IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.1355 of 2019

Arising Out of PS. Case No.-7 Year-2019 Thana- GOVINDGANJ District- East Champaran

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[redacted]

... ... Petitioner

Versus

1. The State of Bihar through Principal Secretary, Home (Police) Deptt., Govt. Of Bihar, Patna
2. The District Magistrate, East Champaran at Motihari
3. The Superintendent of Police, East Champaran at Motihari.
4. The Superintendent, Govt. After Care Home, Gaighat, Patna.
5. The S.H.O. Govindganj (Malahi) P.S., Dist.- East Champaran.
6. Ashok Pandey Son of Ramagya Pandey Resident of Village- Balahi Pandey Tola, P.S.- Malahi, Dist.- East Champaran.

... ... Respondents

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Appearance :

For the Petitioner	:	Mr. Bashishtha Narayan Mishra, Advocate Mr. S,N. Rai, Advocate Mr. B.K. Mishra, Advocate Mr. Brij Kishor Mishra, Advocate
For the State	:	Mr. Pushkar Narain Shahi, AAG-VI Mr. Prabhu Narayan Sharma, A.C. to AAG-VI
Amicus Curiae	:	Mr. Prabhat Ranjan, Advocate.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
and
HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)

Date : 05-03-2020

Heard Mr. Bashishtha Narayan Mishra, learned counsel appearing for the petitioner and Mr. Pushkar Narain Shahi, learned Additional Advocate General-VI for the State.

2. This writ petition has been listed before us in view of reference made by a Division Bench which doubted the correctness of the order passed by another Division Bench in ***Cr.WJC No.991 of 2010 (Sahebi Khatoon @ Sahebi vs. State of Bihar & Ors.)***.

3. In the writ petition, the petitioner has prayed for issuance of a writ in the nature of *habeas corpus* for her release from the Government After Care Home, Gaighat Patna.

4. The father of the petitioner Ashok Pandey had submitted a written report on 07.01.2019 at 7.45 p.m. to the officer-in-charge, Govindganj (Malahi) wherein he has alleged that his daughter aged 16 years had gone to Sirni Bazar on 10.12.2018 in the evening for purchasing some medicine and when she did not return for a quite long time, he started inquiring as to her whereabouts and came to know from his co-villagers that she was seen going together with one Dhanjeet Yadav of the same village. When he inquired from the parents and family members of Dhanjeet Yadav in this regard, they started abusing him and said that Dhanjeet Yadav would marry his daughter. He has further alleged that when he came to know that Dhanjeet Yadav and his family members had taken his daughter to Bettiah Court, he went together with his brother

Santosh Pandey to Bettiah Civil Court, but by then they had already left the court premises. On further inquiry, he came to know that a fake mark sheet of matriculation and a fake adhar card recording the date of birth of his daughter as 01.01.1998 was submitted in the office of the Registrar of Marriages along with a false affidavit whereas in the original mark sheet of matriculation her date of birth is recorded as 02.01.2002. He has further alleged that the accused persons have forcibly abducted his daughter and they want to illegally marry her with Dhanjeet Yadav.

5. On the basis of the aforesaid written report, Govindganj (Malahi) P.S. Case No.07 of 2019 dated 07.01.2019 was registered under Sections 363, 366A, 468, 471, 385, 504 and 506 read with 34 of the Indian Penal Code (for short 'the IPC') against Dhanjeet Yadav, his parents and other relatives and investigation was taken up.

6. Upon recovery of the victim, the investigating officer filed a petition on 18.01.2019 for recording her statement under Section 164 of the Code of Criminal Procedure (for short 'the CrPC'). The Magistrate, who recorded her statement assessed her age as 16 years.

7. The daughter of the informant, in her statement under Section 164 of the CrPC, disclosed that she was having affair with Dhanjeet Yadav since last two years. She had left her parents house out of her own volition and married him in a temple at Kothi High School. After marrying him, she had come back to her parents house. She has further stated that she did not establish any physical relationship with Dhanjeet Yadav. She stated that she wants to go together with Dhanjeet Yadav. She has further contended that her family members are inimical to her and she has threat to her life at the hands of one Marmesh son of Ganesh Yadav.

8. After the statement of victim was recorded, an application was filed by the investigating officer before the court of Additional Chief Judicial Magistrate on 18.01.2019 seeking permission to get the victim examined medically at Sadar Hospital Motihari.

9. The said prayer was allowed and the Civil Surgeon, Motihari was requested to depute a lady doctor for medical examination of the victim.

10. Another petition along with a photo copy of admit card issued by the Bihar School Examination Board, Patna was filed on 18.01.2019 by the father of the victim

seeking her release in his favour as she was minor and her date of birth recorded in the admit card was 02.01.2002.

11. Vide order dated 18.01.2019, the learned ACJM, Motihari directed the investigating officer to produce the victim along with her medical examination report.

12. On 19.01.2019, the investigating officer produced the victim after her medical examination with medial report. The doctor, who had examined the victim, had assessed her age between 16 and 17 years.

13. It is reiterated that the learned Magistrate, who had recorded the statement of the victim under Section 164 of the CrPC, had assessed her age to be 16 years. The documents filed by the informant recorded the date of birth of the victim as 02.01.2002. The medical report also suggested that the victim was a minor, but she expressed her desire to go to her *sasural*.

14. Under the circumstances mentioned above, vide order dated 19.01.2019, the learned ACJM, Motihari sent the victim to Short Stay Home at Motihari and directed her parents to produce the original documents regarding her date of birth and adjourned the matter to 25.01.2019 for passing further orders.

15. On 25.01.2019, when the victim was produced from the Short Stay Home, Motihari, the informant filed the original documents showing her date of birth to be 02.01.2002, but learned ACJM, Motihari adjourned the case to 29.01.2019 and, thereafter, to 04.02.2019, 12.02.2019, 15.02.2019, 25.02.2019 and 02.03.2019 for passing further orders and, in the meantime, the victim continued to stay at the Short Stay Home in Motihari.

16. On 02.03.2019, when the victim was produced before the court of ACJM, Motihari, she stated before the court that she does not want to go to her parents' house.

17. Taking into consideration the fact that the victim being a minor is not willing to go with her parents, the learned ACJM, Motihari directed the investigating officer to take her to the After Care Home at Gaighat, Patna to be kept there till attainment of majority.

18. Being aggrieved by the aforesaid order dated 02.03.2019 passed by the learned ACJM, Motihari, the petitioner filed the instant *habeas corpus* writ petition for her release from After Care Home.

19. Before the Division Bench, learned counsel appearing for the petitioner argued that since she got married to

Dhanjeet Yadav of her own volition, she is being harassed by her family members. She submitted that the learned Additional Chief Judicial Magistrate, Motihari ought to have taken note of the fact that otherwise also, if some years were added to the certificate age of the petitioner, she would be deemed to be a major.

20. In support of his submissions, learned counsel appearing for the petitioner had placed reliance on the order passed by a Division Bench of this Court in ***Sahebi Khatoon*** (Supra).

21. In the matter of ***Sahebi Khatoon*** (supra), the petitioner had married a person of her own choice. Her father filed a written complaint before the officer-in-charge of Azam Nagar Police Station alleging therein that his minor daughter has been kidnapped by one Md. Arif and other eight accused persons. During investigation, Md. Arif was arrested and his wife Sahebi Khatoon was produced before the court of Chief Judicial Magistrate, who sent her for medical examination to get her age assessed and her statement was also recorded under Section 164 of the CrPC wherein she stated that she was not kidnapped but she got married with Md. Arif of her own volition. Since the petitioner was found to be aged between 16-

17 and was also carrying pregnancy of 32-34 weeks as per medical assessment, the learned Chief Judicial Magistrate sent her to After Care Home, Gaighat at Patna. She filed a *habeas corpus* writ petition for her release. The Division Bench vide order dated 23.09.2010 apart from directing the release of the petitioner from After Care Home also issued an advisory to be circulated to all Judicial Magistrates that in such cases, women ought to be released to go with the people of their choice in exercise of its jurisdiction under Section 483 of the CrPC.

22. In order to bring clarity to the matter, we deem it appropriate to extract the operative part of the order dated 23.09.2010 passed in ***Sahebi Khatoon*** (supra) hereinunder:

> **23.09.2010** "The facts of the case is that petitioner and respondent no.6 Md. Arif got married as per their own choice and since it was not a marriage of their parents consent, so they thought it proper to go away for some time from their place of residence, in order to get the matter settled. Petitioner and her husband went to Kolkata and for some time they resided there. The father of the petitioner Abdus Salam filed a written complaint before officer-in-charge of Azam Nagar police station alleging that her minor daughter Sahebi Khatoon has been kidnapped by respondent no.6 and other eight

accused persons, Azam Nagar police station case no.76 of 2010 was registered for offence under Section 363, 366, 379, 120B and 34 of the IPC. On 6.7.2010.The respondent no.6 was arrested at Kokata. The petitioner was also brought and produced before Chief Judicial Magistrate, Katihar. She was sent for her medical examination to get her age assessed and her statement was also recorded under Section 164 Cr.P.C.,wherein she narrated her case regarding her marriage with the respondent no.6 being a consented marriage and also that she has not been kidnapped by any one. She also disclosed that on account of this marriage, she is carrying a pregnancy of eight months. The medical report, also disclosed that she is carrying a pregnancy of 32-34 weeks and her age was assessed in between 16-17 years. As per own disclosure of the petitioner she was 20 years but the court assessed it as 18 years. All these facts indicate that even though a police case has been instituted against respondent no.6, alleging kidnapping of the petitioner but in reality it was not a case of kidnapping, rather it was a case of elopement. The petitioner being practically major, on account of her age being 16-17 years, and by adding three years as per the judgment of the Apex Court in Jaimala Vrs. Home Secretary, Govt. of Jammu and Kashmir reported in AIR 1982 SC 1297, her age should have been presumed to be 19 years which is the age of majority. Being major she was legally

entitled to decide her own fate and to live with the person of her choice. In the given facts and circumstances of case, there was no reason to arrest the respondent no.6, and for sending the petitioner to after Care Home at Patnacity.

The Chief Judicial Magistrate, Katihar, without considering the legal aspect of the matter, and completely ignoring the medical report, as well as the statement of the petitioner recorded under Section 164of the Cr.P.C, passed an order of remand of petitioner to after Care Home at Patnacity. By passing the impugned order, the C.J.M., Katihar committed illegality also for the reason that even though the petitioner was not an accused in any case, either in a police case or in a complaint case, she was treated as an accused, and sent to Remand Home, which was nothing but illegal confinement of the petitioner. There was no reason for sending her to Remand Home,when she had expressed her desire to go and live with her parents in law.

This kind of illegality is being committed repeatedly by Judicial Officers throughout the State of Bihar. In so many cases, of similar facts we have passed such orders, but still we find, similar error being committed by courts, due to which Criminal Writs, for issuance of Habeas Corpusare repeatedly being filed. In such case, confinement of writ petitioners (girls who are majors) at Remand Home is illegal confinement and fit for issuance of Writ of Habeaus Corpus.

Section 483 of the Cr.P.C. imposes a duty on High Courts to exercise continuous superintendence over the courts; Judicial Magistrate, Subordinate to it, and to see that cases are expeditiously and properly disposed of by such Courts. In present nature of case, it seems to have been essential that a general direction be issued to all Magistrates of Subordinate Courts to exercise their jurisdiction, properly and judiciously. In exercise of jurisdiction u/S 483 Cr.P.C. all Judicial Magistrates/Chief Judicial Magistrates throughout the State of Bihar are directed to, decide such cases in the light of the decision of the Apex Court in Jaimala Vrs. Home Secretary, Govt. of Jammu and Kashmir reported in AIR 1982 SC 1297. The girl should be treated as major if she is assessed to be of an age in between 16 to 17 years as per the medical report and also as per own assessment. In such cases, instead of sending such girls to Remand Home or after Care Home, they should be released to go with the people of their choice. This order should be circulated to all Chief Judicial Magistrate and all Judicial Magistrates in the State of Bihar for proper compliance.

The petitioner Sahebi Khatoon @ Sahebi, has suffered a lot, on account of her illegal confinement, as she has lost her baby. Due to lack of care and proper treatment she gave birth to a dead child. Petitioner's husband Respondent

> no.6 is present and eager to take his wife along with him. She is being released to go in the company of her husband from the court itself. In case any formalities are to be completed before being released from the Remand Home, the petitioner and her husband will go to the Remand Home and complete that formality."
>
> (emphasis supplied)

23. The Division Bench hearing the instant case on 23.09.2019 took a view that in a petition seeking a writ of *habeas corpus,* the provision of Section 483 of the CrPC could not have been invoked for passing a general direction and setting aside the order passed by the Chief Judicial Magistrate because any judicial order, if set aside under Articles 226 and 227 of the Constitution of India, is in the exercise of constitutional powers granted to the court, viz., the power to issue writ of *certiorari* to correct the apparent error in a judicial order. The Bench was of the view that if by a judicial order, a minor girl was sent to After Care Home, she cannot be said to be in illegal detention. The Bench was also of the view that the order may be improper or it may not have taken into account relevant factors, social/judicial, but remand in an After Care Home cannot be said to be an illegal detention and thereby providing this Court the jurisdiction to issue a writ of *habeas corpus*.

24. Since the order passed in ***Sahebi Khatoon*** (supra) was also by a two-judge Bench, in the instant case, the Division Bench thought it appropriate to refer this matter to Hon'ble the Chief Justice on the administrative side to constitute a larger Bench so that it could be decided whether such a direction could be given and circulated to all the judicial Magistrates/Chief Judicial Magistrates.

25. While referring the case to Hon'ble the Chief Justice to constitute a larger Bench, the Division Bench framed the following issues to be decided by larger Bench :-

> "(1) Whether, in a petition for issuance of writ of *habeas corpus*, an order passed by a Magistrate could be assailed and set-aside;
>
> (2) Whether an order of remand passed by a Judicial Magistrate could be reviewed in a petition seeking the writ of *habeas corpus*, holding such order of remand to be an illegal detention;
>
> (3) Whether an improper order could be termed/viewed as an illegal detention;
>
> (4) Whether under Section 483 Cr.P.C., a Division Bench of this Court, exercising constitutional powers of issuing prerogative writs, especially writ of *habeas*

> *corpus*, could issue general directions to all the Magistrates/Chief Judicial Magistrates of the State of Bihar for releasing such women and permitting them to go along with the people of their choice, who are minors and are brought before them (Magistrates) with the charge of their having married somebody of their own volition."

26. Since the reference was desired to be resolved by a larger Bench, the same has come up for consideration before us under the orders of Hon'ble the Chief Justice.

27. Mr. Bashishtha Narayan Mishra, learned counsel appearing for the petitioner submitted that the petitioner was having affair with Dhanjeet Yadav since last two years and she solemnized her marriage with him out of her own sweet will. She left her house on 10.12.2018. Her date of birth is 01.01.1998, but in the school register her date of birth has been wrongly recorded at the instance of her father as 02.01.2002. He contended that her father filed Govindganj (Malahi) P.S. Case No. 07 of 2019 against her husband and his family members alleging falsely that the accused persons had kidnapped his daughter aged about 16 years for the purpose of marriage. He contended that the petitioner got her statement recorded under

Section 164 of the CrPC on 18.01.2019 in which she has categorically stated that she had solemnized marriage with Dhanjeet Yadav out of her own sweet will. He contended that the petitioner has been illegally confined in After Care Home at Gaighat, Patna against her will. She is neither an accused in any case nor forcibly abducted by anyone nor her marriage was against her will. He argued that the right of the petitioner guaranteed under Article 21 of the Constitution of India has been infringed as she is being punished for marrying a boy of her own choice. He urged that it is well settled that the marriage solemnized may be voidable but not void. He contended that due to the illegal detention in the After Care Home, the petitioner is being denied her right to live with her husband. He has further alleged that the date of birth mentioned in the school certificate and the school register is erroneous. He has further contended that his case is fully covered with the decision of this Court in ***Sahebi Khatoon*** (supra).

28. Mr. Mishra, learned counsel appearing for the petitioner has submitted, on the issues referred by the Division Bench, that as the order impugned whereby the petitioner has been directed to be kept in an After Care Home is illegal, a writ in the nature of *habeas corpus* would be

maintainable before this Court. He contended that since Section 483 of the CrPC gives power of Superintendence to the High Court over the courts of Judicial Magistrates subordinate to it to ensure that there is proper disposal of cases by such Magistrates while exercising powers under Article 226 of the Constitution of India, this Court may *suo motu* exercise such power for quashing an illegal order passed by a Magistrate. He contended that in an appropriate case, this Court would be justified in issuing general directions to all the Magistrates including the Chief Judicial Magistrates of the State of Bihar for releasing similarly circumstanced detenues. According to him, even if a minor aged about 16 years and above is brought before the Magistrate with the charge of her having married somebody on her own volition, the Magistrate would not be justified in sending her to an After Care Home or Protection Home. In support of his submissions, he has placed reliance on the decision of the Supreme Court in ***Jaya Mala vs. Home Secretary, Government of J. & K. & Ors. [AIR 1982 SC 1297].***

29. *Per contra*, Mr. Pushkar Narain Shahi, learned Additional Advocate General appearing for the State submitted that in a writ seeking a writ of *habeas corpus*, the provision of Section 483 of the CrPC can not be invoked for

passing a general direction and setting aside the order passed by the Chief Judicial Magistrate. He contended that in case of any illegality in the judicial order of remand, the High Court by issuing a writ of *certiorari* may quash the same. However, while exercising the constitutional power of prerogative writ especially writ of *habeas corpus*, this Court cannot issue general direction in exercise of powers under Section 483 of the CrPC to all the Magistrates/Chief Judicial Magistrate of the State of Bihar for releasing such women and permitting them to go along with person of their choice, who are minors and are brought before them with the charge of their having married somebody on their own volition. He has further contended that in the ***Independent Thought vs. Union of India & Anr., [(2017) 10 SCC 800]***, the Supreme Court has held that exception 2 to Section 375 of the IPC insofar as it relates to a girl child below 18 years is arbitrary and inconsistent with the provisions of POCSO Act, 2012 and, therefore, violative of Articles 14, 15 and 21 of the Constitution of India. He contended that after the judgment in ***Independent Thought*** (supra), notwithstanding consent, sexual intercourse with a girl below 18 years of age would constitute an offence of rape under Section 375 of the Indian Penal Code. Thus, under no circumstance, a minor girl

can be permitted to go along with the person of her choice on the ground of solemnizing marriage with him of her own volition.

30. Having heard the parties, apart from considering the issues referred by the Division Bench, we need to deal with certain ancillary issues attached in cases of elopement of minor girls and on recovery, sending them to Nari Niketan/Protection Home/ Care Home. These issues may be summarized as:-

(I) Applicability of Supreme Court's judgment in the matter of ***Jaya Mala*** (supra) in cases of elopement.

(II) Role of courts as *parens patriae*.

(III) Whether release of a minor girl child to the husband would violate the ratio as pronounced by the Supreme Court in the matter of ***Independent Thought***?

31. Before discussing the applicability of writ of *habeas corpus* in case of remand in contravention of the law, we need to firstly examine the meaning and the scope of the writ of *habeas corpus*. The Latin phrase *habeas corpus* means literally that "you", that is, the person with custody over the prisoner,

must "have the body" of the prisoner produced in court at the place and time ordered by a judge. The writ of *habeas corpus* provides individuals with protection against arbitrary and wrongful imprisonment.

32. The meaning of the term *habeas corpus* is "you must have the body". In Halsbury Laws of England, 4th Edition, Vol.11, p.1452, p.768, it is observed :

> "The writ of *habeas corpus ad subjiciendum*" which is commonly known as the writ of *habeas corpus*, is a prerogative process for securing the liberty of the subject by affording an effective means of immediate release from the unlawful or unjustifiable detention whether in prison or in private custody. It is a prerogative writ by which the queen has a right to inquire into the causes for which any of her subjects are deprived of their liberty. By it the High Court and the judges of that Court, at the instance of a subject aggrieved, command the production of that subject, and inquiry into the cause of his imprisonment. If there is no legal justification for the detention, the party is ordered to be released. Release on *habeas corpus* is not, however, an acquittal, nor may the writ be used as a means of appeal."

33. *Habeas corpus ad subjiciendum* means "that you have the body to submit or answer."

34. May in his Constitutional History of England (1912), Vol.II, p.130, described writ of *habeas corpus* as "the first security of civil liberty". Blackstone called the writ of *habeas corpus* as "the great and efficacious writ in all manner of illegal confinement."

35. Julius Stone in Social Dimensions of Law and Justice, (1966), p.203 described the writ of *habeas corpus* as a picturesque writ with an extraordinary scope and flexibility of an application.

36. According to Dicey (A. V. Dicey), Introduction to the Study of Law of the Constitution, Macmillan and Co., Ltd., p.215(1915): "if, in short, any man, woman or child is, or is asserted on apparently good grounds to be deprived of liberty, the court will always issue a writ of *habeas corpus* to anyone who has the aggrieved person in his custody to have such person brought before the court and if he is suffering restraint without lawful cause, set him free."

37. In ***Greene vs. Home Secretary, (1941) 3 All ER 388*****,** it has been observed :

> "*Habeas corpus* is a writ in the nature of an order calling upon the person who has

> detained another to produce the later before the court, in order to let the court know on what ground he has been confined and to set him free if there is no legal jurisdiction of imprisonment."

38. The prerogative writ of *habeas corpus* ad subjiciendum is the most renowned contribution of English common law to the protection of human member.

39. In India, the jurisdiction to issue prerogative writs came with the establishment of the Supreme Court by regulating Act of 1773. The charter of 1774 gave power to each of the justices of the Supreme Court of Calcutta to issue a writ of *habeas corpus.* The three Supreme Courts in Calcutta, Bombay and Madras by the Act of Parliament in 1861 were abolished and High Courts were established and the power to issue writs of *habeas corpus* was inherited by them. This power to issue writ of *habeas corpus* was taken away from 1875 and new power of the High Court arose under Section 491 of the Code of Criminal Procedure, 1898 to issue statutory directions in the nature of *habeas corpus*. By Articles 32 and 226, the Supreme Court and all the High Courts got jurisdiction to issue writ of *habeas corpus* throughout their respective territorial jurisdiction when the Constitution came into force.

40. Article 21 of the Constitution of India provides that no person shall be deprived of his life or personal liberty except according to procedure established by law.

41. In ***Smt. Maneka Gandhi vs. Union of India & Anr., [AIR 1978 SC 597]***, the Supreme Court held that procedure established by law as contemplated by Article 21 should be just, fair and reasonable and any unjust, unfair and unreasonable procedure by which liberty of a person is taken away shall destroy such freedom.

42. Article 22 empowers enactment of legislation providing for preventive detention. But no one can be detained for a period longer than two months unless an Advisory Board has opined that there is, in its opinion, sufficient cause for its detention. There are safeguards of furnishing of grounds of detention and rights of representation.

43. A writ of *habeas corpus* under Article 32 of the Constitution of India in the Supreme Court is available in case of violation of fundamental rights guaranteed under Article 21 but it does not relate to interference with the personal liberty by a private citizen. However, the High Court has jurisdiction to issue writ of *habeas corpus* under Article 226 of the Constitution of India not only for violation of fundamental

rights of freedom but also for other purposes. The High Court can issue such writ against a private person also.

44. *Habeas corpus* writ is most commonly used in India as a remedy in case of preventive detention because in such cases, the validity of the order detaining the detenue is not subject to challenge in any other court and it is only the writ jurisdiction which is available to the aggrieved party. However, the scope of petition of *habeas corpus* has been expanded over a period of time. A writ of *habeas corpus* is also preferred for custody of child or in some cases for custody of wife. But, there are certain limitations to this writ. The most important limitation is that before issuing any writ of *habeas corpus,* the court must come to the conclusion that the detenue is under detention without any authority of law.

45. By now, it is well settled that the earliest date with reference to which the legality of detention challenged in a *habeas corpus* procedure may be examined is the date on which the application for *habeas corpus* is made to the court.

46. The Constitution Bench of the Supreme Court in the case of ***Kanu Sanyal vs. District Magistrate, Darjeeling & Ors., [(1973) 2 SCC 674]***, dealing with the nature and scope of the writ of *habeas corpus* observed as under:-

"It will be seen from this brief history of the writ of habeas corpus that it is essentially a procedural writ. It deals with the machinery of justice, not the substantive law. The object of the writ is to secure release of a person who is illegally restrained of his liberty. The writ is, no doubt, a command addressed to a person who is alleged to have another person unlawfully in his custody requiring him to bring the body of such person before the Court, but the production of the body of the person detained is directed in order that the circumstances of his detention may be inquired into, or to put it differently, "in order that appropriate judgment be rendered on judicial enquiry into the alleged unlawful restraint". The form of the writ employed is "We command you that you have in the King's Bench Division of our High Court of Justice — immediately after the receipt of this our writ, the body of A.B. being taken and detained under your custody — together with the day and cause of his being taken and detained — *to undergo and receive all and singular such matters and things as our court shall then and there consider of concerning him in this behalf*". The italicized words show that the writ is primarily designed to give a person restrained of his liberty a speedy and effective remedy

> for having the legality of his detention enquired into and determined and if the detention is found to be unlawful, having himself discharged and freed from such restraint. The most characteristic element of the writ is its peremptoriness and, as pointed out by Lord Halsbury, L.C., in *Cox* v. *Hakes (supra),* "the essential and leading theory of the whole procedure is the immediate determination of the right to the applicant's freedom" and his release, if the detention is found to be unlawful. That is the primary purpose of the writ; that is its substance and end. ..."

47. In ***Basant Chandra Ghose vs. King Emperor [1945 (7) F.C.R. 81]***, the Federal Court concluded :

> *"*… If at any time before the Court directs the release of the detenue, a valid order directing his detention is produced, the Court cannot direct his release merely on the ground that at some prior stage there was no valid cause for detention. ..."

48. In ***A.K. Gopalan vs. Government of India, [AIR 1966 SC 816]***, the Supreme Court speaking through Wanchoo, J., held:

> "It is well-settled that in dealing with a petition for habeas corpus the Court has to

> see whether the detention on the date on which the application is made to the Court is legal, if nothing more has intervened between the date of the application and the date of hearing. ...”

49. In **T*alib Hussain vs. State of J&K, [(1971) 3 SCC 118]***, the Supreme Court observed :

> “... in habeas corpus proceedings the Court has to consider the legality of the detention on the date of hearing. ...”

50. In ***Janardan Reddy & Ors. vs. The State of Hyderabad & Ors., [1951 SCR 344]***, the petitioners, who were convicted by a Special Tribunal of Hyderabad of murder and other offences and sentenced to death by hanging and whose conviction and sentence have been confirmed by the Hyderabad High Court applied to the Supreme Court under Article 32 for writs of prohibition, *certiorari* and *habeas corpus*. While considering the maintainability of the writ petition, the Supreme Court observed that there is a basic difference between want of jurisdiction and an illegal or irregular exercise of jurisdiction, mere non-compliance with the rules of procedure (e.g, misjoinder of charges) cannot be made a ground for granting a writ under Article 32 of the Constitution. The defect, if any, can,

according to the procedure established by law, be corrected only by a court of appeal or revision, and if the appellate court which was competent to deal with the matter has considered the matter and pronounced its judgment, it cannot be reopened in a proceeding under Article 32 of the Constitution. The Supreme Court further observed that the writ of *habeas corpus* could not be granted as a return that the person is in detention in execution of a sentence on indictment of a criminal charge, is sufficient answer to an application for such a writ.

51. In ***Col. Dr. B. Ramachandra Rao vs. The State of Orissa & Ors., [(1972) 3 SCC 256]***, the Supreme Court held that a writ petition cannot be issued where a person is committed to jail custody by a competent court by an order which *prima facie* does not appear to be without jurisdiction or wholly illegal.

52. Thus, it can be held that a writ of *habeas corpus* could not be issued, firstly, in cases where the detention or custody is authorized by an order of remand issued by a competent court of jurisdiction and secondly, where a person is committed to jail by a competent court by an order which does not appear to be without jurisdiction.

53. On careful perusal of the above discussion, it

can be said convincingly that there is a common factor which justifies the detention of the accused and i.e. **"the order has to be passed by a court of competent jurisdiction"**.

54. A major question that comes before the Court is whether a writ of *habeas corpus* lies against the order of any remand by any court.

55. A plethora of judgments speak about it and it is a settled proposition that no writ of *habeas corpus* lies against an order of remand made by a competent court of jurisdiction. However, we proceed to examine the relevant judgments and the circumstances under which it could be applied.

56. Additionally, we need to see the difference between illegal and irregular orders. These variations need to be examined one by one.

57. Thereafter, the issue of the consequences on an order of remand without jurisdiction and whether it is mere irregularity or it turns into illegality shall be discussed.

58. In ***Manubhai Ratilal Patel vs. State of Gujrat & Ors. [(2013) 1 SCC 314]*****,** the accused was arrested on 16.07.2012 and was produced before the learned Magistrate 1st Class on 17.07.2012 at 4:00 p.m. On the prayer of police for remand, the police custody was granted by the learned

Magistrate upto 2:00 p.m. on 19.07.2012. However, on 18.07.2012 only, it was brought to the notice to concerned investigating agency about the stay order passed by the High Court on l7.07.2012 and the prayer was made not to proceed further with the investigation in obedience to the order passed by the High Court.

59. Being aggrieved by the aforesaid order, the accused preferred criminal miscellaneous application before the court of Sessions Judge, but the same was rejected. Dissatisfied with the aforesaid orders, the accused preferred a *habeas corpus* petition before the High Court of Gujarat. It was contended before the High Court that since the investigation was stayed by the High Court in exercise of power under Section 482 of the CrPC, the learned Magistrate could not have exercised power under Section 167(2) of the CrPC remanding the accused either to the police or judicial custody.

60. The High Court of Gujarat held that it was not possible to accept the stand that once the investigation was stayed, there could not have been exercise of jurisdiction under Section 167(2) of the CrPC, for stay of investigation, would not obliterate the FIR or the investigation that had been already carried out pursuant to the lodging of the FIR. The High Court

further observed that solely because the investigation was stayed, it would not be apposite to say that there was no investigation and the orders passed by the learned Magistrate was flawed. As the orders of remand could not be said to be a part of investigation, the said order was not in conflict with the order passed under Section 482 of the CrPC. Finally, the High Court observed that illegal or unauthorized detention or confinement is a *sine qua non* for entertaining a petition for writ of *habeas corpus* and the custody of the petitioner being in pursuance of a judicial act, it could not be termed as illegal.

61. Being aggrieved by the order passed by the High Court, the accused challenged the order of remand before the Supreme Court. After extensively dealing with the object, purpose and importance of the writ of *habeas corpus,* the Supreme Court held as follows :-

> "24. The act of directing remand of an accused is fundamentally a judicial function. The Magistrate does not act in executive capacity while ordering the detention of an accused. While exercising this judicial act, it is obligatory on the part of the Magistrate to satisfy himself whether the materials placed before him justify such a remand or, to put it differently, whether there exists reasonable grounds to commit the accused to custody

and extend his remand. The purpose of remand as postulated under Section 167 is that investigation cannot be completed within 24 hours. It enables the Magistrate to see that the remand is really necessary. This requires the investigating agency to send the case diary along with the remand report so that the Magistrate can appreciate the factual scenario and apply his mind whether there is a warrant for police remand or justification for judicial remand or there is no need for any remand at all. It is obligatory on the part of the Magistrate to apply his mind and not to pass an order of remand automatically or in a mechanical manner.

25. It is apt to note that in *Madhu Limaye, In re* [(1969) 1 SCC 292] it has been stated that: (SCC p. 299, para 12)

> "*12.* Once it is shown that the arrests made by the police officers were illegal, it was necessary for the State to establish that at the stage of remand the Magistrate directed detention in jail custody after applying his mind to all relevant matters."

62. While dealing with the issue of entertaining a *habeas corpus* writ, when a person is remanded to judicial custody or police custody by the competent court, the Supreme

Court further held as follows :-

> "31. Coming to the case at hand, it is evincible that the arrest had taken place a day prior to the passing of the order of stay. It is also manifest that the order of remand was passed by the learned Magistrate after considering the allegations in the FIR but not in a routine or mechanical manner. It has to be borne in mind that the effect of the order [*Manubhai Ratilal Patel* v. *State of Gujarat*, Criminal Misc. Application No. 10303 of 2012, order dated 17-7-2012 (Guj)] of the High Court regarding stay of investigation could only have a bearing on the action of the investigating agency. The order of remand which is a judicial act, as we perceive, does not suffer from any infirmity. The only ground that was highlighted before the High Court as well as before this Court is that once there is stay of investigation, the order of remand is sensitively susceptible and, therefore, as a logical corollary, the detention is unsustainable. It is worthy to note that the investigation had already commenced and as a resultant consequence, the accused was arrested. Thus, we are disposed to think that the order [*Manubhai Ratilal Patel* v. *State of Gujarat*, Special Criminal Application No. 2207 of 2012, decided on 7-8-2012 (Guj)] of

remand cannot be regarded as untenable in law. **It is well-accepted principle that a writ of habeas corpus is not to be entertained when a person is committed to judicial custody or police custody by the competent court by an order which prima facie does not appear to be without jurisdiction or passed in an absolutely mechanical manner or wholly illegal**. As has been stated in *B. Ramachandra Rao* [(1972) 3 SCC 256 : 1972 SCC (Cri) 481] and *Kanu Sanyal* [(1974) 4 SCC 141 : 1974 SCC (Cri) 280] , the court is required to scrutinise the legality or otherwise of the order of detention which has been passed. Unless the court is satisfied that a person has been committed to jail custody by virtue of an order that suffers from the vice of lack of jurisdiction or absolute illegality, a writ of habeas corpus cannot be granted. It is apposite to note that the investigation, as has been dealt with in various authorities of this Court, is neither an inquiry nor trial. It is within the exclusive domain of the police to investigate and is independent of any control by the Magistrate. The sphere of activity is clear cut and well demarcated. Thus viewed, we do not perceive any error in the order passed by the High Court refusing to grant a writ of habeas corpus as the detention by virtue of the judicial order passed by the

> Magistrate remanding the accused to custody is valid in law."
>
> (emphasis supplied)

63. In ***Saurabh Kumar vs. Jailor, Koneila Jail & Anr., [(2014) 13 SCC 436]***, the petitioner, who was in judicial custody by virtue of order passed by Judicial Magistrate had filed a writ of *habeas corpus* under Article 32 read with Articles 14, 21, 22 of the Constitution of India for a direction to the respondents to produce him before the Supreme Court and also to direct respondent State to devise a way to prevent malicious arrest and detention by the police that too without maintaining necessary record and further to direct the State to pay the petitioner compensation considering that the detention is a black mark on his future career prospects. While dismissing the writ petition, the Supreme Court observed :

> "The only question with which we are concerned within the above backdrop is whether the petitioner can be said to be in the unlawful custody. Our answer to that question is in the negative. The record which we have carefully perused shows that the petitioner is an accused facing prosecution for the offences, cognizance whereof has already been taken by the competent court. **He is presently in custody pursuant to the order**

> **of remand made by the said Court. A writ of habeas corpus is, in the circumstances, totally misplaced**. Having said that, we are of the view that the petitioner could and indeed ought to have filed an application for grant of bail which prayer could be allowed by the court below, having regard to the nature of the offences allegedly committed by the petitioner and the attendant circumstances. The petitioner has for whatever reasons chosen not to do so. He, instead, has been advised to file the present petition in this Court which is no substitute for his enlargement from custody."
>
> (emphasis supplied)

64. In ***State of Maharashtra & Ors. vs. Tasneem Rizwan Siddiquee, [(2018) 9 SCC 745]***, the question before the Supreme Court was again as to whether a writ of *habeas corpus* could be maintained in respect of a person who is in police custody pursuant to remand order passed by the Jurisdictional Magistrate in connection with offence under investigation. In that case relying on the ratio laid down in ***Saurabh Kumar vs. Jailor, Koneila Jail & Anr.*** (supra) and ***Manubhai Ratilal Patel vs. State of Gujrat & Ors.*** (supra), the Supreme Court held as follows :-

"The question as to whether a writ of habeas corpus could be maintained in respect of a person who is in police custody pursuant to a remand order passed by the jurisdictional Magistrate in connection with the offence under investigation, this issue has been considered in *Saurabh Kumar* v. *Jailor, Koneila Jail* [(2014) 13 SCC 436 : (2014) 5 SCC (Cri) 702] and *Manubhai Ratilal Patel* v. *State of Gujarat* [(2013) 1 SCC 314 : (2013) 1 SCC (Cri) 475] . It is no more res integra. **In the present case, admittedly, when the writ petition for issuance of a writ of habeas corpus was filed by the respondent on 18-3-2018/19-3-2018 and decided by the High Court on 21-3-2018** [*Tasneem Rizwan Siddiquee* v. *State of Maharashtra*, 2018 SCC OnLine Bom 2712] **her husband Rizwan Alam Siddiquee was in police custody pursuant to an order passed by the Magistrate granting his police custody in connection with FIR No. I-31 vide order dated 17-3-2018 and which police remand was to enure till 23-3-2018. Further, without challenging the stated order of the Magistrate, a writ petition was filed limited to the relief of habeas corpus. In that view of the matter, it was not a case of continued illegal detention but the incumbent was in judicial custody by virtue of an order**

> **passed by the jurisdictional Magistrate, which was in force, granting police remand during investigation of a criminal case. Resultantly, no writ of habeas corpus could be issued.**"
>
> (emphasis supplied)

65. In ***Serious Fraud Investigation Office vs. Rahul Modi & Anr., [(2019) 5 SCC 266]***, the Supreme Court cancelled bail granted by the Delhi High Court to Rahul Modi and Mukesh Modi accused of duping investors of several hundred crores through a ponzi scheme run by their Gujarat based other co-operative societies. Both the accused were released by the Delhi High Court in a *habeas corpus* writ petition even though they were remanded to judicial custody under the orders of a competent court. After elaborately dealing with the ratio laid down by the Supreme Court in earlier cases, the Supreme Court held as follows :-

> "**The act of directing remand of an accused is thus held to be a judicial function and the challenge to the order of remand is not to be entertained in a habeas corpus petition.** The first question posed by the High Court, thus, stands answered. In the present case, as on the date when the matter was considered by the High Court and the

order was passed by it, not only were there orders of remand passed by the Judicial Magistrate as well as the Special Court, Gurugram but there was also an order of extension passed by the Central Government on 14-12-2018. The legality, validity and correctness of the order or remand could have been challenged by the original writ petitioners by filing appropriate proceedings. However, they did not raise such challenge before the competent appellate or revisional forum. The orders of remand passed by the Judicial Magistrate and the Special Court, Gurugram had dealt with merits of the matter and whether continued detention of the accused was justified or not. After going into the relevant issues on merits, the accused were remanded to further police custody. These orders were not put in challenge before the High Court. It was, therefore, not open to the High Court to entertain challenge with regard to correctness of those orders. The High Court, however, considered the matter from the standpoint whether the initial order of arrest itself was valid or not and found that such legality could not be sanctified by subsequent order of remand. Principally, the issue which was raised before the High Court was whether the arrest could be effected after period of investigation, as stipulated in the

> said order dated 20-6-2018 had come to an end. The supplementary issue was the effect of extension of time as granted on 14-12-2018. It is true that the arrest was effected when the period had expired but by the time the High Court entertained the petition, there was an order of extension passed by the Central Government on 14-12-2018. Additionally, there were judicial orders passed by the Judicial Magistrate as well as the Special Court, Gurugram, remanding the accused to custody. **If we go purely by the law laid down by this Court with regard to exercise of jurisdiction in respect of habeas corpus petition, the High Court was not justified in entertaining the petition and passing the order.**"
>
> (emphasis supplied)

66. We have seen, hereinabove, in ***Kanu Sanyal vs. District Magistrate, Darjeeling & Ors.*** (supra) that while dealing with writ of *habeas corpus*, the Supreme Court has held that it is essentially a procedural writ. It deals with the machinery of justice and not the substantive law. The object of the writ is to secure release of a person who is illegally restrained of his liberty. In ***Manubhai Ratilal Patel vs. State of Gujrat & Ors.*** (supra), the Supreme Court has held that a writ

of *habeas corpus* is not to be entertained when a person is committed to judicial custody or police custody by the competent court by an order which *prima facie* does not appear to be without jurisdiction or passed in an absolutely mechanical or wholly illegal manner. In ***Saurabh Kumar vs. Jailor, Koneila Jail & Anr.*** (supra), the Supreme Court has held that since the petitioner was in judicial custody by virtue of an order passed by a Judicial Magistrate and, hence, it could not be held to be an illegal detention. The Supreme Court has further held that even if the Magistrate has acted mechanically in remanding the accused to judicial custody and has dealt with the process in a cavalier fashion which shows inconsistencies towards the denial of personal liberty of citizen, a writ of *habeas corpus* would not be maintainable. In ***State of Maharashtra & Ors. vs. Tasneem Rizwan Siddiquee*** (supra), the Supreme Court has held that no writ of *habeas corpus* could be issued when the detenue was in detention pursuant to an order passed by the Court. In ***Serious Fraud Investigation Office vs. Rahul Modi & Anr.*** (supra), the Supreme Court has held that the action of directing remand of an accused is a judicial function and challenge to the same is not to be entertained in *habeas corpus* writ petition.

67. Thus, it is evident that a writ of *habeas corpus* would not be maintainable, if the detention in custody is pursuant to judicial orders passed by a Judicial Magistrate or a court of competent jurisdiction. It is further evident that an illegal or irregular exercise of jurisdiction by a Magistrate passing an order of remand cannot be treated as an illegal detention. Such an order can be cured by way of challenging the legality, validity and correctness of the order by filing appropriate proceedings before the competent revisional or appellate forum under the statutory provisions of law but cannot be reviewed in a petition seeking the writ of *habeas corpus*.

68. We, accordingly, sum up our conclusions in respect of the first three issues for determination as follows:-

Question No.1 : "Whether, in a petition for issuance of writ of *habeas corpus*, an order passed by a Magistrate could be assailed and set-aside ?"

Answer : Our irresistible conclusion in view of the ratio laid down by the Supreme Court in the aforementioned cases is that a writ of *habeas corpus* would not be maintainable, if the detention in custody is as per judicial orders

passed by a Judicial Magistrate or a court of competent jurisdiction. Consequently an order of remand passed by a Judicial Magistrate having competent jurisdiction cannot be assailed or set aside in a writ of *habeas corpus*.

Question No.2: "Whether an order of remand passed by a Judicial Magistrate could be reviewed in a petition seeking the writ of *habeas corpus*, holding such order of remand to be an illegal detention ?"

Answer: An illegal or irregular exercise of jurisdiction by a Magistrate passing an order of remand can be cured by way of challenging the legality, validity and correctness of the order by filing appropriate proceedings before the competent revisional or appellate court under the statutory provisions of law. Such an order of remand passed by a Judicial Magistrate of competent jurisdiction cannot be reviewed in a petition seeking the writ of *habeas corpus*.

Question No.3 : "Whether an improper order could be termed/viewed as an illegal

detention ?"

Answer: In view of the clear, unambiguous and consistent view of the Supreme Court in the aforediscussed cases, we unhesitatingly conclude and hold that an illegal order of judicial remand cannot be termed/viewed as an illegal detention.

69. Thus, the first three issues referred for determination are answered, accordingly.

70. The last issue referred for determination by this Bench is :-

> "(4) Whether under Section 483 Cr.P.C., a Division Bench of this Court, exercising constitutional powers of issuing prerogative writs, especially writ of *habeas corpus*, could issue general directions to all the Magistrates/Chief Judicial Magistrates of the State of Bihar for releasing such women and permitting them to go along with the people of their choice, who are minors and are brought before them (Magistrates) with the charge of their having married somebody of their own volition."

71. Section 482 of the CrPC empowers the High Court to make such orders as may be necessary to secure ends of justice in exercise of inherent powers.

72. Section 483 of the CrPC, 1973 casts a duty upon every High Court to exercise its continuous superintendence over trial courts subordinate to it to ensure that there is expeditious and proper disposal of cases by such courts. Section 483 of the CrPC reads as hereunder :-

> **"483. Duty of High Court to exercise continuous superintendence over Courts of Judicial Magistrates**.—Every High Court shall so exercise its superintendence over the Courts of Judicial Magistrates subordinate to it as to ensure that there is an expeditious and proper disposal of cases by such Magistrates."

73. Article 227 of the Constitution also confers on the High Court power of superintendence over all the subordinate courts to exercise powers.

74. In ***TGN Kumar vs. State of Kerala & Ors., [(2011) 2 SCC 772]***, an appeal was filed by the appellant before the Supreme Court against an order passed by the High Court of Kerala whereby a number of general directions had been issued to all the criminal courts, which were called upon to hold trials, particularly in cases involving an offence under Section 138 of the Negotiable Instruments Act, 1881, as also in all other cases

involving offences which were technical in nature and did not involve any moral turpitude.

75. While granting leave to appeal, a Bench of two learned Judges of the Supreme Court referred the case to a larger Bench, posing the following question for determination:

> "One of the questions which arises for consideration in this special leave petition is as to whether the High Court in exercise of its jurisdiction under Sections 482 and 483 of the Code of Criminal Procedure and/or under Article 227 of the Constitution of India could issue guidelines directing all courts taking cognizance of offences under Section 138 of the Negotiable Instruments Act inter alia to invoke the discretion under Section 205 of the Code of Criminal Procedure and only with a further direction that summons under Section 205 shall be issued at the first instance? Keeping in view the importance of the question involved as also the various decisions of this Court upon which the learned Judge of the High Court has placed reliance, in our opinion, we think that this is a matter which should be heard by a larger Bench. It is directed accordingly."

76. A three-judge Bench of the Supreme Court in ***TGN Kumar vs. State of Kerala & Ors.*** (supra) while answering

the question posed by the two-judge Bench, in paras 13, 21 and 22 held as follows :

> "13. Similarly, while it is true that the power of superintendence conferred on the High Court under Article 227 of the Constitution of India is both administrative and judicial, but such power is to be exercised sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority. In any event, the power of superintendence cannot be exercised to influence the subordinate judiciary to pass any order or judgment in a particular manner.
>
> 21. Thus, in the instant case, we have no hesitation in holding that the High Court exceeded its jurisdiction under Section 482 of the Code and/or Article 227 of the Constitution by laying down the aforeextracted general directions, which are inconsistent with the clear language of Sections 205 and 313 of the Code, as noted above. We feel that in the light of the aforenoted guidelines laid down by this Court, further directions on the same issue by the High Court were wholly uncalled for. In this regard, the following observations in *S. Palani Velayutham* v. *Collector* [(2009) 10 SCC 664 : (2010) 1 SCC (Cri) 401] are quite

apt: (SCC p. 669, para 19)

> "*19*. The courts should avoid the temptation to become authoritarian. We have been coming across several instances, where in their anxiety to do justice, the courts have gone overboard, which results in injustice, rather than justice. It is said that all power is trust and with greater power comes greater responsibility."

22. In the light of the foregoing discussion, the appeal is allowed, and the impugned order containing general directions to the lower courts is set aside. However, we direct that if the accused moves the trial court with an application under Section 205 of the Code for exemption from personal attendance within four weeks of the receipt of a copy of this judgment, the exemption granted to her by the High Court shall continue to be in force till her application is disposed of by the trial court."

77. Keeping in mind the ratio laid down by the Supreme Court in the aforementioned cases, it would be manifest that the inherent power of the High Court under Section 482 of the CrPC or under Article 227 or an extraordinary jurisdiction under Article 226 of the Constitution

of India can be invoked only under an extraordinary situation where the abuse of the process of the court or miscarriage of justice is writ large. The power of continuous superintendence of the High Court under Section 483 of the CrPC over the courts of Judicial Magistrates subordinate to it is with a view to ensure that there is an expeditious and proper disposal of cases by such Magistrates. The power of superintendence conferred on the High Court under Article 227 of the Constitution of India or under Section 483 of the CrPC is both administrative and judicial, but such power should be exercised sparingly and only in appropriate cases. Such power cannot be exercised to influence the subordinate judiciary to pass any order or judgment in a particular manner. The power of superintendence exercised over the courts of judicial Magistrates does confer jurisdiction upon the High Court to intervene in functions of the subordinate judiciary, whose independence is of paramount importance in the discharge of its judicial functions.

78. In ***Dharmeshbhai Vasudevbhai & Ors. vs. State of Gujarat & Ors., [(2009) 6 SCC 576]***, the Supreme Court has held that the High Court, apart from exercising its supervisory jurisdiction under Article 227 of the Constitution of India, has a duty to exercise continuous superintendence over

the Judicial Magistrates in terms of Section 483 of the C r.P.C.

79. In ***Popular Muthiah vs. State Represented By Inspector Of Police, [2006 (3) SCC (Cri) 245]***, the Supreme Court has held that it is also significant to note that whereas inherent power of a court or a tribunal is generally recognized, such power has been recognized under the CrPC only in the High Court and not in any other court. The High Court, apart from exercising its revisional or inherent powers, indisputably may also exercise its supervisory jurisdiction in terms of Article 227 of the Constitution of India and in some matters in terms of Section 483 thereof.

80. In view of the above discussions, our answer to the fourth issue referred for our determination is that **in the exercise of constitutional powers granted to the Court under Articles 226 and 227 of the Constitution of India, the High Court would not be justified in issuing a general direction under Section 483 of the CrPC to all Magistrates/Chief Judicial Magistrates of the State for releasing such women and permitting them to go along with the person of their choice, who are minors and are brought before them (Magistrates) with the charge of their having married somebody on their own volition. The fourth issue for**

determination is answered, accordingly.

81. Coming back to the ancillary issues attached in cases of elopement and sending minor girls to Protection Home/Nari Niketan, it would be apposite to consider the applicability of ***Jaya Mala*** (supra), relying upon which the order dated 23.09.2010 was passed by a Division Bench of this Court in ***Sahebi Khatoon*** (supra) in case of elopement of minor girl with the charge of having married some body on her own volition.

82. In ***Jaya Mala*** (supra), a petition for writ of *habeas corpus* had been filed for release of the detenu Riaz Ahmed, who was detained in Central Jail, Jammu under Section 8 of the Jammu and Kashmir Public Safety Act, 1978 under the orders of the District Magistrate, Jammu. The detenu did not make any representation even though it was alleged that he was advised about his right to make representation. Subsequently, the order of detention was approved by the Home Secretary, Government of Jammu & Kashmir and referred the matter to the Advisory Board. Lastly, the Advisory Board also opined that there was sufficient cause for the detention of the detenu.

83. The grounds on which Riaz Ahmad was detained were as follows :-

"(i) That on Jan. 10, 1981, when the detenu was travelling by a mini-bus, the conductor of the bus demanded fare which the detenu refused to pay and left the bus after administering threats. Subsequently, on the same day detenu along with 7-8 other persons, three of whom were named, stopped the mini-bus at Hari Chowk, Jammu and attacked the conductor Chander Shekhar with a dagger with the intention to kill him and caused injuries to his person.

(ii) That on Aug. 1, 1981, around 12 noon the detenu in company of 3-4 other associates took lemon water from Navin Kumar Jain Rehri Wala at Mubarak Mandi and refused to pay for the same and on further demand took out a dagger (khokhri) and threatened saying "By demanding money you are inviting your death".

84. While deciding the case of the detenu, the Superme Court observed :

"In respect of each incident set out in the ground F.I.R. has been lodged. In every infraction of law having a penal sanction by itself is a ground for detention danger looms large that the normal criminal trials, and Criminal Courts set up for administering justice will be substituted by detention laws

> often described as lawless law. There is not the slightest suggestion that witnesses are not forthcoming in respect of the alleged infraction of law. Why the normal investigation was not pursued is a question difficult to answer. If in respect of the incident of Jan. 10, 1981, a charge could have been laid under Section 307 I.P.C., on the face of it, a serious charge, the detenu as accused could have been arrested and if he moved for bail the same could have been legally resisted. ...”

85. The Supreme Court further observed :

> “... It is not made clear in the return why normal procedure of investigation, arrest and trial has not been found adequate to thwart the criminal activities of the detenu. ...”

86. The consideration of the Supreme Court in the subsequent paragraphs being of pivotal importance is extracted hereinunder :

> “But there is a greater infirmity which strikes at the root of the order. It is alleged in the petition that detenu was a minor aged about 17 years at the time of arrest and detention and that it is difficult to even conceive that this school going minor boy

would indulge into such activities as to be a serious threat to the maintenance of public order. In para 7 of the petition it is alleged that the detenu was not even 17 years of age at the time of his detention. In the return filed on behalf of the State, the only assertion is that this averment is misconceived and needs no reply. But in para 2 of the return under the heading 'Paragraph-wise reply' it was denied that the detenu was a minor and it was further averred that his age was between 18 and 19 years. In support of this averment reliance was placed upon report as to the age issued by Dr T.R. Sharma attached to Government Medical College, Jammu. Dr Sharma appears to have examined the detenu for ascertaining his age by radiological and orthopaedic test on May 3, 1982. The relevant portion of the report reads as under:

> "Epiphysis around ankle, lencem wrist, elbow and shoulder joints have appeared and completely fused. Epiphysis for iliac crest has appeared and partially fused. Radiological age is between eighteen and nineteen years."

Detenu was arrested and detained on Oct. 18, 1981. The report by the expert is dated May 3, 1982, that is nearly seven months after the date of detention. Growing

in age day by day is an involuntary process and the anatomical changes in the structure of the body continuously occur. Even on normal calculation, if seven months are deducted from the approximate age opined by the expert, in Oct., 1981 detenu was around 17 years of age, consequently the statement made in the petition turns out to be wholly true. **However, it is notorious and one can take judicial notice that the margin of error in age ascertained by radiological examination is two years on either side**. Undoubtedly, therefore, the detenu was a young school going boy. It equally appears that there was some upheaval in the educational institutions. This young school going boy may be enthusiastic about the students' rights and on two different dates he marginally crossed the bounds of law. It passes comprehension to believe that he can be visited with drastic measure of preventive detention. One cannot treat young people, may be immature, may be even slightly misdirected, may be a little more enthusiastic, with a sledge hammer. In our opinion, in the facts and circumstances of this case the detention order was wholly unwarranted and deserved to be quashed."

(emphasis supplied)

87. After discussing the facts and dictum of the Supreme Court in ***Jaya Mala*** (supra), let us analyze the applicability of the same in the age assessment of a girl in cases of elopement.

88. There is a sharp difference between the two cases as in ***Jaya Mala*** (supra) the principle of margin of error in age determination was discussed in reference to the age of the accused. It would not be out of context to assert at this stage that in criminal jurisprudence, the benefit of doubt always goes to the accused.

89. To the contrary, with certain allied issues, a pertinent question arises as to what should be the criteria while deciding the age of the minor girl in cases of elopement. Whether Section 94 of the Juvenile Justice (care & Protection of Children) Act, 2015 would be an apt parameter for determination of age of the minor girl. Further, whether the principle of margin of error as applied in ***Jaya Mala*** (supra) and the rule of 'benefit of doubt' is equally applicable in cases of age determination of a victim or what other relevant factors can be considered while determination of age assessment of victim. We will discuss it one by one.

90. There are judgments wherein criteria for

ascertainment of victim's age, whether under the Juvenile Justice Act or any other Act, has been discussed.

91. In ***Jarnail Singh vs. State of Haryana, [AIR 2013 SC 3467]***, the Supreme Court held that Rule 12 of the erstwhile Juvenile Justice (Care and Protection of Children) Rules, 2007, which detailed the age determination process for children in conflict with law, should be applied to determine the age of a child victim. The ratio laid down by the Supreme Court is extracted hereinunder:

> "Even though Rule 12 is strictly applicable only to determine the age of a child in conflict with law, we are of the view that the aforesaid statutory provision should be the basis for determining age, even of a child who is a victim of crime. For, in our view, there is hardly any difference insofar as the issue of minority is concerned, between a child in conflict with law, and a child who is a victim of crime. ..."

92. Similarly, in ***Mahadeo vs. State of Maharashtra & Anr., [(2013) 14 SCC 637]***, the Supreme Court has held that Rule 12(3) of the Juvenile Justice (Care and Protection of Children) Rules, 2007 is applicable in determining the age of the victim of rape.

93. Again, in ***State of M.P. vs. Anoop Singh, [(2015) 7 SCC 773]***, the Supreme Court held that Rule 12(3) of the Juvenile Justice (Care and Protection of Children) Rules, 2007 is applicable in determining the age of the victim of rape, and a medical opinion can be relied on only in the absence of the documents prescribed in Rule 12(3) of the Juvenile Justice (Care and Protection of Children) Rules, 2007.

94. It is, thus, clear that age of the victim has to be determined in the same manner as is being done of a person accused of a crime. However, the same is limited only in respect of offences committed under the Juvenile Justice (Care and Protection of Children) Act. The State of Bihar has notified Juvenile Justice (Care and Protection of Children) Rules, 2017 and Rule 54(18)(iv) of the same provides that "For the age determination of the victim, in relation to offences against children under the Act, the same procedure mandated for the Board and the Committee under Section 94 of the Act is to be followed".

95. Thus, after considering the statutory provisions and the judgments of the Supreme Court, we are of the opinion that till the judgment in ***Jarnail Singh*** (supra) holds good, the age of the victim has to be determined on the same

line as of the person accused of an offence.

96. Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015 provides for presumption and determination of age of a juvenile in conflict with law.

97. Sub-section (2) of Section 94 provides the manner in which the Child Welfare Committee or the Juvenile Justice Board should undertake the process of age determination. It reads as under:-

> "Section 94(2).- In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining-
>
> (i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;
>
> (ii) the birth certificate given by a corporation or a municipal authority or a panchayat;
>
> (iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age

determination test conducted on the orders of the Committee or the Board:

Provided such age determination test conducted on the order of the Committee or theBoard shall be completed within fifteen days from the date of such order."

98. Section 94 (2) of the Juvenile Justice (Care and Protection of Children) Act, 2015 is couched in a preferential term i.e. only in the absence of certificate mentioned in Section 94(2)(i), any other certificate mentioned in Section 94(2)(ii) shall be acceptable and only in the absence of any certificate mentioned in (i) or (ii), age shall be determined by an ossification test or any other latest medical age determination test.

99. Now, if we take an instance where no certificate as mentioned in Section 94(2)(i) or (ii) is available, the residuary clause of Section 94(2)(iii) of ossification test or any other latest medical age determination test will come into picture.

100. This age determination methodology related to medical examination is a difficult contemplation. Science in this respect does not show exact result and the medical opinion

can be given in a range of age and not with certainty. There have been certain decisions while dealing with determination of age of an accused.

101. At this stage, one can aptly refer to the case of ***Jaya Mala*** (supra) wherein it has been held ". …*However, it is notorious and one can take judicial notice that the margin of error in age ascertained by radiological examination is two years on either side*…."

102. By application of principles of 'margin of error' and 'benefit of doubt', the Supreme Court held the detention order of the detenu Riyaz Ahmad wholly unwarranted and quashed the same.

103. But, can it be said that both the principles are equally applicable in elopement cases as applied in ***Jaya Mala*** (supra). The answer to such question cannot be given in a straight jacket formula.

104. No doubt, as far as the applicability of principle of margin or error is concerned, it is equally applicable in cases of age determination of victim because uncertainty in medical science does not differentiate the accused and the victim. However, the principle of 'margin of error' of two years on either side as laid down by the Supreme

Court in ***Jaya Mala*** (supra) cannot be seen from the same lenses in reference to accused and the victim. It is well settled principle of criminal law that benefit of doubt should always go to the accused. Accordingly, it may be said that in case of an accused the lower side of the margin (reduced age) would be beneficial to him as he would be treated as a juvenile if assessed below 18, but while applying the principle of 'margin of error' in reference to the victim in cases of elopement, which principle is to be followed, is still undecided.

105. To settle the guiding principle in such cases is of prime importance, as the outcome of application of principle of 'margin of error' would severely affect the mental, physical, emotional and psychological well being of a girl.

106. Let us see what may be the possible outcome if one applies the principle of 'margin of error' to a victim girl in cases of elopement :

(i) If the girl's age is assessed to be between 17 and 19 in her medical examination, then by application of ***Jaya Mala*** (supra) if her age is being assessed 17, then :

(a) If she wishes to go to her husband and not to her family due to her

security issues;

In such cases, since there is threat to her life in her family, the Court cannot release her in favour of her family. On the other hand, the Court cannot allow a minor to go with her husband especially after the judgment pronounced by the Supreme Court in the case of ***Independent Thought vs. Union of India*** (supra). In such cases the only option left to the Court is to send her to the Nari-Niketan/Protection Home till the time she is major or does not consent to go to her family.

(b) If she wishes to go to her family;

In such cases, the Court will allow her to be with her family.

(ii) On the contrary, if her age is being assessed 19 then:

The court has no option but to release her and let her go wherever she wants, be it with her husband or with her family or with none of them.

107. At this juncture, the question arises that as to on what grounds the court might reach at a certain conclusion as

to the age of the victim in cases of elopement: whether it should be on the higher side or on the lower side.

108. In this context, we need to understand the concept of *parens patriae*. This concept is of much relevance while taking a decision even on the basis of verdict of Jaya Mala's case.

109. '*Parens Patriae*' is a Latin term means 'parent of his or her country'.

110. Black's Law Dictionary defines '*parens patriae'* as :

> "The State in its capacity of sovereign, a provider of protection to those unable to care for themselves".

111. The *parens patriae* is a doctrine that allows the State to step in and serve as a guardian for children, the mentally ill, the incompetent, the elderly, or disabled persons, who are unable to care for themselves. It refers to the public policy viz the power of the State Government to intervene against an abusive or negligent parent, legal guardian, or informal caretaker, and to act as the parent of any child or individual who is in need of protection. Normally, the natural parents and family are expected to take care of their children, but when they fail, the State steps into the shoes of the parents

and family to provide some care and protection as their own parents and family should have provided for them.

112. With the passage of time, the principle of *parens patriae* shifted to the right approach which respects the constitutional and procedural rights of a juvenile.

113. In ***Heller vs. DOE [(509) US 312]***, Justice Kennedy observed:

> "The State has a legitimate interest under its **parens patriae** powers in providing care to its citizens who are unable to care for themselves."

114. In ***State of Kerala & Anr. vs. N.M. Thomas & Ors., [1976(1) SCR 906]***, it has been categorically held that the Court is also 'State' within the meaning of Article 12 of the Constitution of India. Thus, Court can also act as *Parens Patriae* so as to meet the ends of justice.

115. Relying on the above-mentioned reasoning, the Supreme Court in ***Aruna Ramchandra Shanbaug vs. Union of India & Ors., [2011 (3) SCALE 298]*** has observed :

> "In our opinion, in the case of an incompetent person who is unable to take a decision whether to withdraw life support or not, it is the Court alone, as parens patriae, which ultimately must take this decision,

though, no doubt, the views of the near relatives, next friend and doctors must be given due weight".

116. In ***Suchita Srivastava & Anr. vs. Chandigarh Administration, [(2009) 9 SCC 1]***, the Supreme Court observed :

> "The doctrine of "parens patriae" has been evolved in common law and is applied in situations where the State must make decisions in order to protect the interests of those persons who are unable to take care of themselves. Traditionally this doctrine has been applied in cases involving the rights of minors and those persons who have been found to be mentally incapable of making informed decisions for themselves."

117. There are two tests in relation to this doctrine. These tests help the court to ascertain the course of action that it can adopt depending upon the situation. It is important to remember that these tests are merely guiding principles so as to help the court to reach a logical conclusion.

1. **'Best Interests Test'** – The 'Best Interests Test' requires the Court to ascertain the course of action which would serve the **best interests** of the person in question. It is

important to note that the Court's decision should be guided by the **interests of the victim alone** and not those of other stakeholders such as guardians or society in general.

2**. 'Substituted Judgment Test'**– The application of the **'Substituted Judgment'** test requires the court to step into the shoes of a person who is considered to be mentally incapable and attempt to make the decision which the said person would have made, if he/she was competent to do so.

118. Conceptually, the *Parens Patriae* theory is the obligation of the State to protect and take into charge the rights and privileges of its citizens for discharging its obligations.

119. The Directive Principles as well as the Fundamental Rights enshrined in our Constitution make it imperative for the State to secure to all its citizens the rights guaranteed by the Constitution and where the citizens are not in a position to assert those rights, the State comes into picture and protects the rights of such Citizens.

120. The Preamble to our Constitution read with Article 38, Article 39 and Article 39A makes it amply clear that the State must take up these responsibilities. The State must strive to promote social, economic and political welfare of the people. A harmony needs to be maintained between the Fundamental Rights and the Directive Principles of State Policy by the State so as to effectively discharge its commitments towards the people. While discharging these commitments, the state may even deprive some rights and privileges of the individual victims or their heirs to protect their other important rights in a better manner and secure the ends of social welfare. The values enshrined in our Constitution are a testimony of the standard of governance and welfare that the people expect from their representatives to maintain and carry out respectively. Doctrine of ***Parens Patriae*** is simply one of the links in this long chain. This doctrine makes sure that the voiceless, abandoned and disabled people are ultimately the responsibility of the State and the State must take all the steps to ensure their well-being as they are not in a position to do so.

121. Thus, keeping in view the role of the Court as *parens patriae*, it is expected from the court that whatever decision it might take as to the assessment of the age of the

victim, it needs to serve the best interests of the girl. Before reaching any conclusion, the court must consider the detrimental effects on a girl child, not only in terms of her physical or mental health but also in terms of her nutrition, education and her general well being.

122. The direction of the Division Bench of this Court in the case of ***Sahebi Khatoon*** (Supra) i.e. the girl should be treated as major, if she is assessed to be of an age in between 16-17 as per the medical report and also as per own assessment, also needs to be reconsidered in the light of the Supreme Court's judgment in the case of ***Independent Thought vs. Union of India***, (supra).

123. In ***Independent Thought*** (supra), the petitioner was a registered society working in the area of child rights, which filed a petition under Article 32 of the Constitution with a view to draw the attention of the Court towards the violation of the rights of girls who are married between the ages of 15 and 18 years. In the said case, the petitioner pleaded that vide Criminal Law (Amendment) Act, 2013, the age of consent for sexual intercourse, which was earlier 16 years had been increased to 18 years. However, Exception 2 to Section 375 IPC still retained the age of consent

as 15 years as a result there is heavy gap of three years in the age of consent for a married girl child vis-a-vis unmarried girl child. The petitioner further pleaded that Exception 2 to Section 375 IPC is discriminatory and violates Article 14 of the Constitution. The said provision classified girl child below age of 18 years between two categories; (i) those who are married and (ii) those who are not married. The husband can successfully intercourse with his wife, if she is above the age of 15 years irrespective of her consent. However, for all other purposes, the age of consent is 18 years. The petitioner submitted that this classification had no rational nexus with the object sought to be achieved. The rationale for increase of the age of consent in 2013 from the earlier age 16 years, which was the age of consent since 1940 was that a girl below the age of 18 years is incapable of realizing the concept of consent for intercourse and she is treated as minor under the law and thereby mentally and physically not mature enough to give a valid consent. Therefore, consent by a girl of less than 18 years of age is no consent under the law. The petitioner further submitted that if this is the object of increasing the age of 18 years from 2013, then marriage of a girl at the age of 15/16/17 years does not make the girl mature enough mentally and

physically for the purpose of consent.

124. Exception (2) to Section 375 of the IPC reads as follows :-

> "Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape."

125. The Supreme Court, having heard the parties, while elaborately discussing the 'best interests' of a girl child and impact of an early marriage in her mental, physical and psychological health in ***Independent Thought*** (supra), observed as follows :-

> ". … an early marriage and sexual intercourse at an early age could have detrimental effects on the girl child not only in terms of her physical and mental health but also in terms of her nutrition, her education, her employability and her general well-being. To make matters worse, the detrimental impact could pass on to the children of the girl child who may be malnourished and may be required to live in an impoverished state due to a variety of factors. An early marriage therefore could have an inter-generational adverse impact."

126. After extensively discussing the Law

Commission Reports (84th and 172nd), National Charter for Children, 2003, National Policy of Children and other various national and international reports concerning ill effects on the girl after marriage in early age held that it can adversely affect their educational prospects and restrict economic autonomy. It read down Exception 2 to Section 375 of the IPC, holding that the same will not apply in the case of minors. Accordingly, Exception 2 to Section 375 of the IPC will now read :

> "Sexual intercourse or sexual acts by a man with his own wife, the wife not being under eighteen years of age, is not rape."

127. Now coming to the case of ***Sahebi Khatoon*** (supra) wherein direction has been issued that if any girl has been assessed between 16 and 17 years, she should be treated as major, it would not only encourage a girl child at the age of 16-17 to get married but also put her in the life threatening risks.

128. Further, the boy with whom she would be married would be liable to be prosecuted for the offence of rape as Exception (2) to Section 375 of the IPC has been read down prospectively.

129. Therefore, the law as it stands now is that sexual intercourse or sexual act by a man with his own wife, the wife being age of 15, 16, or 17 would constitute an offence of

rape under Section 375 of the IPC.

130. The reasons are obvious. Due to the tender age, minors are not in a position to decide their 'best interests' and at this stage, role of guardian becomes important. For minors, it is the guardian who understands their best interests.

131. It is not only the duty of the natural guardian to protect the interests of minors rather the courts are also duty bound to ensure the safety and well being of a minor child. In this light, if one follows the verdict of ***Sahebi Khatoon*** (supra) and treat a girl child of 16-17 years as a major, it would be against the notion of *parens patriae*, as discussed above and it will also put the person of her choice liable to be prosecuted for the offence of rape even in case she decides to marry him out of her own volition and to have sexual intercourse with him.

132. Thus, one of the grounds for presuming the age of a girl in the higher side would be at the risk involved therein, viz such presumption of fact going wrong. However, this reason cannot pre-empt a court to treat a girl child as a major, but the rule of caution needs to be adhered to. Practically, it has been observed that in cases of elopement, a girl is always willing to go to her husband and not to her parents. However, after the judgment of ***Independent Thought***

(supra), the courts cannot permit the minor girl to stay with her husband even if she is 16-17 old.

133. While deciding the age of a victim in cases of elopement in the light of ***Jaya Mala***'s case, an interesting aspect needs to be discussed. For that, it is necessary to refer to what Supreme Court has held in the said case. It states that "*however, it is notorious and* ***one can take judicial notice*** *that the margin of error in age ascertained by radiological examination is two years on either side*".

134. Thus, it can be seen that the Supreme Court has used the phrase "one can take judicial notice"

135. Another important aspect which has arisen in the instant case is the issue of maintainability of a writ of *habeas corpus* in cases of sending girls to Protection Home/Nari-Niketan. Undisputedly, the sole object of writ of *habeas corpus* is to secure the liberty and the freedom of any person and to afford security against the illegal detention. Sending a girl to a Protection Home/Nari Niketan cannot be treated as detention or anything akin to remand as applicable in criminal laws.

136. In criminal law, the concept of detention is attached with a sort of punishment or it can be seen to protect

the society at large from any person. But sending a girl to a Protection Home/Nari Niketan can never be equated with any punishment or to protect the society at large from such girl. If it were not so, then every child in the custody of his/her parents would seek his/her liberty and file a writ of *habeas corpus*. We need to appreciate the fact that the role of court in cases of a minor child is that of a guardian. Due to their tender age, a child cannot foresee his/her 'best interests'. However, being in the capacity of *parens patriae*, the court is duty bound to ensure the well being of a child ensuring his/her 'best interests'.

137. At times, it may be argued that the condition of such Protection Homes/Nari Niketans is miserable, but, it is the duty of the State to maintain these institutions properly. The bad condition of Protection Homes/Nari Niketan will not dwarf/belittle the object and purpose behind establishing such institutions.

138. To conclude, we are of the opinion that the court cannot pass order against the well being of a child or against his/her interests. Being merely confined within the four walls of a Protection Home cannot be termed as detention for the purpose of writ of *habeas corpus*. No doubt, the court's order may be termed as improper in that particular case, but that

does not invest the order with malafides or illegality. If such orders of the court are improper, it may be corrected by invoking statutory provisions, but by no means, a writ of *habeas corpus* can be justified in such cases.

139. Keeping in mind the discussions made hereinabove and our conclusions in respect of the issues referred to this Bench for determination by the Division Bench, we hold that the general direction issued by the Division Bench in ***Sahebi Khatoon*** (Supra) to all the Magistrates of the subordinate courts throughout the State of Bihar to treat the girl as major if she is assessed to be of the age in between 16-17 years as per the medical report and also as per own assessment and in such cases instead of sending such girls to Remand Home or After-Care Home they should be permitted to go with the people of their choice is bad in law. We further hold that in cases of elopement if a minor girl is sent to Protection Home/After-Care Home/Remand Home/Nari Niketan by a judicial order passed by a court of competent jurisdiction, the same cannot be treated to be illegal confinement giving rise to a remedy under the writ of *habeas corpus*. The contrary view taken by the Division Bench in ***Sahebi Khatoon*** (Supra) is also expressly overruled.

140. In view of our above findings, the instant writ petition is dismissed.

(Ashwani Kumar Singh, J)

Ashutosh Kumar, J:-

(Ashutosh Kumar, J)

Birendra Kumar, J:-

(Birendra Kumar, J)

kanchan/Pradeep/

AFR/NAFR	AFR
CAV DATE	16.10.2019
Uploading Date	05.03.2020
Transmission Date	05.03.2020