamukhi, 4-5 vehicles intercepted the vehicle in which petitioner and Ms Komal Parmar were travelling and around 20-25 persons came out of those vehicle and overpowered Ms Komal Parmar after beating petitioner and had taken her alongwith them.

2. It has been claimed in the petition that Ms Komal Parmar has been detained by respondent No.3, her family members and friends against her wishes, so as to prevent solemnization of marriage of petitioner with Ms Komal Parmar and petitioner is being continuously threatened by the family and friends of Ms Komal Parmar and also by other persons belonging to their caste. Further that the only reason that petitioner belongs to a caste which is considered by family, relatives and friends of Ms Komal Parmar a lower caste, is the cause of whole incident leading to abduction and illegal detention of Ms Komal Parmar and, thus, petitioner has prayed for production of Ms Komal Parmar by way of present Writ Petition and also for direction to respondents-State to provide appropriate

security to the petitioner and his family members as there is imminent threat to their lives and property.

3. In sequel to order dated 9.2.2021, directing respondents to produce Ms Komal Parmar, she had attended the Court on 12.2.2021, alongwith Police Officers/officials. On that day, during interaction with the Court, Ms Komal Parmar, instead of returning to parental home, had expressed her desire to live in Nari Niketan Mashobra, District Shimla and, therefore, she was directed to be taken to the said Nari Niketan, with direction to produce her in the Court on 16.2.2021, with further direction to respondent No.3 – her father to remain present in the Court on next date of hearing. Thereafter, case was adjourned for 16.2.2021 and 18.2.2021 and has been taken up for final decision today, i.e. 19.2.2021. During this period Ms Komal Parmar stayed in Nari Niketan alone without having any facility of Mobile Phone etc. and during this period she was having sufficient time to consider and reconsider the issues of her life to decide her fate. On each hearing, there was interaction with Ms Komal Parmar, her father and petitioner Sanjeev Kumar in presence of all of them and individually also in absence of others.

4. Status Report has also been filed by the Police, stating therein that on 2.2.2021, one Ajay Kumar (Uncle

(Chacha) of Ms Komal Parmar) had submitted a complaint in Police Station Nadaun that Ms Komal Parmar was missing from 5.30 p.m. on 1.2.2021. Said complaint was entered in the Daily Diary Register, information whereof was sent to all Police Stations and Police Posts in Himachal Pradesh. On 5.2.2021, complainant Ajay Kumar had informed the police that Ms Komal Parmar was found on 3.2.2021 at Jawalaji, and requested to close the report of missing person. This information was also entered in the Daily Diary Register.

5. It is also stated in the Status Report that on 4.2.2021, petitioner Sanjeev Kumar had also filed a complaint, via 'CM Helpline', alleging that he has married Ms Komal Parmar at Hamirpur Court on 1.2.2021, but despite that Ms Komal Parmar has been taken by her parents, who are extending threats to his family, however during inquiry of this report, on 7.2.2021 petitioner was not found at home and as per statement of his father, petitioner was bachelor, earning his livelihood as a Drummer by beating drum in marriages and social gatherings. As per Status Report, father of petitioner had stated that petitioner had gone to attend a retirement function on 1.2.2021, but thereafter had not come back and he had heard that petitioner had married Ms Komal Parmar daughter of respondent No.3 but he (father of petitioner) was not

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having any other clue in this regard, except this information on the basis of hearsay.

6. As per Status Report, on 5.2.2021, petitioner Sanjeev Kumar had also filed a complaint before Superintendent of Police, Hamirpur, for inquiry and action, as per law, about threats being extended to him and his family members. On receiving the said application/complaint from the Office of Superintendent of Police, Station House Officer, Police Station Nadaun, had deputed HC Desh Raj for inquiry and the said Police Officer had visited house of the petitioner but petitioner was not found at his residence and his parents were not having any clue about him.

7. Lastly, it is stated in the Status Report that on 9.2.2021, police officials had visited the house of Ms Komal Parmar where her father Ashwani Parmar (respondent No.3) had produced an OPD Slip dated 3.2.2021, scribed by Mental Health Specialist, Nagrota Bagwan, District Kangra and respondent No.3 had further informed that Ms Komal Parmar had not married anyone and was not in a condition to make a statement.

8. Respondent No.3, father of Ms Komal Parmar, has also filed reply, wherein allegation of opposition to marriage of his daughter with petitioner on account of caste

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has been denied being false and frivolous with averment that respondent No.3 had never raised such issue. It is stated in the reply that Ms Komal Parmar is suffering from mental depression and because of her mental health problem she is not in proper state of mind to understand the things to go for marriage with the petitioner. To substantiate this plea, medical prescription slip, pertaining to mental sickness of Ms Komal Parmar, has also been placed on record. It is further stated that petitioner cannot solemnize marriage with Ms Komal Parmar until and unless she opts for the same of her own volition and free consent on attaining proper state of mind by her after recovery from illness.

9. Ms Komal Parmar, present in the Court, has refuted the allegations of her ill mental health with further submission that she was slapped brutally on 2.2.2021 at Jawalaji and thereafter she was beaten and administered some injection and forcibly taken to Mental Health Specialist on 3.2.2021 and 10.2.2021. She has further stated that she is not having any mental health problem and that she is a student and has appeared in BBA Final Year Examination a few months ago. She has also endorsed the contents of the petition and incidents narrated therein with effect from 29.1.2021 to 2.2.2021.

Though she has stated that she has been thrashed, harassed and tortured while she was in custody of her parents and others and, thus, she does not want to face such trauma again by opting to live with parents, but at the same time she has expressed that out of deep love for family and regards for others, she does not want to initiate any action against her parents and others.

10. So far as allegation that Ms Komal Parmar is suffering from mental illness is concerned, when this allegation was vehemently refuted by Ms Komal Parmar and she expressed her intention to go for her examination by Medical Board with further request to conduct inquiry about circumstances in which she was taken to Mental Health Specialist and subjected to forcible examination and medicaton, respondent No.3, through his counsel, on 16.2.2021, had stated that respondent No.3 would not be pressing his stand taken regarding mental health of Ms Komal Parmar, on the basis of prescription slips issued by Dr. N.K. Sharma, but it was stated that parents of Ms Komal Parmar were and are worried about future of their daughter. It is also stated by respondent No.3, in the Court, that he has no opposition for marriage, for difference of caste, but for poor financial condition of unemployed petitioner he is afraid that it would not be possible for the petitioner to

maintain Ms Komal Parmar and she would be in great difficulty after solemnization of marriage with petitioner and further that he intends to convince his relatives and friends for permitting Ms Komal Parmar to marry petitioner in case she is determined to marry him and, thus, he has asked for custody of Ms Komal Parmar for 5-6 months with assurance that he would solemnize her marriage with the petitioner thereafter.

11. Ms Komal Parmar has submitted that main opposition for marriage is for the difference in caste and rest submissions by her father are nothing but an attempt to defer the solemnization of marriage so that avoidance of her marriage with petitioner could be managed by passage of time by hook or crook.

12. We are living in a State governed by the Constitution and discrimination on the basis of caste by denying of right to choose spouse, is in violation of Fundamental Rights guaranteed under the Constitution of India.

13. So far as opposition to marriage for difference of caste is concerned, the same is result of spiritual as well as religious ignorance leading to behaviour in violation of constitutional mandate, despite the fact that Constitution is an embodiment of ancient values of *Bhartiya* Society.

Independence of thought to an individual is fundamental feature of Indian culture.

14. Though people advocating for continuation of caste system and discrimination based thereon, relates it with religion, however, they do so because of ignorance as such thoughts are contrary to basic and true essence of religion. It is basic spiritual as well as religious mandate of all religions that God is everywhere, in everyone and everyone is equal before God. Not only this, it is also considered that existence of God is not only in living creatures but is also in non-living things and, thus, no one is to be discriminated on account of sex, caste, creed, race, colour or financial status.

15. In Shrimad Bhagwat Gita also, which is said to be message of God, it is propounded that the one who discriminates amongst the creatures of God and do not see presence of God everywhere can never attain self-realization and blessings of God. Discrimination on the basis of caste sometime is propounded on the basis of some Samritis and Puranas, forgetting the basic principle that the highest source of religious norms are Vedas and anything in any other religious texts, including Samritis and Puranas, which is contrary to the principles propounded in Vedas, is to be considered ultra vires to Vedas and, thus,

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contrary to Dharma and, therefore, is to be discarded.

Vedas propound a principle of equality and betterment of all without any discrimination by pronouncing that we should work together, eat together, march together and live together for betterment and progress of all. Discrimination on the basis of caste, under the garb of religion, is anti-thesis of basic spiritual and religious principles which are, unfortunately, relied upon for discrimination. Therefore, discrimination on the basis of caste is not only in violation of constitutional mandate but also in opposition to real Dharma.

16. Right to marry or, for valid reasons, not to marry, as well as right to choose spouse is a well recognized right in Indian society since ancient era. Inter-caste marriages were also permissible in ancient Indian society but for evils of Medieval period wrong perceptions have clouded the rich values and principles of our culture and civilization. Marriage of Shantunu and Satyavati; and Dushyant and Shakuntla are well known examples of inter-caste marriages. Recognition of right to choose spouse by a girl is well reflected in the case of Savitri (who was daughter of a King) and Satyavan, where Savitri had travelled across the Sub Continent (India) in search of suitable match for her and ultimately she had selected a

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Woodcutter Satyavan as a suitable spouse, which was accepted by her father and society. Devhooti, a daughter of King, had also married with Rishi Kardam, a researcher, who was neither King nor Prince, and her choice was accepted by her father and society. Another well known example of exercise of such right is Vidyottama wife of Kalidas.

17. To my little knowledge, oldest example of marrying a person of choice is marriage of Sati with Lord Shiva, which was solemnized in defiance and against wishes of her father King Daksha Prajapati. Another more than 5000 years old example of choosing the spouse according to choice of the girl is of Rukmani and Lord Krishna, as Rukmani was having liking and wish to marry Lord Krishna, whereas her brother was intending to arrange her marriage with Shishupal, whereupon Rukmani had wrote a letter to Lord Krishna to take and accept her as his spouse and Lord Krishna did so by taking her from the *Mandapa*. Similar example is the marriage of Subhadra and Arjun, where family members were intending to marry Subhadra somewhere else, whereas Subhadra had chosen Arjun as her spouse.

18. Leaving apart the history and ancient values of Indian society, we all are living in a country governed by

constitutional mandate and 'Rule of Law' is to prevail in all eventualities.

19. In present case, antecedents and character of petitioner is not under cloud, and petitioner and Ms Komal Parmar have filed a joint application for registration of their marriage and not only this during hearings of the case they have expressed their desire to marry and register the marriage not only under Special Marriage Act, 1954 but also to solemnize marriage according to Hindu rites and rituals in any temple or any other place, in case they are permitted to move freely without any oppression, suppression and fear, on the part of parents, family, relatives and villagers of Ms Komal Parmar. It is not a case where petitioner is asking for custody of Ms Komal Parmar but a case where he has prayed for production of Ms Komal Parmar in order to ascertain her 'Free Will' and on production, Ms Komal Parmar has narrated the tail of her sorrow faced by her after her abduction on 2.2.2021 from Jawalaji and has expressed her desire not to go to her parental house and also to the house of petitioner but firstly to Nari Niketan and lateron to the house/village of married sister of petitioner, namely Smt. Pooja Devi, who is known to her since childhood and is her friend.

20. Learned counsel for respondent No.3, relying upon a Division Bench Judgment of Kerala High Court in case *Dr. Lal Parameshwar v. Ullas N.N. and others, 2014 Cr.LJ 1921*, has contended that Ms Komal Parmar is not under any illegal confinement or detention or punishable restraint by further contending that though there have been changes in social and moral values and our society is recognizing freedom of every citizen, but even then such liberties cannot be stretched beyond limits nor can such freedom be made a weapon to destroy our fundamental values and social establishments like families, which, undoubtedly, concede authority on parents to advise and guide their children and general principle cannot be set that parents are, in all circumstances, bound to concede absolute decisional autonomy to their children even if they have attained majority and remain helpless even in situations where their wards have taken wrong and immature decisions which will be disastrous not only to the wards themselves but also to the family itself. It is further contended that such parental authority, except in cases such as those pointed out in *K.N. Sadanandan v. Raghava Kurup & others, AIR 1975 Kerala 2*, should be out of bounds for a Writ Court because such parental authority is exercised for ultimate benefit of the ward and immature

reactions of wards should not be allowed to influence judgments, since the ultimate aim and purpose of all exercise undertaken by the Court is welfare of the ward.

21. In *K.N. Sadanandan's case*, Marriage Certificate produced before the Court was doubtful and detenu was staying with her own parents and except allegations made by the petitioner there was nothing before the Court to show that she was under restraint or was being illegally detained by the parents, rather in criminal proceedings pending between the parties detenu had stated that she was staying with her parents of her own free will and was not being wrongfully confined and in this background the Court had not found the facts sufficient for entertaining the Habeas Corpus.

22. In *Dr. Lal Parameshwar's case* also petitioner was not married to the detenu but was having relations with more than one ladies and it was apparent from the conversation of Mobile Messages between the petitioner and the detenu that detenu was not having good relations with the petitioner, who was having relationship with at least six other women and had attempted to assault not only himself but also detenu, that too in the premises of the Court and the father, with whom detenu was residing, had allowed her to work in the Hospital and had not prevented

her either from reporting to work or from appearing in Postgraduate Entrance Examination, but was keeping her with him in order to ensure her safety and had removed internal locks of her room and she was always at liberty to move inside the house and, thus, he was acting in her welfare exercising his natural right as parent of his only daughter and, under these circumstances, observations, relied upon by learned counsel for respondent No.3, were made by the Court that petitioner was only attempting to, somehow or other, get custody of the detenu without caring for her future, welfare and well being and, therefore, custody of father was not considered to be illegal detention of the detenu. The facts of judgments in *K.N. Sadanandan's case* and *Dr. Lal Parameshwar's case* are not similar to present case.

23. Relying on *Mohd. Ikram Hussain v. The State of Uttar Pradesh & others*, AIR 1964 SC 1625, respondent No.3 has contended that proceedings under Article 226 of the Constitution are discretionary and that discretion does not deserve to be exercised in present case for welfare of Ms Komal Parmar. For the material on record, I do not find any force in such contention.

24. In *Dr. Lal Parameshwar's case*, a judgment of another Division Bench of the same Court (Kerala High

Court) in *Rajmohan v. State of Kerala*, 2009 (4) KLT 466, has been referred. Though the said judgment has not been considered a binding precedent in *Dr. Lal Parameshwar's case*, for being passed without taking note of judgment of Full Bench of that Court in *K.N. Sadanandan's case*, but I am in agreement with the observations made in *Rajmohan's case*, quoted in *Dr. Lal Parameshwar's case*, which read as under:

"14. It is next contended that the 6th respondent being the father of the alleged detenu, has an unbridled right to keep her "in custody". The keeping of an adult major woman in the custody of her parent even against her will and desire will not amount to improper restraint or detention/confinement as to justify invocation of the jurisdiction under Art.226 of the Constitution, contends the learned counsel for the 6th respondent strenuously. The contention of the learned counsel for the 6th respondent virtually is that parental authority is sufficient to justify such "custody" even against the will and wishes of the detenu.

15. We are afraid that such a general principle of law cannot be accepted. A person who has attained majority, is in the eye of law, a person and a citizen entitled to all rights and privileges under the Constitution. There can be no question of an adult major woman being kept in the "custody" of anyone else against her wishes, desire and volition. Even if it be the parents, such custody cannot in the absence of better reasons be justified. There is no contention that she suffers from any debility which obliges her to be in the "custody" of any other. An adult major woman residing with parents or husband cannot be held to be in the "custody" of such parent or husband as to deny to her, her rights to decisional autonomy and to decide what is best for her. Parental authority would certainly extend until a child attains majority. But, thereafter, though the parent and the child may be residing together, it can never be held that such child is in the "custody" of

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the parent. An adult major woman is not a chattel. The theory that until marriage a woman must be under the custody and confinement of her father and thereafter in the custody and confinement of her husband cannot possibly be accepted in this era. Such an adult person is certainly entitled to take decisions which affect her. Parental authority or matrimonial authority will not at any rate give right to such parent or husband to keep such woman under restraint, confinement or detention against her will. The parent may feel that he has the monopoly for taking correct decisions which concern his daughter, but that impression of a doting patriarchal parent cannot blindly be accepted and swallowed by a Court. The parental authority may extend to advice, counsel and guidance. But certainly, it cannot extend to confinement, detention or improper restraint against the wishes and volition of the adult major daughter. Right to take decisions affecting her will certainly have to be conceded to her even assuming that, decisions taken may at times or in the long run prove to be not wise or prudent.

16. In this context, the learned counsel for the 6th respondent places reliance on two decisions of the earlier Division Benches of this Court in *Prasadhkumar v. Ravindran*, 1992 1 KLT 729 [1992 CriLJ 3203 (Ker)] and *Sreekesh v. Mohammed Asharaf*, 2003 1 KLT 397 .

17. We have been taken through the decisions in detail. We are unable to agree that they lay down a proposition that under no circumstances, when there is an allegation that parental authority is invoked to justify improper restraint or confinement/detention powers under Art. 226 cannot be invoked. It depends on the facts of each case. Merely because beneficent parental authority is exercised over an adult child, this Court will not invoke its jurisdiction under Art.226 of the Constitution. Sagacity and judicial wisdom are required to identify the fit cases in which such jurisdiction can, need or need not be invoked. The observations in those decisions will have to be understood carefully and cautiously. It would be myopic and obscurantist to understand those observations as sufficient to concede to the parent a right to deny liberty and freedom to his adult daughter and to move her out of the country against her will keep her away from the Court before which proceedings are initiated. We are unable to so

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understand those observations. Home and parental authority are not out of bounds for a constitutional court while performing its duty to translate the constitutional promise of freedom and liberty and while responding to the prayer of a citizen who has come to court complaining about negation of such rights, in exercise of his fundamental constitutional right to move the court for enforcement of such right.

18. This Court comes across many such cases of alleged detentions/confinement/compulsive restraint placed on adult daughters by parents. We have taken a consistent stand that the decisional autonomy of such an adult daughter will have to be respected. An adult woman cannot be treated as chattel by this Court. Her rights as an equal citizen will have to be respected and cannot be denied. In cases where we feel that the decision of such alleged detenu does not appear to be voluntary and genuine, we resort to the course of granting them time to reflect, contemplate and ponder. We give them opportunity to be accommodated in neutral venues for some period to facilitate rational and dispassionate evaluation - sometimes for long periods. We give parents opportunity to counsel their children during such period. But ultimately, we do respect the decisional autonomy of such adult children. We are convinced that, that is the proper course to be followed in all cases. To do otherwise would simply be denial of human rights of an adult woman to take decisions affecting her future. That would certainly be denial of the right to life guaranteed under Art. 21 of the Constitution of India. The mere fact that the decision may turn out to be incorrect, or bad does not justify the denial of the right to take a decision. We do not permit our concepts of what is right and good for them to override their own assessment of what is right and good for them. We do not permit the concept of others (including parents) of what is right and good for them to override their own concepts. Concept of right and good may vary with the times. This generation's concept of right and wrong may not find acceptance with the next. No generation or parent can claim infallibility and enforce its/his concept of right and wrong on the succeeding. Suffice it to say that we do not agree with the learned counsel that *Prasadhkumar and Sreekesh* (supra) concede to the parents any unbridled rights to usurp the decisional autonomy of their adult

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daughters and keep them in "custody" against their desire in exercise of their parental authority or duty. We do not agree that the said decisions lay down that this Court cannot exercise jurisdiction under Art.226 of the Constitution of India in such a situation. We do not agree that the mere fact that the petitioner's marriage with the alleged detenu may not be strictly legal is sufficient to deny relief. At least it can be said that in the present era of social and societal development in this State such understanding of the dictum is impermissible. In the peculiar facts of those cases and to cater to the interests of justice in such situations, the Courts had followed such courses while considering invocation of the jurisdiction under Art.226."

25. Learned counsel for the petitioner has put reliance on *Shafin Jahan v. Asokan K.M. & others, (2018) 16 SCC 368*, wherein it has been observed, in majority decision, as under:

"28. In the instant case, the High Court, as is noticeable from the impugned verdict, has been erroneously guided by some kind of social phenomenon that was frescoed before it. The writ court has taken exception to the marriage of respondent No. 9 herein with the appellant. It felt perturbed. As we see, there was nothing to be taken exception to. Initially, Hadiya had declined to go with her father and expressed her desire to stay with respondent 7 before the High Court and in the first writ it had so directed. The adamantine attitude of the father, possibly impelled by obsessive parental love, compelled him to knock at the doors of the High Court in another Habeas Corpus petition whereupon the High Court directed the production of Hadiya who appeared on the given date along with the appellant herein whom the High Court calls a stranger. But Hadiya would insist that she had entered into marriage with him. True it is, she had gone with respondent 7 before the High Court but that does not mean and can never mean that she, as a major, could not enter into a marital relationship. But, the High Court unwarrantably took exception to the same forgetting that parental love or concern cannot be allowed to fluster the right of choice of an adult in choosing a man to whom she gets married.

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And, that is where the error has crept in. The High Court should have, after an interaction as regards her choice, directed that she was free to go where she wished to.

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52. It is obligatory to state here that expression of choice in accord with law is acceptance of individual identity. Curtailment of that expression and the ultimate action emanating therefrom on the conceptual structuralism of obeisance to the societal will destroy the individualistic entity of a person. The social values and morals have their space but they are not above the constitutionally guaranteed freedom. The said freedom is both a constitutional and a human right. Deprivation of that freedom which is ingrained in choice on the plea of faith is impermissible. Faith of a person is intrinsic to his/her meaningful existence. To have the freedom of faith is essential to his/her autonomy; and it strengthens the core norms of the Constitution. Choosing a faith is the substratum of individuality and sans it, the right of choice becomes a shadow. It has to be remembered that the realization of a right is more important than the conferment of the right. Such actualization indeed ostracises any kind of societal notoriety and keeps at bay the patriarchal supremacy. It is so because the individualistic faith and expression of choice are fundamental for the fructification of the right. Thus, we would like to call it indispensable preliminary condition.

53. Non-acceptance of her choice would simply mean creating discomfort to the constitutional right by a Constitutional Court which is meant to be the protector of fundamental rights. Such a situation cannot remotely be conceived. The duty of the Court is to uphold the right and not to abridge the sphere of the right unless there is a valid authority of law. Sans lawful sanction, the centripodal value of liberty should allow an individual to write his/her script. The individual signature is the insignia of the concept.

54. In the case at hand, the father in his own stand and perception may feel that there has been enormous transgression of his right to protect the interest of his daughter but his viewpoint or position cannot be allowed to curtail the fundamental rights of his daughter who, out of her own volition, married the appellant. Therefore, the High Court has

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completely erred by taking upon itself the burden of annulling the marriage between the appellant and respondent 9 when both stood embedded to their vow of matrimony."

In concurring judgment, Hon'ble Mr. Justice (Dr.) D.Y.

Chandrachud has observed as under:

"75. The ambit of a habeas corpus petition is to trace an individual who is stated to be missing. Once the individual appears before the court and asserts that as a major, she or he is not under illegal confinement, which the court finds to be a free expression of will, that would conclude the exercise of the jurisdiction. In *Girish v Radhamony K*, (2009) 16 SCC 360, a two-Judge Bench of this Court observed thus: (SCC p.361, para3)

"3In a habeas corpus petition, all that is required is to find out and produce in court the person who is stated to be missing. Once the person appeared and she stated that she had gone of her own free will, the High Court had no further jurisdiction to pass the impugned order in exercise of its writ jurisdiction under Article 226 of the Constitution."

26. In *Lata Singh v. State of U.P. & another*, (2006) 5

SCC 475, dealing with a case of inter-caste marriage, the Supreme Court has observed as under:

"14. This case reveals a shocking state of affairs. There is no dispute that the petitioner is a major and was at all relevant times a major. Hence she is free to marry anyone she likes or live with anyone she likes. There is no bar to an inter-caste marriage under the Hindu Marriage Act or any other law. Hence, we cannot see what offence was committed by the petitioner, her husband or her husband's relatives.

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16. Since several such instances are coming to our knowledge of harassment, threats and violence against young men and women who marry outside

their caste, we feel it necessary to make some general comments on the matter. The nation is passing through a crucial transitional period in our history, and this Court cannot remain silent in matters of great public concern, such as the present one.

17. The caste system is a curse on the nation and the sooner it is destroyed the better. In fact, it is dividing the nation at a time when we have to be united to face the challenges before the nation unitedly. Hence, inter-caste marriages are in fact in the national interest as they will result in destroying the caste system. However, disturbing news are coming from several parts of the country that young men and women who undergo inter-caste marriage, are threatened with violence, or violence is actually committed on them. In our opinion, such acts of violence or threats or harassment are wholly illegal and those who commit them must be severely punished. This is a free and democratic country, and once a person becomes a major he or she can marry whosoever he/she likes. If the parents of the boy or girl do not approve of such inter-caste or inter-religious marriage the maximum they can do is that they can cut off social relations with the son or the daughter, but they cannot give threats or commit or instigate acts of violence and cannot harass the person who undergoes such inter-caste or inter-religious marriage. We, therefore, direct that the administration/police authorities throughout the country will see to it that if any boy or girl who is a major undergoes inter-caste or inter-religious marriage with a woman or man who is a major, the couple is not harassed by anyone nor subjected to threats or acts of violence, and anyone who gives such threats or harasses or commits acts of violence either himself or at his instigation, is taken to task by instituting criminal proceedings by the police against such persons and further stern action is taken against such persons as provided by law.

18. We sometimes hear of 'honour' killings of such persons who undergo inter-caste or inter-religious marriage of their own free will. There is nothing honourable in such killings, and in fact they are nothing but barbaric and shameful acts of murder committed by brutal, feudal minded persons who deserve harsh punishment. Only in this way can we stamp out such acts of barbarism."

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27. **WWW.LIVELAW.IN** No doubt, parents are always worried about future and well being of their child and, thus, apprehension of respondent No.3 may not be said to be ill-founded but it is also true that parents, relatives and friends cannot force an adult to act according to their whims and wishes by suppressing the wish and desire of an individual. It is also true that in normal circumstances, stay of a child at his home, in custody of parents, may not construe an illegal detention or unlawful restraint but such stay or custody can be used for a control upon child to a limited extent, that too with consent of the child when child is adult and is having right of freedom to take decision with respect to his/her own life. The moment control or custody of parent crosses the limits, in violation of constitutional mandate and law, the same becomes illegal detention or unlawful restraint, as such control is not unbridled.

28. Undoubtedly, family members are bound and also supposed to follow the norms of discipline and tradition of the family for harmonious living and peace of the family. "Family" is the basic unit of social life and healthy atmosphere of family helps in creating healthy society but, at the same time an individual is also basic unit of family. Where an individual is supposed to act in consonance with wishes of other family members and keeping in view the

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traditions of family, there, at the same time, necessary freedom for growth of personality of individual is also necessary for which his/her individual rights are also to be protected. Suppressing or oppressing freedom of an individual, that too which is contrary not only to his/her spiritual and religious rights but also constitutional rights, is to be deprecated. Balance is to be maintained between individual, family and societal interests and that should be in consonance with constitutional mandate.

29. It is to be remembered that a girl is not a cattle or non-living thing but a living independent soul having rights, like others, and, on attaining the age of discretion, to exercise her discretion according to her wishes. Unlike ancient western thought, wherein a female was supposed to be created by God from rib of a man for enjoyment of man, in India, a female was always considered not only equal but on higher pedestal than male since Vedic Era, except for evils of Medieval Period, which are necessarily to be eradicated in present era.

30. In present case, as surfaced from the version of Ms Komal Parmar endorsing the incident of abduction and treatment given to her thereafter, by her family members, relatives and villagers, it is more than sufficient to construe

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that such restraint, detention or custody was illegal and contrary to constitutional mandate.

31. Ms Komal Parmar, on previous dates and today also, has been apprised about the financial status and occupation of the petitioner and possible miseries to be faced by her after marriage for no income or low income, but despite that she has re-affirmed her stand that she intends to marry petitioner Sanjeev Kumar as she is well acquainted with the family and status of family of the petitioner and she is ready to face all eventualities which may come in her life. She has expressed her desire not to accompany her parents or relatives or friends of family but to move independently to the house of her friend Pooja Devi who is also sister of the petitioner. Ms Komal Parmar has also stated that her proposed marriage with petitioner is not prohibited either under any codified law or un-codified personal law or custom.

32. Date of Birth of petitioner Sanjeev Kumar is 21.1.1998 and that of Ms Komal Parmar is 29.4.2000 and, as such, they are 23 and 21 years old adults. Petitioner has made unsuccessful attempt to complete Bachelor of Commerce Degree and now intends to do Electrician Training Course in ITI, whereas Ms Komal Parmar has also

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studied in college and has appeared in BBA Examination held during the year 2020.

33. Ms Komal Parmar is a grown-up girl of 21 years of age having no infirmity or incapacity to understand each and every aspect of life and to take decision and she has a right to exercise her discretion to choose spouse and to decide the place of her residence. Ms Komal Parmar is major, capable of taking her own decisions and is entitled to the right recognized by the Constitution to lead her life exactly as she pleases. During all hearings, nothing was observed in her personality so as to construe that she is incapable of ascertaining a free will, and she has clearly stated that her parents, family members, relatives and villagers are forcing her to act contrary to her own free will and pressurizing her to withdraw her submission/consent for solemnizing marriage with petitioner with re-affirmation that her decision to marry petitioner is well considered and determined after having knowledge of each and every fact with respect to educational qualification, caste, financial status and landed property of the petitioner and his family.

34. In view of aforesaid discussion and considering the pronouncements, referred supra, present petition is disposed of with liberty to Ms Komal Parmar to go and reside wherever she wants, including house of Pooja Devi,

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as desired by her, and also her parental house, if desired so by her, and with direction to respondents No.1 and 2 to ensure safety of lives and property of petitioner and his family and also Ms Komal Parmar and to provide rapid help/assistance to ensure that whenever required.

35. At this stage, Ms Komal Parmar has submitted that instead of going to the house of her parents or petitioner Sanjeev Kumar, she would like to stay with Ms Pooja Devi, sister of petitioner Sanjeev Kumar. However, she has submitted that it would not be possible for her to start for village Jalari today itself and, therefore, tonight she would be staying with Ms Pooja Devi at Shimla and would like to go to village Jalari, P.S. Nadaun, District Hamirpur, Himachal Pradesh tomorrow (20.2.2021) in the morning.

36. As requested by Ms Komal Parmar, Superintendent of Police Shimla and Hamirpur, SHOs Sadar (Shimla), District Shimla and Nadaun, District Hamirpur, Himachal Pradesh, are directed to depute Police Personnel to escort her from the Court premises to the destination she desires to go today and upto Jalari tomorrow (20.2.2021). Ms Komal Parmar is also directed to intimate the time of her departure from Shimla to the SHO of Police Station Sadar, District Shimla, Himachal Pradesh, today itself.

37. Learned Additional Advocate General is directed to communicate the aforesaid direction to all concerned for necessary action on their part, telephonically forthwith, besides written communication.

38. The parties are permitted to produce ~~copy of the~~ judgment downloaded from the High Court website before the authorities concerned and the said authorities shall not insist for certified copy of the order, however, they may verify the order from the High Court Website or otherwise.

Dasti copy on usual terms.

February 19, 2021^(sd)

(Vivek Singh Thakur)
Vacation Judge.

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