IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.408 of 2021

Arising Out of PS. Case No.-57 Year-2020 Thana- BARH District- Patna

==========

Khushi Kumari, daughter of Shri Pappu Singh R/o village- Gowar Dharmpur @ Gobar Dharmpur, P.S.- Barh, District- Patna

... ... Petitioner

Versus

1. The State of Bihar through the Principal Secretary Home (Police) Patna.
2. The Superintendent of Police, Patna
3. The S.D.P.O., Barh, Patna
4. The Officer in Charge, Police Station- Barh, Patna
5. The Superintendent of Girl's Remand Home, (Uttar Raksha Grih) Gaay Ghat, Patna City, Patna, Bihar
6. Pappu Singh S/O Late Umanath Singh Village-Gowar Dharmpur @ Gobar Dharmpur, P.S. - Barh, District-Patna.

... ... Respondents

==========

Appearance :
For the Petitioner/s : Mr.Upendra Kumar Singh, Advocate
For the Respondent/s : Mr.Sheo Shankar Prasad, A.P.P.

==========

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL ORDER

3 25-03-2021 This writ application has been preferred by the victim girl who is claiming that she has attained majority. The victim girl has been kept in the Remand Home at Gaighat, Patna City since 20.03.2020 in connection with Barh P.S. Case No. 57/2020 registered under Section 363, 366(A) of the Indian Penal Code.

On perusal of the records, it appears that the father of the victim girl had lodged the First Information Report alleging that his daughter was seen being taken away by the accused on a motorcycle. The allegation was that when he sent his maternal brother to the house of the boy to get back his daughter, father

WEB COPY

of the boy told him that the girl would not be sent back and that they will keep her. The Police recovered the victim girl and brought her before the learned Judicial Magistrate for recording her statement under Section 164 Cr.P.C. A copy of the statement under Section 164 Cr.P.C. is placed on the record as Annexure '2'. Perusal of Annexure '2' would show that the victim girl claims to have left her house on her own because her parents wanted to get her married with someone else. She did not want to go with her parents. She expressed her desire to go to the house of her maternal grand-mother. The learned Additional Chief Judicial Magistrate vide his order dated 20.03.2020, after recording the statement of the victim girl sent her to the observation home at Gaighat, Patnacity.

On perusal of the order dated 20.03.2020, this Court finds that in the Court of learned Magistrate the victim girl claimed that she was 18 years old, but the learned Magistrate assessed her age as 17 years. Without considering the request of the victim girl to allow her to live with her maternal grand-mother, the learned Magistrate sent her to the Observation Home. Since then she is there.

Learned counsel for the petitioner submits that the learned Additional Chief Judicial Magistrate, Barh should have

WEB COPY

been more sensitive towards the rights of the victim girl. The learned Magistrate did not call for the school certificate of the victim girl to assess her age, though the victim girl had disclosed that she was a student of Class-XII and this has been recorded by the learned Magistrate in his own pen in the format of the statement under Section 164 Cr.P.C (Annexure '2').

Learned counsel further submits that when the victim girl desired to go to the house of her maternal grand-mother and there was no objection to this from her parents, keeping in view the emotional need of a child, the learned Magistrate should have first considered as to whether she is required to be united with her maternal grand-mother in order to keep her in her family environment rather than sending her to an institutional care home. What was in the interest of the child/victim girl was required to be taken care of.

Learned counsel for the State as well as learned counsel representing the informant are unanimous in their view that the victim girl – petitioner was not required to be sent to the Observation Home. They do not dispute that the petitioner is major and is capable of taking her decisions.

Learned counsel for the informant has submitted that the informant desires that in case her daughter is not willing to

WEB COPY

live with her parents she should live in the house of her maternal grand-mother.

Having regard to the facts and circumstances of the case and after perusal of the records, this Court finds substance in the submissions of learned counsel for the petitioner. The records speak for themselves. The father of the victim girl is said to have seen that his daughter was being taken away on motorcycle by the accused on 04.02.2020. Thereafter, he had lodged the First Information Report, but when the victim girl was recovered, she disclosed that she had gone to the house of her maternal grand-mother because her parents wanted to marry her with someone else. She did not want to go to the house of her parents but had expressed her desire to go to the house of her maternal grand-mother. She disclosed her age as 18 years but the learned Magistrate assessed her age as 17 years without there being any basis for the same.

This Court is of the view that the learned Additional Chief Judicial Magistrate while passing the order dated 20.03.2020 should have acted with more circumspection and care. In all fairness, he should have called for the school certificate of the victim girl because he was aware that the victim girl was a student of Class-XII. The learned Magistrate

WEB COPY

did not do so. He also failed to consider the submission of the victim girl that she wanted to live with her maternal grand-mother. In fact, the request of the victim girl has not at all been discussed and no reason has been provided by the learned Magistrate in the order dated 20.03.2020 as to why and under what circumstances he is not agreeing to the desire of the victim girl to go to the house of her maternal grand-mother. It is not the case that parents of the victim girl had objected to sending the victim girl to her maternal grand-mother.

This Court understands that the judicial officers are required to be sensitive towards the rights of the child and need to take care of them on the principles of parens patriae. The principle is well founded under the provisions of the Juvenile Justice (Care and Protection) Act, 2018. The learned judicial officers are required to be sensitized on this issue otherwise similar examples will kept on coming before this Court. The need to keep a child in the Observation Home or to allow him/her to stay with her parents/guardians is one of the most essential consideration which is required to be given by the learned Magistrates when they find that a minor girl or victim of a crime is produced before them. There cannot be a remand of a victim girl to an Observation Home in a routine manner. All

WEB COPY

possibilities are required to be explored keeping the best interest of the child in the mind, to facilitate her stay either with her own family or with a trusted guardian where her security would also be intact. It is only when there is no possibility of keeping the victim girl with her family or with a guardian, she would be required to be sent to an Observation Home.

In the present case, as on today, there is no dispute that the petitioner is major and is entitled to set a free. In this connection the Court reminds itself with the judgment of Hon'ble Division Bench of this Court in the case of **Based on the News item uploaded on the website of News App Bar and Bench Vs. The State of Bihar & Ors.** reported in **2018 SCC Online Pat 1179**. In the said case the Hon'ble Division Bench has quoted extensively the relevant part of the judgment of the Hon'ble Apex Court in the case of **Shafin Jahan Vs. Asokan K.M.** reported in **AIR 2018 SC 1933**. In view of the judgment of the Hon'ble Supreme Court in the case of Shafin Jahan (supra) the Hon'ble Division Bench of this Court observed as under:-

> "….. …...If we analyze the aforesaid judgment in the backdrop of facts and circumstances of the present case, even though we are conscious of the fact that the parents have various reasons to resist the wishes of their daughter, but once the daughter in categorical term on

WEB COPY

> two occasions when she appeared before us, i.e. today and earlier to that on 26.06.2018, expressed her desire to have her own way of life and exercise her fundamental right, we have no hesitation in allowing her to go the way she desires and exercise the constitutional right available to her. She is a free citizen and no one even her parents have a right to curtail or withhold the freedom available to her under the Constitution……..”

For the reasons stated above, this Court sets-aside the order dated 20.03.2020 passed by the learned Additional Chief Judicial Magistrate, Barh (Annexure ‘3’). The respondent no. 5 is directed to release the petitioner from the Observation Home and while doing so, as prayed in paragraph ‘1(A)’ of the present application provide her the medical report of her medical examination said to have been conducted in November, 2020. It will be open to the petitioner to choose her place of residence. It will be equally open to respondent no. 6, who is father of the petitioner, to persuade her to live with the family but the respondent no. 6 shall not indulge in applying any force and would not adopt any extra-judicial method to pressurize this petitioner in any manner whatsoever.

Since this Court has found that the judicial officers are required to be sensitized on the subject, this Court would request Hon’ble the Chief Justice of this Court as Patron of the Bihar Judicial Academy to consider issuing appropriate

WEB COPY

directions to the Director, Bihar Judicial Academy to hold classes on the subject and take efforts to sensitize the judicial officers of the State as to how to deal with such cases in accordance with law.

This Application stands disposed off accordingly.

(Rajeev Ranjan Prasad, J)

Rajeev/-
A.F.R.

U		T	

Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.

WEB COPY