



2026:AHC:207289-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD
HABEAS CORPUS WRIT PETITION No. - 987 of 2026



nd Another

.....Petitioner(s)

Versus

State Of U.P. And 4 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Rakesh Kumar Mishra
Counsel for Respondent(s)	:	G.A.

Court No. - 42

HON'BLE ATUL SREEDHARAN, J.
HON'BLE ACHAL SACHDEV, J.

1. Heard learned counsel for the petitioners and Sri Deepakh Kapoor, learned AGA for the State.

2. The present petition has been filed by petitioner No.1 seeking production of petitioner No.2, who is referred to as the corpus in the present case. The petition arises in the context of a case registered and pending under the provisions of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as 'POCSO Act'), in which petitioner No.1 is the accused and petitioner No.2 is the survivor.

3. As per the case put forth by the learned counsel appearing for the petitioners, petitioner No.1 and petitioner No.2 had eloped together and thereafter are stated to have jointly executed an affidavit dated 01.09.2025, wherein they disclosed their marital status as husband and wife.

4. Learned counsel for the State, as well as the father of the prosecutrix, on the other hand, have submitted before this Court that the date of birth of the prosecutrix is 25.07.2010 and, accordingly, she is still a minor. It has further been submitted that, upon her recovery, the corpus was sent to the Bal Griha, where she

subsequently gave birth to a child. It is stated that the child is more than two months old and that petitioner No.1 is the father of the said child.

5. Before passing the final order, this Court, on the last date of hearing, considered it appropriate to hear the father of petitioner No.2. He has accordingly appeared before this Court today and has disclosed his name as [REDACTED], resident of Village [REDACTED], Police Station [REDACTED], District [REDACTED]. His objection, apart from the plea regarding the minority of his daughter, is that petitioner No.1 and petitioner No.2 are within the sapinda relationship and therefore they cannot be married. However, the facts and circumstances of the present case indicate that the relationship between the petitioner No.2 and petitioner No.1 has progressed beyond the stage of a mere matrimonial claim and has resulted in the birth of a child.

6. Instances such as the present one arise, *inter alia*, on account of abject illiteracy coupled with poverty prevalent amongst a predominant section of the population, which, owing to lack of awareness and understanding of the law, may result in acts being committed in violation of the provisions of the POCSO Act. Such acts may otherwise be regarded as legitimate but for the age of the prosecutrix concerned. However, ignorance of law cannot be an excuse for violating the law.

7. In the case of Petitioner No.2, the corpus/prosecutrix, has studied only up to Class V. However, this Court, during its interaction with her, asked her whether she could read a Hindi newspaper, to which she answered in the negative. The Court further asked her whether she could write her name, to which she answered in the affirmative. The Court thereafter asked her whether, apart from her name, she could write anything else in the Hindi language, to which she stated that she could not write anything else in Hindi.

8. This Court also interacted with the father of the prosecutrix. Upon being asked whether he could sign his name, he stated that he was an illiterate and had never attended school. He disclosed his age to be approximately 45 years. Upon being asked about his occupation, he stated that he works as a labourer and earns approximately Rs.10,000/- to Rs.12,000/- per month. He further stated that he has four children, none of whom has yet started earning, and that he is the sole earning member of the family. He also stated that his aged parents reside with him and that he is responsible for their care and support.

9. The necessity of setting out the background of the prosecutrix/corpus and her family was felt by this Court because the actions of the parties are required to be considered in the backdrop of the provisions of the POCSO Act, the full and literal application of which may, in certain circumstances, have serious repercussions and consequences. Undoubtedly, ignorance of law is no excuse. However, if this principle is applied in a purely pedantic manner, the implementation of the POCSO Act may, in certain factual situations, result in consequences which may appear to advance injustice rather than justice.

10. While enacting the legislation, it does not appear that sufficient regard was given to the social realities prevailing in India, where a considerable section of the population remains illiterate or semi-literate and may not even be aware of the rights guaranteed to them under law and the Constitution, much less of the duties, obligations and legal consequences arising therefrom.

11. In the present case, the facts disclose a situation where the natural course of human development appears to have come into conflict with the rigours of law. It is natural for a child of about 15 years of age, upon attaining a certain degree of physical and emotional maturity, to experience attraction towards another person

of the opposite gender. To expect such a child, particularly in the circumstances of the present case, to understand the legal liabilities and consequences arising from such conduct would require the State, in the first instance, to ensure that a minor remains meaningfully engaged in education until attaining the age of majority and is provided with adequate opportunities to acquire vocational skills and, ultimately, stand on her own feet.

12. When this law is applied to a society where the literacy rate is low and the quality of the State education system is, to put it mildly, a matter of serious concern. Questions inevitably arise as to why the prosecutrix attended school only up to Class V. Why was the State unable to ensure that she continued her education, or otherwise compel her to remain in school until she completed Class XII?

13. It is equally shocking that a child who, according to the record and as stated by the learned counsel for the State, had studied up to Class V, was nevertheless unable to read a newspaper in her mother tongue. It is even more disturbing that she stated that she could only put her signature and could not write anything more than that in Hindi.

14. This issue perhaps has already been raised before the legislature, which is responsible for ensuring that appropriate changes are made in the law. Yet, the legislature appears to have remained consistently silent on the matter. Even earlier, the Law Commission had been apprised of the gross injustice that can result from the strict application of the provisions of the POCSO Act.

15. Under the circumstances, the Court considers it necessary to request the Law Commission to examine these factors and facets in the context of Indian social realities and to recommend suitable amendments to the POCSO Act for consideration by the legislature. Such amendments may include vesting the Special Judge with adequate discretion in exceptional cases, such as the present one, to

consider the circumstances of the case while determining the appropriate punishment. The possibility of alternative forms of punishment, including community service, may also be examined, so that a family formed in circumstances arising from ignorance of the provisions of the POCSO Act is not unnecessarily disrupted in the very name of protecting girls and women below the age of 18 years.

16. In the present case, the child born to the prosecutrix is dependent upon petitioner No.1, who is responsible for its care. The same cannot be done if petitioner No.1 is convicted under the stringent provisions of law and sentenced to imprisonment, which is a distinct possibility in the present case. The question, therefore, arises: would the responsibility for the care and maintenance of the prosecutrix and the child born to her ultimately fall upon the State? The law must remain dynamic and capable of rendering complete justice having regard to the peculiar facts of each case. The Trial Court ought not to be placed in a situation where, for want of sentencing discretion, it is compelled to impose a stringent punishment upon a person who is presently the husband of the prosecutrix and the father of her child, merely because he had eloped with her before she attained majority.

17. In the present case, learned counsel appearing for the State as well as the father of the prosecutrix have stated in one voice that the prosecutrix is a minor and that her date of birth is 25.07.2010. However, the only document available on record before this Court in the present habeas corpus petition is a transfer certificate issued to the prosecutrix at the time when she left Class V.

18. Section 94(2) of the Juvenile Justice (Care and Protection of Children) Act, 2015 prescribes the manner in which the age of a child is to be determined, and accords preference to the date of birth certificate from the school, and in the absence thereof, the matriculation or equivalent certificate from the concerned examination board, if available.

19. Admittedly, no date of birth certificate issued by the school has been brought on record before this Court. Further, as per the case of the State itself, the prosecutrix, petitioner No.2, did not pursue her studies beyond Class V and, therefore, did not appear in the matriculation examination.

20. The second document prescribed for determining age under the aforementioned Act is a birth certificate issued by a Corporation, Municipal Authority, or Panchayat. However, no such birth certificate is available with the State. Lastly, where the aforesaid two documents are not available, the age is required to be determined on the basis of an ossification test. In the present case, such an ossification test was conducted, which assessed the age of the prosecutrix to be approximately 18 years.

21. Under the circumstances, this Court holds that the corpus, i.e. petitioner No.2 herein, is a major and, having expressed her desire to reside with her husband, i.e. petitioner No.1, the present petition is allowed. The corpus is permitted to go along with her husband (petitioner No.1) from the Court premises itself.

22. The observations made in this order with regard to the questions of fact are based purely upon the material available on record in the present habeas corpus petition. Such observations shall neither be taken into consideration by the learned Trial Court seized of the POCSO case nor shall they be available to the defence. The learned Trial Court trying the POCSO case shall adjudicate the matter strictly in accordance with law and solely on the basis of the evidence led and recorded in the said case.

23. Ms. Archana Mishra, Chairman, Child Welfare Committee is also present before this Court. Her further presence is, accordingly, dispensed with.

24. With the above, the present petition stands **disposed of as**

allowed.

25. A copy of this order be sent to the Hon'ble Law Commission.

October 5, 2026
R.S. Tiwari

(Achal Sachdev,J.) (Atul Sreedharan,J.)