HIGH COURT OF JUDICATURE AT ALLAHABAD

HABEAS CORPUS WRIT PETITION No. - 1042 of 2025

Smt Saniya And Another

.....Petitioner(s)

Versus

State Of U.P. And 3 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Arjit Srivastava, Usha Srivastava, Vinod Kumar Srivastava
Counsel for Respondent(s)	:	G.A.

Court No. - 44

HON'BLE J.J. MUNIR, J.
HON'BLE SANJIV KUMAR, J.

Let the Chairperson, National Commission for Women, Plot-21, Jasola Institutional Area, New Delhi – 110025, the Principal, Ucchh Prathmik Vidyalaya, Gram Ratheri, Muzaffarnagar and Jai Prakash Bhaskar, Sub-Inspector of Police, Police Station- Nai Mandi, District- Muzaffarnagar be impleaded as party respondents to this writ petition during the course of the day.

The first petitioner, Smt. Saniya, daughter of Muneer and the second petitioner Vikas *alias* Ramkishan, son of Sahendra alias Surendra, who claim to be major and of marriageable age, fell in love and solemnized marriage on 29.01.2024 at Azad Nagar, Delhi. Since then, they were residing as man and wife in Delhi.

The first petitioner's father lodged a First Information Report with the Police on 02.10.2023 at Police Station- Nai Mandi, District- Muzaffarnagar giving rise to Case Crime No. 538 of 2023 under Sections 363 and 120B I.P.C. saying that his daughter, Sania, aged fourteen years on 01.10.2023, in the evening hours at 5.30 p.m., went missing. When he came back home from work, he found out that Smt. Amresh daughter of

Sito had called her over to some place. Companions of the informant Muneer, one, Shahzad, son of Salim, told him that his daughter Sania had been seen by them riding pillion with Vikas, son of Sahendra and Dharmendra, son of Malkhaan on the Nasirpur Road. The informant said that Vikas and Dharmendra had fled their homes and the hunt for his daughter was on. He expressed an apprehension that something untoward may not befall his daughter. It is on these facts that the information was registered by the Police.

The victim was recovered by the Police and her statement under Section 164 Cr.P.C. recorded before the Magistrate. The statement was recorded on 07.10.2023. There she said in her statement that she and Vikas are in love for the past four years and wanted to marry. Her family members also know of the fact for the past one year and are not prepared to marry her. On 01.10.2023 when she was talking to Vikas over phone at 3 O'clock in the wee hours of 01.10.2023/02.10.2023, her father caught her. He thrashed her with the heavy block of wood used for washing clothes, leading her to bleed from the head. She sustained injuries and was now scared. She said before the Magistrate that her father would kill her. She said that he abuses her in vulgar words. Before leaving for work, he had asked the other family members to throw her out of the home. It was for this reason that, on 01.10.2023, in the afternoon, she left home. Near the school, she boarded a *rickshaw* and went to the Government Hospital. She called Vikas over mobile phone, who dissuaded her from taking the course of action she indicated. She did not agree and boarded a bus to Haridwar. From there, she went to Dehradun. She again called up Vikas, who, in turn, advised her to go back home, but she did not agree. Thereupon Vikas called her over to *Nahan* in Himachal Pradesh, where he

would work. She stayed at *Nahan*. The two of them boarded a bus on 02.10.2023 to Chandigarh and from there to *Sarayadal*. They stayed at *Parthawal* renting a room.

In the said case, Vikas, who was arrested and incarcerated in prison, was granted bail by this Court *vide* order dated 15.12.2023, passed in Criminal Misc. Bail Application No. 53779 of 2023, taking into account all these facts, in particular the testimony of petitioner no. 1. We notice that Sessions Trial No. 2598 of 2023, arising out of the said FIR, is in progress. After this incident, apparently, the first petitioner was back with her family.

Now, a First Information Report has again been lodged by Muneer, the first petitioner's father on 29.06.2025 giving rise to Case Crime No. 323 of 2025 under Sections 137(2), 352, 351(3) and 61(2) B.N.S., Police Station- Nai Mandi, District- Muzaffarnagar saying that his minor daughter, Sania, aged seventeen years, had been taken by Vikas, his brother and two unknown men by blandishment on 18.06.2025 at about 1500 hours. It is said that the informant's daughter is a minor and Vikas, his brother and two unknown men, had been seen taking her on a motorcycle in the village by Farruddin, son of Yaseen, who reported the matter to the informant. It was said that they had taken the first petitioner towards the forest *via* the fields. It is also mentioned that in the past also Vikas had taken away the informant's daughter by blandishment and a case in that regard was pending trial in Court. The hunt for the missing, by the informant, did not yield result and, therefore, he had come to report the matter.

There are some other allegations not of much relevance to the issue that

figures in the FIR.

At this stage, Vikas alias Ramkishun and the informant's daughter Sania, besides two others, filed Criminal Misc. Writ Petition No. 17045 of 2025 before this Court where this Court issued notice and stayed the petitioners' arrest in Case Crime No. 323 of 2025 under Sections 137(2), 352, 351(3) and 61(2) B.N.S., Police Station- Nai Mandi, District- Muzaffarnagar till the next date of listing *vide* order dated 13.08.2025, subject to cooperation in the ongoing investigation.

It is averred in paragraph no. 16 of the writ petition that the petitioners served the order dated 13.08.2025 passed in the writ petition, last mentioned, upon the Senior Superintendent of Police, Muzaffarnagar on 19.08.2025, who, in turn, sent the orders to the Station House Officer, Police Station- Nai Mandi, District- Muzaffarnagar. The Station House Officer communicated the order to the Sub-Inspector of Police, that is the Investigating Officer, on 21.08.2025. The fact of the stay order passed by this Court is entered in C.D. No. XI, at page nos. 68 and 69 of the paper book.

Despite being cognizant of the stay order, the Senior Superintendent of Police the Station House Officer and the Investigating Officer did not lay their hands off in arresting the first petitioner. However, they went about their task, considering themselves to be very clever by indulging in a crude and uneducated play of words.

In C.D. No. XII, dated 08.09.2025 at page no. 74 of the writ petition, it has been recorded by the Investigating Officer:

"नकल फर्द अवलोकन.....फर्द बाबत कब्जे लेने पीड़िता कु० सानिया पुत्री मुनीर नि० ग्राम रथेडी थाना

नई मण्डी मु०नगर सम्बन्धित मु0अ0सं0 323/25 धारा 137(2)/352/351(3)/61(2) बी0एन0एस० थाना नई मण्डी मु०नगर ..... आज दिनाक 08.09.2025 को पीडिता कु० सानिया पुत्री मुनीर नि० ग्राम रथेडी थाना नई मण्डी मु०नगर जो अभियुक्त विकास उर्फ रामकिशन पुत्र सुरेन्दर उर्फ सहेन्द्र नि० ग्राम रथेड़ी थाना नई मण्डी मु0नगर के उपस्थित थाना आयी है क्योकि पीड़िता थाना नई मण्डी मु0नगर के मु0अ0सं0 323/25 धारा 137(2) /352/351(3)/61(2) बी0एन0एस0 से सम्बन्धित है अतः पीडिता क० सानिया को माननीय उच्च न्यायालय इलाहाबाद द्वारा दिये गये निर्देशो के अनुपालन मे अन्य विवेचनात्मक कार्यवाही हेतु महिला का0 1127 गुन्जा की उपस्थिति मे कब्जा पुलिस लिया जाता है। अभियुक्त विकास उर्फ रामकिशन पुत्र सुरेन्दर उर्फ सहेन्द्र की उपस्थिति में अन्य विवेचनात्मक कार्यवाही की जाती है। फर्द तैयार कर पीड़िता कु० सानिया व विकास उर्फ रामकिशन को पढकर सुनाकर हस्ताक्षर वनवाये जाते है। एस०डी० हिन्दी सानिया, एस०डी० हिन्दी रामकिशन, एस०डी० म० का० 1127 गुन्जा एस0डी0 जयप्रकाश भास्कर एस०आई० थाना नई मण्डी मु0नगर 08.09 25 मूल फर्द संलग्न सीडी की जाती है।

emphasis by Court"

After dubbing the first petitioners' arrest or deprivation of liberty during investigation as the taking of her possession, described in Hindi as "सानिया को.....कब्ज़ा पुलिस लिया जाता है", she was produced for her medical examination relating to the determination of age, before the Additional Chief Medical Officer, Muzaffarnagar. She was subjected to an ossification test and there is a report from the Department of Radiology, District Hospital, Muzaffarnagar dated 09.09.2025 opining her to be about eighteen years old. On the basis of this report, there is a further report dated 10.09.2025 issuing an age certificate signed by the Additional Chief Medical Officer, Muzaffarnagar formally opining her to be aged about eighteen years. These certificates are there on the paper book at page nos. 87 and 88.

After the said examination was over, the first petitioner was produced before the Chairman, Child Welfare Committee, Muzaffarnagar on 12.09.2025, who mechanically passed an order of the said date directing her to be interned in the Bal Girha (Balika), Pushpanjali Vihar, Janta Road, Saharanpur. The order of the Chairman, Child Welfare Committee, Muzaffarnagar dated 12.09.2025 is on record at page no. 94 of the paper

book.

At this stage, Mr. Shashi Shekhar Tiwari, learned Additional Government Advocate states that the Police, on the basis of some kind of a register from the Ucchh Prathmik Vidyalaya, Ratheri Sadar, Muzaffarnagar, relating to Class VIII, where petitioner no. 1 read, have recorded in C.D. No. VIII that her roll number in the school was 6645 and, according to that register, her date of birth was 25.04.2009. He has shown us the case diary as well as the school register on which the Investigating Officer has relied upon.

The school register is *prima facie* not a complete document but truncated and photostat copy of the same appended to the case diary. It does little service to the respondents' case. It would have to be determined whether the said document qualifies under Section 94(2) of the Juvenile Justice (Care and Protection of Children) Act, 2015, as evidence, that would have precedence over the medico-legal estimation of the first petitioner's age. This can be done after we have the original register from the Ucchh Prathmik Vidyalaya, Ratheri Sadar, Muzaffarnagar before us, copies whereof are annexed in the case diary.

The foremost issue, to which we take serious umbrage, in this case, is that the first petitioner was deprived of her liberty, virtually taken into custody and effectively arrested in violation of the stay order passed by a Division Bench of this Court on 13.08.2025 in Criminal Misc. Writ Petition No. 17045 of 2025, where the first petitioner is also a petitioner and this Court has restrained the Police from arresting any of the petitioners, including petitioner no. 1, Sania.

The second issue, to which we take serious objection, is that in C.D. No. XII, dated 08.09.2025, the Police have effectivelly arrested the petitioner by describing it, in the manner, that they are taking her into *kabza* police. They have not stopped at that and prepared a memorandum of possession, relating to the first petitioner, which they have made Vikas sign.

'Kabza' is a word which connotes most closely to the English word 'possession' in legal and common parlance, both. It is reserved for chattels not humans. If any doubt could be extended to benefit the intention of the Police, they have effectively stamped it out by drawing up a *fard* or memo of possession relating to a human being. The idea and the action - the idea more than the action are both abhorrable. To think that in the twenty first century, a man of contemporary society, working in the ranks of the Police, can think that a human being can be taken into possession, on the basis of a memorandum of possession or *fard*, makes it seem to us that at least the persons concerned in this transaction have not come a long way from the days of **Dred Scott v. Sandford, 60 U.S. 393 (1856).**

It would, therefore, be necessary for us, apart from issuing a *rule nisi* and, directing the production of the detenue, to direct an inquiry in the matter, to be made by the National Commission for Women and appropriate proceedings taken against the policemen who seem to be much at guilt and in the need of much reformation.

It would also be imperative for us to require the Principal of the Ucchh Prathmik Vidyalaya, Gram Ratheri, Muzaffarnagar to appear before us, along with all the original records relating to the first petitioner, Sania, maintained with the school that have bearing on her age, be it the admission register, the scholar register, transfer register or any other

register.

The Senior Superintendent of Police, Muzaffarnagar, would of course be the most answerable man in the matter. He would have to file his own affidavit explaining the conduct of his subordinates, both about taking the first petitioner into custody in violation of this Court's interim order dated 13.08.2025 passed in Criminal Misc. Writ Petition No. 17045 of 2025 and also describing it as an act of taking 'possession' or '*kabza*' of a person and drawing up a memorandum of possession.

Admit.

Issue notice.

Notice on behalf of respondent nos. 1 to 4 is accepted by Mr. Shashi Shekhar Tiwari, learned Additional Government Advocate.

Steps to serve the newly added respondents, to wit, respondent nos. 5, 6 and 7 shall be taken by R.P.A.D. within the next three working days.

In addition to the service being affected through R.P.A.D., respondent nos. 6 and 7 shall be caused to be served through the learned Chief Judicial Magistrate, Muzaffarnagar and respondent no. 5 by the learned Registrar General through the learned Registrar General of the Delhi High Court.

Notice to the said respondents will indicate that this matter will be listed for orders on 27.11.2025 at 2.00 p.m.

Mr. Shashi Shekhar Tiwari will file a counter affidavit on behalf of respondent nos. 1 to 4 on or before the date fixed.

The Superintendent of the Rajkiya Bal Girha (Balika), Pushpanjali Vihar, Janta Road, Saharanpur and the Senior Superintendent of Police, Muzaffarnagar are ordered to cause the detenue, Smt. Sania, daughter of Muneer and the wife of the second petitioner Vikas *alias* Ramkishan, son of Sahendra *alias* Surendra, be produced before this Court on 27.11.2025 at 2.00 p.m.

The Senior Superintendent of Police, Muzaffarnagar will file a personal affidavit on or before the next date fixed indicating his stand in the matter.

The Chairperson, National Commission for Women, New Delhi will also cause an affidavit to be filed on their behalf indicating the action taken.

List for **orders** on **27.11.2025** along with a report regarding service and the postal track attached.

To be taken up at **2.00 p.m.**

The learned Chief Judicial Magistrate, Muzaffarnagar shall submit his report regarding service on the respective respondents.

Let this order be communicated to the learned Chief Judicial Magistrate, Muzaffarnagar, the Superintendent of the Rajkiya Bal Girha (Balika), Pushpanjali Vihar, Janta Road, Saharanpur through the learned Chief Judicial Magistrate, Saharanpur and through the learned Chief Judicial Magistrate, Muzaffarnagar to the Senior Superintendent of Police, Muzaffarnagar, the Station House Officer, Police Station- Nai Mandi, District- Muzaffarnagar and the Principal, Ucchh Prathmik Vidyalaya, Gram Ratheri, Muzaffarnagar through the learned Chief Judicial Magistrate, Muzaffarnagar by the Registrar (Compliance) **today.**

Let this order be also communicated to the Chairperson, National Commission for Women, Plot-21, Jasola Institutional Area, New Delhi – 110025 through the learned Registrar General of the Delhi High Court by the learned Registrar General **today.**

(Sanjiv Kumar,J.) (J.J. Munir,J.)

November 20, 2025
Prashant D.

HIGH COURT OF JUDICATURE AT ALLAHABAD

HABEAS CORPUS WRIT PETITION No. - 1042 of 2025

Smt Saniya And Another

.....Petitioner(s)

Versus

State Of U.P. And 3 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Arjit Srivastava, Usha Srivastava, Vinod Kumar Srivastava
Counsel for Respondent(s)	:	G.A.

Court No. - 44

HON'BLE J.J. MUNIR, J.
HON'BLE SANJIV KUMAR, J.

A progress compliance affidavit has been filed on behalf of the Senior Superintendent of Police, Muzaffarnagar and a counter affidavit has been filed on behalf of the State. Both the affidavits are taken on record.

Learned Counsel for the petitioners, if he so desires, may file a rejoinder within 24 hours.

The detenue has been produced in compliance with the *rule nisi* issued by us.

Since a short time is required to look into the matter, the detenue will be housed in the One Stop Centre, Police Station Shahganj, Prayagraj by the State.

The Commissioner of Police, Prayagraj and the District Magistrate, Prayagraj, acting together, shall ensure that the detenue is housed immediately at the One Stop Centre. She will be **produced again** tomorrow i.e. 28.11.2025 by the Police personnel, who have brought her forth from Muzaffarnagar.

Put up this matter tomorrow i.e on **28.11.2025** at **2:00 p.m.** for **hearing**.

The original school records relating the the detenue, which have been produced, shall be kept in a sealed cover and entrusted to the safe custody of the learned Registrar General of this Court. These shall be produced

before the Court again tomorrow.

The school records have been produced by Anil Kumar, Principal, Uccha Prathmic Vidyalaya, Rathedi, Sadar, Muzzafarnager, who is present in person to explain the records to the Court. He will **appear again** tomorrow before the Court.

The Registrar (Compliance) is directed to communicate this order to the Commissioner of Police, Prayagraj and the District Magistrate, Prayagraj, both through the learned Chief Judicial Magistrate, Prayagraj, **today.**

(Sanjiv Kumar,J.) (J.J. Munir,J.)

November 27, 2025
Amit

2025:AHC:214384-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

HABEAS CORPUS WRIT PETITION No. - 1042 of 2025

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Counsel for Petitioner(s)	:	Arjit Srivastava, Usha Srivastava, Vinod Kumar Srivastava
Counsel for Respondent(s)	:	G.A.

Court No. - 44

HON'BLE J.J. MUNIR, J.
HON'BLE SANJIV KUMAR, J.

1. This habeas corpus writ petition has been instituted on behalf of Smt. Saniya, wife of Vikas *alias* Ramkishan and daughter of Muneer by the second petitioner, Vikas *alias* Ramkishan, son of Sahendra *alias* Surendra, with her husband praying that a *rule nisi* be issued to respondent nos. 2, 3 and 4, to wit, the Superintendent Government Women Shelter Home, Muzaffarnagar, the Superintendent of Police, Muzaffarnagar and the Station House Officer, Police Station- Nai Mandi, District- Muzaffarnagar ordering them to produce Smt. Sania before the Court, and thereupon, to set her at liberty.

2. By a detailed order of ours, dated November the 20th, 2025, we granted a *rule nisi* ordering the detenue to be produced. We also directed the Principal, Ucchh Prathmik Vidyalaya, Gram Ratheri, Muzaffarnagar to appear in person, along with all the original records relating to the first petitioner's age maintained with the school, be it the admission register, the scholar register or the transfer register. This course was necessitated because the detenue has landed in the Rajkiya Bal Girha (Balika), Pushpanjali Vihar, Janta Road, Saharanpur (for short, 'the Protection Home') pursuant to an order of the

Child Welfare Committee, Muzaffarnagar that came to be passed on September the 21st, 2025 by the Chairman of that Committee on ground that her date of birth recorded is 25.04.2009, which makes her a minor. Apparently, this date of birth was considered as correct because it appears in her school records.

3. The genesis of the dispute that had led the detenue to be produced before the Child Welfare Committee and then sent to the Protection Home is that the first petitioner who claims to be a major, married petitioner no. 2 of her free will and wish and against that of her family's. In consequence, the detenue's father lodged a First Information Report giving rise to Crime No. 538 of 2023 under Sections 363 and 120B IPC, Police Station- Nai Mandi, District- Muzaffarnagar. The First Information Report said that the informant's daughter, Sania aged fourteen years went missing on 01.10.2023 at 5.30 p.m. The informant complained that Vikas and Dharmendra had fled their homes and Sania was missing. He expressed an apprehension that something untoward may not befall his daughter. The victim was recovered by Police and her statement recorded under Section 183 BNSS before the Magistrate.

4. The statement aforesaid was recorded on 7th October, 2023. In her statement, the detenue said that she and Vikas are in love for the past four years and wanted to marry. Her family members also knew of the fact for the past one year but were not prepared to accept the marriage. On 01.10.2023, when she was talking to Vikas over phone at 3 O'clock in the wee hours of 01.10.2023/02.10.2023, her father caught her. She received a sound thrashing with a heavy block of wood used for washing clothes, leading her to bleed from the head. She sustained injuries and was now scared. She said

before the Magistrate that her father would kill her. She also said that her father abuses her in vulgar words. Before leaving for work, her father had asked the other family members to throw her out of the home. It was for this reason that, on 01.10.2023, in the afternoon hours, she left home. Near the school, she boarded a rickshaw and went to the Government Hospital. She called Vikas over mobile phone, who dissuaded her from taking the course of action she contemplated. She did not agree and boarded a bus to Haridwar. From there, she went to Dehradun. She again called up Vikas, who, in turn, advised her to go back home, but she did not agree. Thereupon, Vikas called her over to Nahan in Himachal Pradesh, where he would work. She stayed at Nahan. The two of them boarded a bus on 02.10.2023 to Chandigarh and from there to Sarayadal. They stayed at Parthawal renting a room.

5. Vikas, who was arrested and incarcerated in prison, was granted bail by this Court *vide* order dated 15.12.2023, passed in Criminal Misc. Bail Application No. 53779 of 2023, taking into account all these facts, in particular the stand of the detenue. We notice that Sessions Trial No. 2598 of 2023, arising out of the FIR last mentioned, is in progress. After this incident, apparently, the first petitioner was back with her family.

6. Now, a First Information Report has again been lodged by Muneer, the first petitioner's father on 29.06.2025 giving rise to Case Crime No. 323 of 2025 under Sections 137(2), 352, 351(3) and 61(2) B.N.S., Police Station- Nai Mandi, District- Muzaffarnagar saying that his minor daughter, Sania, aged seventeen years, had been taken by Vikas, his brother and two unknown men by blandishment on 18.06.2025 at about 1500 hours. It is said that the informant's daughter is a minor and Vikas, his brother and the two

unknown men, had been seen taking her on a motorcycle in the village by one Farruddin, son of Yaseen, who reported the matter to the informant. It was said that they had taken the first petitioner towards the forest *via* the fields. It is also mentioned that in the past also Vikas had taken away the informant's daughter by blandishment and a case in that regard was pending trial in Court. The hunt for the missing, by the informant, did not yield result and, therefore, he had come to report the matter. Faced with this FIR, Vikas *alias* Ramkishan and the informant's daughter, the first petitioner, Sania, besides two others, filed Criminal Misc. Writ Petition No. 17045 of 2025 before this Court where this Court issued notice and stayed the petitioners' arrest in Case Crime No. 323 of 2025 under Sections 137(2), 352, 351(3) and 61(2) B.N.S., Police Station- Nai Mandi, District- Muzaffarnagar till the next date of listing *vide* order dated 13.08.2025, subject to cooperation in the ongoing investigation.

7. It is averred in paragraph no. 16 of the writ petition that the petitioners served the order dated 13.08.2025 passed in the writ petition, last mentioned, upon the Senior Superintendent of Police, Muzaffarnagar on 19.08.2025, who, in turn, sent the orders to the Station House Officer, Police Station- Nai Mandi, District- Muzaffarnagar. The Station House Officer communicated the order to the Sub-Inspector of Police, that is the Investigating Officer, on 21.08.2025. The fact of the stay order passed by this Court is entered in C.D. No. XI, at page nos. 68 and 69 of the writ petition paper book. Despite being cognizant of the stay order, the Senior Superintendent of Police, the Station House Officer and the Investigating Officer did not lay their hands off in arresting the first petitioner. However, they went about their task, considering themselves to be very clever by indulging in a crude and uneducated play of words.

8. In C.D. No. XII, dated 08.09.2025 at page no. 74 of the writ petition, it has been recorded by the Investigating Officer:

> "नकल फर्द अवलोकन.....फर्द बाबत कब्जे लेने पीड़िता कु० सानिया पुत्री मुनीर नि० ग्राम रथेडी थाना नई मण्डी मु०नगर सम्बन्धित मु0अ0सं0 323/25 धारा 137(2)/352/351(3)/61(2) बी0एन0एस० थाना नई मण्डी मु०नगर ..... आज दिनाक 08.09.2025 को पीडिता कु० सानिया पुत्री मुनीर नि० ग्राम रथेडी थाना नई मण्डी मु०नगर जो अभियुक्त विकास उर्फ रामकिशन पुत्र सुरेन्दर उर्फ सहेन्द्र नि० ग्राम रथेड़ी थाना नई मण्डी मु0नगर के उपस्थित थाना आयी है क्योकि पीड़िता थाना नई मण्डी मु0नगर के मु0अ0सं0 323/25 धारा 137(2)/352/351(3)/61(2) बी0एन0एस0 से सम्बन्धित है अत: पीड़िता कु० सानिया को माननीय उच्च न्यायालय इलाहाबाद द्वारा दिये गये निर्देशो के अनुपालन मे अन्य विवेचनात्मक कार्यवाही हेतु महिला का0 1127 गुन्जा की उपस्थिति मे कब्जा पुलिस लिया जाता है। अभियुक्त विकास उर्फ रामकिशन पुत्र सुरेन्दर उर्फ सहेन्द्र की उपस्थिति में अन्य विवेचनात्मक कार्यवाही की जाती है। फर्द तैयार कर पीडिता कु० सानिया व विकास उर्फ रामकिशन को पढ़कर सुनाकर हस्ताक्षर वनवाये जाते है। एस०डी० हिन्दी सानिया, एस०डी० हिन्दी रामकिशन, एस०डी० म० का० 1127 गुन्जा एस0डी0 जयप्रकाश भास्कर एस०आई० थाना नई मण्डी मु0नगर 08.09 25 मूल फर्द संलग्न सीडी की जाती है।"

(emphasis by Court)

9. Despite the first petitioners' arrest or deprivation of liberty during investigation camouflaged as "the taking of her possession", described in Hindi as "सानिया को ..... कब्ज़ा पुलिस लिया जाता है", she was produced for her medical examination relating to the determination of age, before the Additional Chief Medical Officer, Muzaffarnagar. She was subjected to an ossification test and there is a report from the Department of Radiology, District Hospital, Muzaffarnagar dated 09.09.2025 opining her to be about eighteen years old. On the basis of this report, there is a further report dated 10.09.2025 issuing an age certificate signed by the Additional Chief Medical Officer, Muzaffarnagar formally opining her to be aged about eighteen years. These certificates are there at pages nos. 87 and 88 of the writ petition paper book.

10. After the said examination was over, the first petitioner was produced before the Chairman, Child Welfare Committee, Muzaffarnagar on 12.09.2025, who mechanically passed an order of the said date directing her to be interned in the Protection Home.

11. These facts, more or less, have already been noticed in the detailed order by which we issued *rule nisi* in this matter. But on that day, Mr. Shashi Shekhar Tiwari said that the Police had ascertained the first petitioner's age from a register maintained with the Ucchh Prathmik Vidyalaya, Ratheri, Sadar, Muzaffarnagar relating to Class VIII where petitioner no. 1 read, which they have recorded in Case Diary No. VIII. There, her roll number in the school was mentioned as 6645, and, according to that register, her date of birth was 25.04.2009.

12. Mr. Shashi Shekhar Tiwari had invited our attention to the case diary as well as the school register, upon which the Investigating Officer relied. We found the school register to be a truncated document, and, therefore, while granting the *rule nisi*, mindful as we were of the provisions of Section 94(2) of the Juvenile Justice (Care and Protection of Children) Act, 2015 ('the Act of 2015', for short), we deemed it proper to summon the original records from the school aforesaid and also directed the Principal of the said school to be present in order to assist us with the original records.

13. We had to take the aforesaid course of action because under Section 94(2) of the Act of 2015, a date of birth certificate from the school or the Board, where the victim had secured her matriculation certificate, as the case may be, is the highest in the rung of evidence to be considered for the determination of a victim's age as well, like a juvenile (see **Jarnail Singh v. State of Haryana, (2013) 7 SCC 263**).

14. If a date of birth certificate from the school or the Board of Education is not available, the next in order of preference or the next rung in the ladder of preference, falls in favour of the certificate issued by the Municipality or a Gram Panchayat. Failing both these two kinds of evidence in that order, medico-legal evidence regarding estimation of a victim’s age can be

considered. Therefore, we were hesitant to straightaway take into account the certificate of medico-legal estimation of the detenue's age which has been annexed to the writ petition.

15. Today, we have before us records from the Ucch Prathmik Vidyalaya, Gram Ratheri, Muzaffarnagar relating to the petitioner and the Principal of that school as well. The first task that we set about is to determine what these records say about the detenue's age and what is the fidelity of these records or their legal worth.

16. The Principal of the Ucch Prathmik Vidyalaya, Gram Ratheri, Muzaffarnagar, Anil Kumar Singh, is present before us and has produced the admission register carrying the details of students from S.R. No. 6601-7099. The petitioner's name figures at S.R. No. 6645. Her father's and mother's name is recorded in the sixth column and in the fourth and fifth column, her date of birth mentioned, in words and figures both, is Twenty Fifth April Two Thousand Nine.

17. The Principal has also produced before us the 'Register of Results' where the petitioner's name is mentioned at Serial No. 40. There, too, her date of birth mentioned is 25.04.2009.

18. It is relying upon these entries in the register, that Mr. Shashi Shekhar Tiwari, submits that we have to accept it as the detenue's correct date of birth, which would make her a minor of sixteen years plus.

19. We asked the Principal of the school, who is present before us, as to the basis on which this entry in the school records has been made. He informed us that the detenue has joined the school in Class V and before that she was educated at home. He further said that the date of birth that has been entered in the school records is based on the Aadhar Card.

20. Now, it is well known that the date of birth entered in the Aadhar Card

hardly affords any basis to ascertain a person's date of birth. Dates of birth mentioned on the Aadhar Card are recorded for the mere saying of the head of a family or the person who is applying for the Card to be made. It is not cross-checked by any authentic record such as a date of birth certificate from the Corporation or other competent Body. On this short ground alone, we find that the school record, about the detenue's age, is entirely unreliable and cannot be accepted.

21. Admittedly, there is no date of birth certificate issued by a Corporation, a Municipality or a Panchayat certifying the petitioner's age. Therefore, this Court is left with no option but to look into the medico-legal certification of the detenue's age.

22. A look at the certificate dated 10.09.2025 and the one dated 09.09.2025, upon which the latter certificate is based, leaves us in no manner of doubt that the doctors, after conducting an ossification test and also an examination of her dental development, have opined the detenue to be aged about eighteen years.

23. Considering the well settled principle that a medically estimated age can have a variation of two years on either side, but has to be construed in the manner in which is exculpatory, we hold the detenue to be a major aged eighteen years or more.

24. Since, the detenue is a major and is now before the Court, produced on our *rule nisi*, we proceed to ascertain her stand about the claim if she is in unlawful detention of the Protection Home:

प्रश्न : आपका नाम ?

उत्तर : सनिया ।

प्रश्न : आपके पिताजी का नाम ?

उत्तर : मुनीर।

प्रश्न : अभी आप कहाँ से आयी हैं ?

उत्तर : सहारनपुर से।

प्रश्न : सहारनपुर में कहाँ से?

उत्तर : नारी निकेतन से।

प्रश्न : ये विकास कौन है?

उत्तर : जी, जिस से मैं शादी करना चाहती हूँ।

प्रश्न : आप किसके साथ जाना चाहती हैं ?

उत्तर : विकास के साथ।

प्रश्न : आप अपने माता पिता के साथ जाएँगी ?

उत्तर : नहीं।

25. The detenue is an adult and has expressed an unequivocal choice before us that she wishes to go along and stay with Vikas and not her parents. The detenue, being an adult, is free to go anywhere that she likes and stay with whomsoever she wants. Though it is mentioned in paragraph no. 11 of the FIR that the second petitioner and the detenue have married, the detenue has been candid in saying that she wants to marry Vikas.

26. This petition is not about marriage or its validity. It is about unlawful detention and the right of the detenue to self-determination and the fact that she, being a major, is entitled to stay with whomsoever she wants and wherever she likes. The detenue's stand, being unequivocal, that she wants to go and stay with Vikas, whom she wants to marry, she is at liberty to do so. She is free to marry Vikas and stay with him and marry him according to such rites and rituals which both of them consider appropriate. They can stay together, even otherwise. This is a right which inheres in every citizen of India who is a major and it cannot be interfered with by anyone, including the State, acting at someone’s instance like the detenue’s parents.

27. In the result, this habeas corpus petition **succeeds** and is **allowed**. The detenue, Sania, who is present in Court, is ordered to be set at liberty **forthwith**. She is at liberty to go anywhere she likes and stay with whomsoever she wants, including Vikas.

28. The police personnel, who have broughtforth the detenue, are discharged of their assignment and shall go back and report to the office, lines or station whence they came.

29. Let the records of the school be returned forthwith to the Principal, Ucch Prathmik Vidyalaya, Gram Ratheri, Muzaffarnagar.

30. Let this order be communicated to the Superintendent of the Rajkiya Bal Girha (Balika), Pushpanjali Vihar, Janta Road, Saharanpur through the learned Chief Judicial Magistrate, Saharanpur and through the learned Chief Judicial Magistrate, Muzaffarnagar to the Senior Superintendent of Police, Muzaffarnagar and the Station House Officer, Police Station- Nai Mandi, District- Muzaffarnagar by the Registrar (Compliance) **today.**

(Sanjiv Kumar,J.) (J.J. Munir,J.)

November 28, 2025
Prashant D.