

Court No. - 65

Case :- HABEAS CORPUS WRIT PETITION No. - 536 of 2022

Petitioner :- Sandeep Kumar And Another

Respondent :- State Of U.P. And 9 Others

Counsel for Petitioner :- Bed Kant Mishra

Counsel for Respondent :- G.A.

Hon'ble Sanjay Kumar Singh,J.

Shri Rajesh Singh, Advocate has filed his Vakalatnama on behalf of the corpus/petitioner No. 2, Smt. Sakshi Panchal, whereas Ms Laxmi Viswakarma has filed her Vakalatnama on behalf of respondent Nos. 4 to 10, who are father, *Tau*, uncle, brothers and cousin brothers of the corpus/petitioner No. 2, the same are taken on record.

On 13.9.2022, during the course of argument, learned counsel for the petitioners submitted that the corpus-petitioner No. 2 has filed a complaint against respondent Nos. 4, 5, 9 and 10, in which her statement was also recorded on 02.12.2021 and prayed for time to bring on record the copy of the aforesaid complaint, statement of the complainant and witnesses as well as order passed therein, if any, the order passed the following orders:

"Heard Shri Bed Kant Mishra, learned counsel for the petitioners and learned Additional Government Advocate representing the State.

By means of this petition, the petitioner-Sandeep Kumar, who is the alleged husband of petitioner No. 2 Ms Sakshi Panchal has prayed for a direction to respondent Nos. 2 and 3 to produce petitioner No. 2 Ms Sakshi Panchal before this Court, who was in their illegal captivity.

On 18.7.2022, a Coordinate Bench of this Court had directed respondent Nos. 5 to 10 to appear in person along with corpus of Ms. Shakshi Panchal. Thereafter vide order dated 23.8.2022, Station House Officer, Baraut, Baghpat was directed to ensure the strict compliance of the direction of this Court dated 18.7.2022.

Pursuant to the aforesaid orders of this Court, the corpus-petitioner No. 2, Sakshi Panchal has been produced by SI Amit Kumar Chauhan of police station Baraut, district Baghpat. Respondent Nos 5 to 10 are also present.

Perusal of record reveals that the date of incident in this case is 01.01.2021 and the first information report has

been lodged on 22.7.2022, i.e. after about seven months of the date of occurrence, under Sections 376/3/354(C) IPC and Section 4 of Protection of Children from Sexual Offence Act, 2012 at police station Gokul Puri, North East (Delhi). It is evident that FIR has been lodged after passing of the order by this Court dated 18.7.2022 directing the respondents to produce the corpus- Ms Shakshi Panchal. It is pointed out that pursuant to the FIR, the petitioner No. 1 has been arrested and at present he is in jail.

Learned counsel for the petitioners submits that both the petitioners have solemnized their marriage in Arya Samaj Temple and got it registered on 23.11.2021 before the Marriage Registration Officer. The certificate issued by the Arya Samaj Marriage Trust and Marriage Registration Officer have been brought on record as Annexure 1 and 2 to the petition.

The Corpus-petitioner No. 2 has admitted her marriage with petitioner No. 1 in Arya Samaj Mandir.

Learned counsel for the petitioners submits that the corpus-petitioner has also filed a complaint in the court of Chief Judicial Magistrate, Baghpat under Sections 452, 380, 504, 506, 323 IPC, police station Baraut arraigning therein as many as four accused namely Devendra, Jaipal, Sagar and Sanni, who are father, father's elder brother (Tau) and cousin brothers of the petitioner No. 2 and they are also respondents in the instant habeas corpus petition, in which the statement of the corpus-petitioner was also recorded under Section 200 Cr.P.C. on 02.12.2021. During the course of argument, learned counsel for the petitioners has produced before this Court a copy of the complaint and statement of the complainant-Sakshi Panchal.

Learned counsel for the petitioners prays for and is allowed three weeks' time to file certified copy of the aforesaid complaint, statement of complainant and witnesses as well as the order passed therein, if any.

List this case on 14.10.2022 as fresh for further hearing before this Court."

Pursuant to the order of this Court dated 13.9.2022, Shri Bed Kant Mishra, learned counsel for petitioner No. 1 has filed supplementary affidavit dated 04.10.2022, which is taken on record.

Petitioner No. 1 (Sandeep Kumar) and petitioner No. 2 (Smt. Sakshi Panchal) are personally present before this Court and have been identified by their respective counsel.

Heard learned counsel for the parties and perused the record of the case.

Referring to the contents of supplementary affidavit, it is pointed out by the learned counsel for petitioner No. 1 that petitioner Nos. 1 and 2 both are major and they have solemnized their marriage in Shiv Temple at Baghpat and thereafter they also got their marriage registered on 23.11.2021 before the concerned authority at Ghaziabad and they were living their life happily as husband and wife, but on 25.11.2021, respondent Nos. 4 to 10, who are family members of corpus/petitioner No. 2 have forcefully took her to her father's house and since then she is in the captivity of respondent Nos. 4 to 10.

It is pointed out that on 26.11.2021 corpus/petitioner No. 2 filed complaint case No. 5073 of 2021 in the Court of Judicial Magistrate, Baghpat against respondent Nos. 4, 5, 9 and 10 under Sections 452, 380, 504, 506, 323 IPC, police station Baraut, district Baghpat in which her statement under Section 200 Cr.P.C was recorded on 02.12.2021 whereby she has supported her version as mentioned in the complaint. The copies of the complaint and statement of the corpus recorded under Section 200 Cr.P.C. have been annexed as Annexure 1 and 2 of the supplementary affidavit.

It is further pointed out that petitioner No. 1 has also filed case No. 322 of 2022, under Section 9 of Hindu Marriage Act on 01.7.2022 before the Principal Judge, Family Court, Baghpat, in which notices were issued and the same is still pending.

Much emphasis has been given by contending that the corpus is major and she is legally wedded wife of petitioner No. 1 and is willing to live with him.

In the light of the aforesaid submission of learned counsel for petitioner No 1, statement of corpus/petitioner No. 2 has been recorded before the Court in the presence of learned counsel for the parties as well as respondent Nos. 4 and 5. The corpus/petitioner No. 2 has stated that she is major and has admitted her marriage with

petitioner No. 1 as well as registration of her marriage before the concerned authority at Ghaziabad, copy whereof has been filed as Annexure 2 to this petition. She also stated that after filing of this habeas corpus petition, and issuance of notice by this Court vide order dated 18.7.2022, she lodged FIR on 22.7.2022 at case crime No. 296 of 2022, under Sections 376/328/354-C IPC and section 4 of POCSO Act, police station Gokul Puri, Delhi under the pressure and threat of her father and Tau, respondent Nos. 4 and 5, in which her statement under Section 161 and 164 Cr.P.C. were also recorded under pressure, whereas correct fact is that no such incident as alleged in the FIR dated 22.7.2022 took place. In the said case, petitioner No. 1 has been granted bail by the concerned court below. Lastly, she stated that petitioner No. 1 is her husband and she is willing to go with him and to live her matrimonial life peacefully. Statement of the corpus/petitioner No. 2 is taken on record and marked as "A".

After the aforesaid statement of the victim before this Court, learned counsel for petitioner No. 2 and respondent Nos. 4 to 10 submit that since the corpus-petitioner No. 2 is willing to go and live with petitioner No. 1, they have no objection if the Court direct her to go with her husband-petitioner No. 1.

The choice of a life partner, the desire for personal intimacy and yearning to find love and fulfilment of human relationship between two consenting adults cannot be interfered with by any other persons.

In view of the above, the writ petition is allowed. The corpus/petitioner No. 2 is free to go with petitioner No. 1.

Registrar General is directed to refund the amount of Rs. 40,000/- which was deposited by petitioner No. 1 before him by Bank Draft No. 033569 dated 25.08.2022 pursuant to the order of this Court dated 18.7.2022.

Order Date :- 14.10.2022

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