2025:AHC:218626-DB

A.F.R.

RESERVED ON 21.08.2025
DELIVERED ON 05.12.2025

HIGH COURT OF JUDICATURE AT ALLAHABAD

HABEAS CORPUS WRIT PETITION No. - 572 of 2025

Smt Rohini and another

…..Petitioner(s)

Versus

State of U.P. and 4 others

…..Respondent(s)

Counsel for Petitioner(s) : Shailendra Kumar Tripathi
Counsel for Respondent(s) : G.A.

Court No. - 43

HON'BLE SALIL KUMAR RAI, J.
HON'BLE ZAFEER AHMAD, J.

(Per : - Salil Kumar Rai, J.)

The present petition has been filed for a writ of Habeas Corpus to release the petitioner no. 1 from Rajkiya Balgrih (Balika), Swaroop Nagar, Kanpur Nagar.

The petitioners claim to be married according to Hindu Rites and Customs and that petitioner no.2 is the husband of petitioner no. 1.

It is stated in the writ petition that the date of birth of petitioner no. 1 is 01.01.2005 and in support of the aforesaid averment, a mark-sheet allegedly issued by Rameshwar Singh, Janta Vidhyalaya, Khama Paraur, Kannauj as well as family register of petitioner no. 1 are annexed with the writ petition. The Aadhaar card of petitioner no. 1 annexed with the writ petition also discloses that the date of birth of petitioner no. 1 is 01.01.2005. The case of the petitioners is that petitioner no. 1 had gone

with petitioner no. 2 and married him in 2023 voluntarily and no force or coercion was applied on her. Respondent no. 5, who is the mother of petitioner no. 1 lodged a first information report on 25.01.2024 registering Case Crime No. 15 of 2024 under Sections 147, 363, 366, 323, 506 IPC. The petitioner no. 1, after being recovered was subsequently handed over to respondent no. 5 but, it is alleged that she was again abducted by petitioner no. 2. It was claimed in the first information report that the date of birth of petitioner no. 1 was 11.05.2008. After recovery, the petitioner no. 1 was medically examined and the medical report opined that the age of petitioner no. 1 was 18 years or above. It is stated by the complainant that petitioner no. 1 had studied in Primary School Sarhati, District Kannauj and it transpires that the age of petitioner no. 1 was recorded in her school records as 11.05.2008.

In her statement recorded under Section 164 Cr.P.C., the petitioner no. 1 admitted that she had voluntarily left her parental home and had married petitioner no. 2 and no force or coercion was applied on her. In her statement under Section 164 Cr.P.C. recorded on 13.03.2024, petitioner no.1 stated her age to be 19 years.

Subsequently, the Investigating Officer of Case Crime No. 15 of 2024 filed an application before the Special Judge (POCSO Act) / Additional Sessions Judge, Kannauj complaining that petitioner no.1 had eloped with petitioner no. 2 four times and had to be recovered every time which wasted the time of the Court and also of the administration. It was prayed that the petitioner no. 1 be kept in Naari Niketan as her date of birth was entered in school records as 11.05.2008. On the aforesaid application, the Special Judge (POCSO Act) vide his order dated 19.02.2025 directed that the matter be put up before the Child Welfare Committee. The Child Welfare Committee, initially, by its order dated 20.02.2025 sent the petitioner no. 1 in foster care of one Poonam Katiyar and Sub Inspector Ram Prakash. Subsequently, by its order dated 30.07.2025, the Child Welfare Committee directed that petitioner no. 1 be kept at Government Children Home (Girls), Swaroop Nagar,

Kanpur Nagar. The copy of the order annexed with the counter affidavit filed by the Additional Government Advocate does not contain the date of the order but it has been averred in the counter affidavit that the order was passed on 30.07.2025. In the counter affidavit, the Additional Government Advocate has also annexed the transfer certificate of petitioner no. 1 issued by the Primary School, Sarhati which records the date of birth of petitioner no. 1 as 11.05.2008.

In its order dated 30.07.2025, the Child Welfare Committee notes that the petitioner no. 1 had stated that her date of birth in the school records was noted as 11.05.2008 on the statement of her father which she did not accept and petitioner no. 1 had refused to go with her parents because her father wanted her to marry somebody else.

Petitioner no. 1 was produced before this Court on 21.08.2025, on which date, the Court examined petitioner no.1 who stated that she did not wish to stay with her parents and wanted to go with her husband, i.e., petitioner no. 2.

It has been argued by the counsel for the petitioners that petitioner no. 1 is major as would be evident from the medical report and her statement recorded under Section 164 Cr.P.C. and is not a child as defined under the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as, 'Act, 2015'). It was argued that the petitioners are married according to Hindu rites and the said marriage is a valid marriage under the Hindu Marriage Act, therefore, the mother of petitioner no. 1 had no guardianship rights over petitioner no. 1 and the order of the Child Welfare Committee dated 30.07.2025 was without jurisdiction. It has been further argued that the order dated 30.07.2025 has been passed by the Child Welfare Committee mechanically and without application of mind. It has been argued that for the aforesaid reason, the detention of petitioner no. 1 at Government Children Home (Girls), Swaroop Nagar, Kanpur Nagar is illegal and without authority of law. It was further argued that the order dated 30.07.2025 passed by the

Child Welfare Committee is liable to be quashed and a writ of Habeas Corpus is to be issued to release the petitioner no. 1.

Rebutting the argument of the counsel for the petitioners, the Additional Government Advocate has mainly argued that the corpus is kept at Government Children Home (Girls), Swaroop Nagar, Kanpur Nagar on the orders of the Child Welfare Committee which is a Court, therefore, the present petition for a writ of Habeas Corpus is not maintainable and is liable to be dismissed. In support of his contention, the AGA has mainly relied on the judgment of Full Bench of this Court reported in ***Rachna and Anr. vs. State of U.P. and Ors.*** AIR 2021 All 109 (FB). It was argued that under Section 94 of Act, 2015, the school records have priority over medical report and because the corpus is below 18 years of age and minor according to school records, therefore, the order dated 30.07.2025 passed by the Child Welfare Committee is in accordance with law and there is no illegality in the aforesaid order so as to occasion interference by this Court under Article 226 of the Constitution of India. It was argued that for the aforesaid reasons, the writ petition is liable to be dismissed.

We have considered the submission of the counsel for the parties.

It would be appropriate that the objections of the AGA to the maintainability of the present Habeas Corpus petition be considered first.

The AGA argues that the Habeas Corpus petition is not maintainable because the corpus is detained at Government Children Home (Girls), Swaroop Nagar, Kanpur Nagar on the orders of the Child Welfare Committee which is a Court. The AGA relies on Section 27 (9) of the Act, 2015 which provides that the Child Welfare Committee shall function as a bench and shall have the powers conferred by the Code of Criminal Procedure, 1973 on a Metropolitan Magistrate or, as the case may be, a Judicial Magistrate of I Class to argue that the Child Welfare Committee is a Court. In support of his contention, the AGA has relied mainly on the judgment of the Full Bench of this Court in ***Rachna and Anr.*** (supra).

It has been observed by the Supreme Court in ***Ummu Sabeena vs. State of Kerela & Ors. (2011) 10 SCC 781*** that procedural safeguards given for protection of personal liberty must be strictly followed. The history of personal liberty is a history of insistence on procedural safeguards. It was observed by the Supreme Court that the principal of Habeas Corpus has been incorporated in our Constitutional law and in a democratic republic, the Judges owe a duty to safeguard the liberty not only of the citizens but also of all persons within the territory of India. The most effective way of doing the same was by way of exercise of power by the Court by issuing a writ of Habeas Corpus. It was further observed that the aforesaid facet of the writ of Habeas Corpus makes it a writ of the highest constitutional importance being a remedy available to the lowliest citizens against the most powerful authority. It has been said that the writ of Habeas Corpus is the key that unlocks the door to freedom.

It is in the above background that we shall consider the objections regarding the maintainability of the present petition.

The issue as to whether a petition for writ of Habeas Corpus was maintainable in cases of detention by an order of the Court was considered by the Supreme Court in several cases and it has been held that a writ of Habeas Corpus was not to be entertained when a person is put to judicial custody or police custody by the competent Court by an order which *prima facie* did not appear to be without jurisdiction or was not passed in an absolutely mechanical manner or was not wholly illegal. The aforesaid implies that in case, the order of the court was without jurisdiction or was passed in an absolutely mechanical manner or was wholly illegal, the petition for Habeas Corpus would be maintainable and a writ directing release of the detenue would be issued. At this stage, it would be relevant to consider two decisions of the Supreme Court.

The Supreme Court in ***Madhu Limaye***, ***In re, (1969) SCC 292***, while considering the legality of the detention after a judicial remand, observed that for successfully opposing the petition for Habeas Corpus,

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. Similarly, in ***Manubhai Ratilal Patel Tr.Ushaben vs. State of Gujarat (2013) I SCC 314***, the Supreme Court considered the legality of the remand orders passed by the Magistrate and dismissed the Habeas Corpus petition after noting that there was no illegality in the order passed by the Magistrate remanding the accused to judicial custody. The observations of the Supreme Court in paragraph no. 24 and 25 of the aforesaid judgment are reproduced below:-

> *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 exist 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.***
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> *25. It is apt to note that in Madhu Limaye, In re [(1969) 1 SCC 292 : AIR 1969 SC 1014] it has been stated that : (SCC p. 299, para 12)*
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> *"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."*
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> (Emphasis supplied)

It be noted that in the aforesaid paragraphs, the Supreme Court has observed that it was 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. The condition that an order shall not be passed in a mechanical manner and should be passed after application of mind is an essential feature of a judicial order. The Supreme Court in ***Manubhai Ratilal Patel(supra)*** further observed in paragraph no. 31:-

> *"31. … 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. Ramchandra Rao*** *[(1972) 3 SCC 256: 1972 SCC (Cri) 481: AIR 1971 SC 2197] and* ***Kanu Sanyal*** *[(1974) SCC 141:1974 SCC (Cri) 280],* ***the court is required to scrutinize 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.***
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> *(Emphasis supplied)*

It is apparent from the observations of the Supreme Court reproduced above that in a Habeas Corpus petition, the legality of a detention order can be examined to ascertain whether the order suffers from a lack of jurisdiction or is absolutely illegal or has been passed in a wholly mechanical manner. If the order detaining the person is without jurisdiction or is absolutely illegal or has been passed in a mechanical manner, a writ of Habeas Corpus directing the release of the detenue would be issued.

The judgment of the Full Bench of this Court in ***Rachna and Anr.*** (supra) which has been relied upon by the AGA does not hold that a petition for Habeas Corpus would not be maintainable even in circumstances where an order passed by the Child Welfare Committee would be without jurisdiction and a nullity or where the order has been passed mechanically and without application of mind.

In the present case, the Child Welfare Committee has passed the order detaining the corpus, i.e., petitioner no. 1, on the ground that the corpus was below 18 years of age, therefore, a child. The Child Welfare Committee has relied on the school records wherein the date of birth of petitioner no. 1 was recorded as 11.05.2008.

Child has been defined under Section 2(12) of the Act, 2015 to mean a person who has not completed 18 years of age. Under Section 29

of the Act, 2015, the Child Welfare Committee has been empowered to dispose of cases for the care, protection, treatment, development and rehabilitation of children in need of care and protection, as well as to provide for their basic needs and protection. A child in need of care and protection has been defined in Section 2 (14) of the Act, 2015. The issue in the present case is as to whether the corpus, i.e., the petitioner no. 1 is a child as defined in Section 2 (12) of the Act, 2015 and thus covered by Section 2 (14) and whether the Child Welfare Committee had the jurisdiction to take the corpus, i.e., the petitioner no. 1 under its protection and custody and act in exercise of powers under Section 29 of the Act, 2015. The decision on the issue is dependent on the determination of age of the corpus, i.e., the petitioner no. 1.

Rule 19 (2) of the Juvenile Justice (Care and Protection of Children) Rules, 2016 states that in any inquiry as to whether any person produced before it was a child in need of care and protection, the Committee shall, *prima facie*, determine the age of child in order to ascertain its jurisdiction pending further inquiry as per Section 94 of the Act, if need be. Section 94 of the Act, 2015 is reproduced below:-

> ***94. Presumption and determination of age****.—(1) Where, it is obvious to the Committee or the Board, based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry under section 14 or section 36, as the case may be, without waiting for further confirmation of the age.*
>
> *(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—*
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> *(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;*
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> *(ii) the birth certificate given by a corporation or a municipal authority or a panchayat;*
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> *(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 the Board shall be completed within fifteen days from the date of such order.*
>
> *(3) The age recorded by the Committee or the Board to be the age of person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person.*
>
> (Emphasis supplied)

A reading of Section 94 of the Act, 2015 shows that the Committee shall undertake the process of age determination by seeking evidence, first by obtaining **the date of birth certificate** from the school, if available, and in absence thereof, the birth certificate given by the local body, and in absence of birth certificates, the age shall be determined by the latest medical age determination test conducted on the orders of the Committee. Mere production of the school records would not be sufficient for the Committee to determine the age of the person produced before it. As provided in Section 27 (9) of the Act, 2015, the Child Welfare Committee has powers conferred by the Code of Criminal Procedure, 1973 on the Judicial Magistrate of I Class. The Committee, thus, has the power to take evidence on oath and to scrutinize the evidence produced before it. The Committee has to act judicially. In case the Child Welfare Committee fails to scrutinize evidence and passes a mechanical order accepting the school records produced before it without any application of mind and without the records being proved as required in law, the order of the Child Welfare Committee would be absolutely illegal and a Habeas Corpus petition would lie before the Court for release of the person who has been taken in its custody by the Child Welfare Committee.

A reading of Section 94(2) of the Act, 2015 also shows that the school records, i.e., entries in the admission register or in the transfer certificate are not the documents stipulated in the aforesaid provision as evidence of the date of birth of the person produced before the Committee. Section 94(2) (i) provides that date of birth certificate shall be obtained from the school. A transfer certificate or entries in the admission register of the school **are not date of birth certificates**. In our aforesaid view, we are supported by the judgment of Supreme Court

in ***P. Yuvaprakash vs. State Rep. by Inspector of Police 2023 SCC OnLine SC 846***.

In the aforesaid case, the school transfer certificate was produced to prove the age of the child. The Supreme Court held that a school transfer certificate cannot be relied upon to determine the age of child under the Act, 2015. In this context, the observation of the Supreme Court in paragraph nos. 14, 18 and 19 of the aforesaid judgment are reproduced below:-

> *"14. Section 94 (2)(iii) of the JJ Act clearly indicates that the date of birth certificate from the school or matriculation or equivalent certificate by the concerned examination board has to be firstly preferred in the absence of which the birth certificate issued by the Corporation or Municipal Authority or Panchayat and it is only thereafter in the absence of these such documents the age is to be determined through "an ossification test" or "any other latest medical age determination test" conducted on the orders of the concerned authority, i.e. Committee or Board or Court. In the present case, concededly, only a transfer certificate and not the date of birth certificate or matriculation or equivalent certificate was considered. Ex. C1, i.e., the school transfer certificate showed the date of birth of the victim as 11.07.1997.*
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> ***Since it did not answer to the description of any class of documents mentioned in Section 94(2)(i) as it was a mere transfer certificate, Ex C-1 could not have been relied upon to hold that M was below 18 years at the time of commission of the offence.***
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> *18. Reverting to the facts of this case, the headmaster of M's School, CW- 1, was summoned by the court and produced a Transfer Certificate (Ex.C-1). This witness produced a Transfer Certificate Register containing M's name. He deposed that she had studied in the school for one year, i.e., 2009-10 and that the date of birth was based on the basis of the record sheet given by the school where she studied in the 7th standard. DW-2 TMT Poongothoi, Headmaster of Chinnasoalipalayam Panchayat School, answered the summons served by the court and deposed that 'M' had joined her school with effect from 03.04.2002 and that her date of birth was recorded as 11.07.1997. She admitted that though the date of birth was based on the birth certificate, it would normally be recorded on the basis of horoscope.* ***She conceded to no knowledge about the basis on which the document pertaining to the date of birth was recorded.*** *It is stated earlier on the same issue, i.e., the date of birth, Thiru Prakasam, DW-3 stated that the birth register pertaining to the year 1997 was not available in the record room of his office.*

> ***19. It is clear from the above narrative that none of the documents produced during the trial answered the description of "the date of birth certificate from the school" or "the matriculation or equivalent certificate" from the concerned examination board or certificate by a corporation, municipal authority or a Panchayat. In these circumstances, it was incumbent for the prosecution to prove through acceptable medical tests/examination that the victim's age was below 18 years as per Section 94(2)(iii) of the JJ Act.*** *PW-9, Dr. Thenmozhi, Chief Civil Doctor and Radiologist at the General Hospital at Vellore, produced the X-ray reports and deposed that in terms of the examination of M, a certificate was issued stating "that the age of the said girl would be more than 18 years and less than 20 years". In the cross-examination, she admitted that M's age could be taken as 19 years. However, the High Court rejected this evidence, saying that "when the precise date of birth is available from out of the school records, the approximate age estimated by the medical expert cannot be the determining factor". This finding is, in this court's considered view, incorrect and erroneous.* ***As held earlier, the documents produced, i.e., a transfer certificate and extracts of the admission register, are not what Section 94 (2) (i) mandates;*** *nor are they in accord with Section 94 (2) (ii) because DW-1 clearly deposed that there were no records relating to the birth of the victim, M. In these circumstances, the only piece of evidence, accorded with Section 94 of the JJ Act was the medical ossification test, based on several X-Rays of the victim, and on the basis of which PW-9 made her statement. She explained the details regarding examination of the victim's bones, stage of their development and opined that she was between 18-20 years; in cross-examination she said that the age might be 19 years. Given all these circumstances, this court is of the opinion that the result of the ossification or bone test was the most authentic evidence, corroborated by the examining doctor, PW-9."*
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> *(Emphasis supplied)*

The Supreme Court in ***Suresh vs. State of Uttar Pradesh and Anr. 2025 SCC OnLine SC 1579*** while considering Rule 12 (3) of the rules framed under The Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as 'Act, 2000') held that the entries in the school records would not be acceptable to determine the age of girl on the testimony of the school's Headmaster in case the date of birth in the school records has been entered on the oral representation of the parents of the person claiming juvenility. Observations of the Supreme Court in paragraph nos. 21, 24 and 25 of the aforesaid judgment are reproduced below:-

> *"21. There is no dispute on the factum that Kaushik Modern Public School, Khurgaon – the first attended school – is not a Government School and thus, the records maintained by the said School would not be 'public documents'.Moreover, the Headmaster/Principal of such School cannot be said to be a*

'public servant' for the purposes of the Evidence Act. The Headmaster when examined has himself taken the stand that Kaushik Modern Public School, Khurgaon was only a State Government-recognized school.

23. Even otherwise, in the case at hand, except for the Headmaster's sole testimony, there is no material to establish that the date 18.04.1995 as Respondent No.2's date of birth, as recorded in the certificate issued by Kaushik Modern Public School, Khurgaon, was correct. *As a matter of fact, the Principal in his cross-examination stated that when the Respondent No.2 was leaving the school on that day after making cutting he had written the correct date of birth.* ***Moreover, the Principal has also stated that the birth-date entry was made on the basis of an oral representation alone by Respondent No.2's father and when he was asked for the horoscope or any other document in support of the date of birth of the Respondent No.2, nothing was submitted. This, in our view, discredits the certificate issued by the Kaushik Modern Public School, Khurgaon.*** *As noted hereinbefore, the other school certificates were issued following this and therefore, meet the same fate inasmuch as they cannot be treated as correct, in the face of conflicting public records and public documents as also the Medical Report which state to the contrary.*

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24. Rule 12(3)(a) of the Rules lays down the sequential list of certificates to be examined and the order thereof. As no 'matriculation or equivalent certificates' were available under Rule 12(3)(a)(i) of the Rules, thus under Rule 12(3)(a)(ii) of the Rules, 'date of birth certificate from the school (other than a play school) first attended' was attracted and certificate issued by Kaushik Modern Public School, Khurgaon was taken as conclusive proof of date of birth. However, the deposition of the School's Headmaster, especially to the effect that the birth-date was noted as per an oral representation by Respondent No.2's father, makes the said certificate unreliable. Moving on, Rule 12(3)(a)(iii) and Rule 12(3)(b) of the Rules, respectively, provide for 'birth certificate given by a corporation or a municipal authority or a panchayat' and 'only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child.' 18 of 21

25. From an overall circumspection of all the facts and circumstances surrounding the case, including the Rules, the picture which emerges is that on the one hand, there is the certificate backed by the testimony of the Headmaster of the first school (which as indicated supra notes that the recordal was made on the oral say-so of Respondent No.2's father) relating to the date of birth and the three consequentially-made/issued certificates, whereas on the other hand, there exists a statutory document, being a public record and a public document, in Form (A) under Rule 2 of the Rules framed under the U.P. Panchayat Raj Act, 1947 disclosing the year of birth of Respondent No.2 as 1991 as also the entry in the

> *Voters' List for the Legislative Assembly of the year 2012 and the Medical Report apropos the age of Respondent No.2 given by the Chief Medical Officer, Muzaffarnagar, who opined that Respondent No.2 was aged about 22 years on 01.12.2012. As such, the certificate issued by Kaushik Modern Public School, Khurgaon could not have been taken as conclusive proof of date of birth of Respondent No.2, discarding Form (A) under Rule 2 of the Rules under the U. P. Panchayat Raj Act, 1947; the entry in the Voters' List for the Legislative Assembly of the year 2012, and; the Medical Report. On the basis of the latter three documents, it is clear that Respondent No.2 cannot be said to have been a 'juvenile' on the date of the unfortunate incident.*
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> (Emphasis supplied)

In the present case, the Child Welfare Committee has not recorded any finding as to the genuineness of the school records produced before it. There is nothing on record disclosing the source of entries made in the school record and the reliability of such source. The entries in school record were also not proved as required by law. The Child Welfare Committee has also not taken the evidence of the Principal of the institution to verify the school records produced before it. It would also be relevant to note that the institution in which the state respondents claim the corpus was admitted, is not a government institution, therefore, its Principal is not a public servant. The father of the corpus was also not called by the Child Welfare Committee to verify the age of the corpus. It is apparent that there is no determination of the age of the corpus by the Child Welfare Committee. The essential condition for holding that the corpus is a minor and below 18 years of age, i.e., a child as defined under Section 2 (12) of the Act, 2015 and the Child Welfare Committee has the jurisdiction to take the corpus under its care and protection or in custody do not exist. The order passed by the Child Welfare Committee has been passed mechanically and without any application of mind. The order dated 30.07.2025 is without jurisdiction and nullity. The detention of the petitioner in Government Children Home (Girls), Swaroop Nagar, Kanpur Nagar is without jurisdiction.

There is no other document on record except the medical report, to determine the age of the corpus. The medical test determining the age of petitioner no.1 indicates that the age of corpus, i.e., petitioner no. 1 is 18

years or above and is, therefore, not a child as defined in Section 2(12) of Act, 2015. The Child Welfare Committee has no jurisdiction to take the corpus, i.e., petitioner no. 1 under its care and protection or keep her in Government Children's Home or anywhere else. The detention of corpus, i.e., petitioner no. 1 in Rajkiya Balgrih (Balika), Swaroop Nagar, Kanpur Nagar is without jurisdiction.

For the aforesaid reasons, a writ of Habeas Corpus is to be issued to release Smt. Rohini, corpus, i.e., petitioner no. 1. Consequently, a writ of Habeas Corpus is issued directing the Superintendent, Government Children Home (Girls), Swaroop Nagar, Kanpur Nagar and the Chairman, Child Welfare Committee, Kannauj to release forthwith Smt. Rohini, petitioner no.1. The corpus, i.e., the petitioner no. 1 is free to go wherever she likes and to stay with whomsoever she wants including the petitioner no. 2.

In view of the aforesaid, the petition is ***allowed***.

A copy of this order be communicated for necessary compliance to the Superintendent, Government Children Home (Girls), Swaroop Nagar, Kanpur Nagar and the Chairman, Child Welfare Committee, Kannauj by the Registrar (Compliance) within one week.

(Zafeer Ahmad,J.) (Salil Kumar Rai,J.)

December 05, 2025
Vipasha