

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11689 of 2018

Based On The News Item Uploaded On The Website Of News App Bar And Bench

... .. Petitioner/s

Versus

The State Of Bihar & Ors

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Rajiv Kumar Srivastava, Advocate
Mr. Aditya Sahay, Advocate

Ms. Anukriti Jaipurayar, *Amicus Curiae*

For the State : Mr. Lalit Kishore, Advocate General
Mr. Manish Dhari Singh, AC to AG

For the Parents : Mr. Vikash Kumar Sharma, Advocate
Mr. N. K. Singh, Advocate
Mr. Jitendra Kumar, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 12-07-2018

Cognizance in the matter was taken by this Court on the basis of certain reports that appeared in the website of a legal journal, i.e. 'Bar & Bench', looking to the seriousness of the matter and the fact that there were allegations against a sitting District & Sessions Judge of this State. The High Court took serious view of the matter and directed for registration of the news item as a writ petition (Habeas Corpus Petition under Article 226 of the Constitution) and on 25th of June, 2018, this Court passed an order directing for production of the corpus at 2:15 P.M. in the Chamber. On 26th June, 2018, the corpus appeared, her parents were also present and after hearing all concerned, a detailed order was passed by this Court



which reads as under:-

“ Pursuant to the order passed yesterday, the corpus in question is present. Amicus Curiae Ms. Anukriti Jaipuriyar interacted with her and has assisted us at the time of hearing, parents of the corpus are also present.

We have heard the Advocate General and other Advocates present and interacted with the corpus and her parents. After talking to the corpus we find that she is not comfortable, staying with her parents and wants to stay separately, it was also stated by her that she has decided to get into wedlock with the person concerned as it was reflected in the news item and has taken this decision on her own without any coercion, pressure or any adverse influence in any manner whatsoever. She further stated that her date of birth is 28.09.1993. She has graduated in Law under the five years course from the Chanakya National Law University, Patna, (CNLU in short) in the year 2016 and wants to prosecute her career and future life in the manner as to be decided by her exercising her own right, as would be deemed appropriate.

Keeping in view the facts and circumstances of the case, the welfare of the corpus and after considering various aspects of the matter, we issue the following directions:-

The corpus shall be lodged immediately in the guest of house of CNLU, Patna for a period of 15 days from today.

We request the Registrar General of this Court, Patna to talk to the Registrar, CNLU, Patna and make all arrangements for stay of the corpus in the guest house of the University for a period of 15 days from today. During this period, the Sr. Superintendent of Police, Patna is requested to ensure that a 24 hours' guard, preferably a Lady Police Officer is present in the premises of the guest house of CNLU, Patna. The S.S.P. Patna shall also ensure that corpus is granted adequate protection during her stay in the guest house. The corpus is free to interact with whomsoever she wishes. She has been provided a Mobile Phone by her parents, at the request of the Court and she is free to talk to anybody or convey her refusal to meet or talk to anybody through the Lady Constable/Officer during her stay at the guest house. However, we grant liberty to the



parents to visit the corpus in the campus and talk to her subject to her consent whenever they wish.

The corpus is requested to remain in Patna till the next date of hearing. She is free to move around in the city of Patna and the Registrar, CNLU, Patna shall make arrangement for her transport during her movement in the city of Patna.

We further direct that the Media shall not publish any news item which would have any adverse effect on the reputation and career of the corpus, or her parents or malign the reputation of her family. Media shall however be free to report about the proceeding held in this Court and refer the order passed by this Court, but shall not print the name of corpus or her parents.

All expenses for the stay of the corpus in the guest house, CNLU, Patna shall be borne by the Law University concerned for the present and further orders in this regard will be passed on the next date. The team of Officers appointed by the S.S.P., Patna to escort the corpus and drop her in the guest house, CNLU, Patna and thereafter they are free to disperse as per the order that may be issued by the S.S.P., Patna.

The Registrar, CNLU, Patna shall visit the corpus once in a day and ensure her day-to-day well being.

We express our gratitude for the assistance rendered during the course of this proceeding by Mr. Lalit Kishore, learned Advocate General.

We direct for listing of this matter at 2.15 PM in chambers on 12th of July, 2018.

Copy of this order be supplied to all concerned by the Office by 4.30 PM today.”

On the last date, looking to the facts as were unfolded, the circumstances that came on record and with a view to give the corpus some time to think over the matter, protective order was passed and she was directed to be lodged in the Guest House of the Chankya National Law University, Patna (CNLU in short) to enable her to reconcile the situation and come out with a stand with regard to her intentions or desire for the future.



Today, the corpus is present along with the *Amicus Curiae* Ms. Anukriti Jaipuriyar, her parents are also present and we have considered the contentions advanced and the statements made.

As far as the corpus is concerned, she, in very categorical term, expressed to us that she intends to marry the person concerned, she has applied for a job and she is proceeding to Delhi to prosecute her career and further life.

The parents are in a state of panic. They are unable to reconcile or accept a situation in which their only daughter has been placed and by filing an interlocutory application being I.A. No.4974 of 2018, have expressed certain apprehension in the matter and wants this Court to enquire into the apprehension.

The question before this Court is as to whether in a habeas corpus petition under Article 226 of the Constitution, when the material available on record shows that the corpus is a major citizen, more than 23 years of age, be permitted to exercise freedom and liberty available to her under the Constitution and choose her own way of life or she be directed to stay with her parents as per their wishes and against her will.

At this stage, we may profitably refer to a recent judgment of the Hon'ble Supreme Court in the case of Shafin Jahan v. Asokan K.M. AIR 2018 SC 1933, where a situation akin to the one arose before the Hon'ble Supreme Court, while dealing with a habeas corpus petition decided by the High Court of Kerala. In that case,



identical situation had arisen where the corpus a 23 years woman wanted to live with a particular person of her own and in that case, serious allegations were made with regard to the conduct of the boy, his family and also certain religious activities that took place in the matter and after evaluating the facts and circumstances and knowing the wishes of the corpus, who was 23 years of aged girl, the Supreme Court laid down the following principles with regard to exercise of jurisdiction in a Habeas Corpus Petition:-

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 detenu 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 status 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.”

We have referred to the principles as laid down by the Hon'ble Supreme Court for the simple reason that before us also the parents of the corpus expressed similar sentiments based on the facts that the corpus is their only daughter and she is being misguided and possibility of her being black mailed and consequence of mis-guidance cannot be ruled out.

We have taken note of the aforesaid and we find that in the



case of **Shafin Jahan** (supra), the Hon'ble Supreme Court goes to observe that “ *in case at hand, father in his own stand and perception may feel that there has been enormous transgression of his right to protect interest of his daughter but his view point or position cannot be allowed to curtail fundamental rights of his daughter who, out of her own volition, married appellant husband.*”

Thereafter, Hon'ble Dr. D. Y. Chandrachud approving the observations made by Hon'ble the Chief Justice goes on to discuss the issue in the following manner:

“72. The schism between Hadiya and her father may be unfortunate. But it was no part of the jurisdiction of the High Court to decide what it considered to be a ‘just’ way of life or ‘correct’ course of living for Hadiya. She has absolute autonomy over her person. Hadiya appeared before the High Court and stated that she was not under illegal confinement. There was no warrant for the High Court to proceed further in the exercise of its jurisdiction under Article 226.....”

Finally, the concept of fundamental right available to a person and the principle of social value and morals and wishes to the parents giving way to the fundamental rights available to the citizen are discussed by the Supreme Court in the following manner:-

“53.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.....”

54. 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 centripetal value of liberty should allow an individual to write his/her script. The individual signature is the insignia of the concept.

55. 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 view point 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 completely erred by taking upon itself the burden of annulling the marriage between the appellant and the respondent no.9 when both stood embedded to their vow of matrimony.”

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 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.

Accordingly, we direct that the corpus be set free. She is free to proceed to any place as she wishes. The corpus is free to move out on her own and prosecute her career and the life in the way she desires.

As the corpus has made a complaint that her original certificates and educational testimonials are with her parents and they are not being given as a result she is unable to prosecute her career and feels frustrated on the aforesaid acts of her parents. The parents on the other hand make a statement that the documents are not available with them and there is no question of giving any document. The corpus thereafter indicated to us that the documents are with her uncle (*Mamaji*) and he on the influence of the parents are not parting with the same. If that be so, the corpus will file a certified copy of this order along with an application giving particulars of the certificates or documents with the Senior Superintendent of Police, Patna and on the same being done, the Senior Superintendent of Police, Patna would proceed as per law to ensure that the documents are released and handed over to the corpus. In case, the Senior Superintendent of Police, Patna, feels that



anybody is creating any hindrance in parting with the documents, he shall be free to register an FIR and proceed against the person concerned in accordance with law for curtailing the rights of the corpus.

During the course of hearing, an order passed by the Hon'ble Supreme Court was brought to our notice. The order which is available on record only speaks about dismissal of the writ petition filed by one Siddharth Bansal. For the present, Siddharth Bansal has not initiated any action in the matter. We had taken cognizance of the matter on the basis of the news items that was brought to our notice and thereafter we passed the aforesaid order and interfered into the matter on the basis of the statement made by the corpus before us and, therefore, dismissal of the writ petition at the instance of Siddharth Bansal does not take away the jurisdiction available to us, nor can it act as a res judicata in dealing with the matter.

As far as the settlement of the bills with respect to staying of the corpus in the Guest House of the CNLU is concerned, the Registrar of the CNLU is directed to forward the bills to the Registrar General of the Patna High Court who shall, after obtaining orders from the Chief Justice on the administrative side, deal with the same.

We may indicate that if the parents feel that any of their legal rights have been violated, this order will not curtail their rights in exercise of their legal remedy in any manner.



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The corpus expressed an apprehension with regard to threat to her and keeping in the view the aforesaid, we request the Senior Superintendent of Police, Patna to give adequate protection to the corpus for going from Patna to a place of her choice. After she reaches her destination, the corpus may claim police protection from the local police of the area where she proposes to reside.

Before parting, we may express our gratitude to the assistance rendered to us by the learned Advocate General Sri Lalit Kishore and *amicus curiae* Ms. Anukriti Jaipuriayar. The High Court Legal Services Committee is directed to pay to the *amicus curiae*, a junior counsel, the fees notified to be paid to a panel lawyer for hearing in such matters.

With the aforesaid, the writ petition stands disposed of.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

Sunil/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	12.07.2018
Transmission Date	

