

The High Court Of Madhya Pradesh

WP No. 3423 of 2022

(FAISAL KHAN Vs THE STATE OF MADHYA PRADESH AND OTHERS)

Jabalpur, Dated : 22-02-2022

Shri Rizwan Khan, learned counsel for petitioner.

Shri Pradeep Singh, learned Government Advocate for respondents/State.

Shri Sunil Gupta, learned counsel for respondent. No.6.

This petition under Article 226 of the Constitution seeks issuance of writ of habeas corpus for releasing the corpus from the alleged unlawful confinement at Nari Niketan.

The factual matrix reveals that the petitioner and the corpus knew each other since number of years and developed fondness for each other and are presently inclined to get married. However, it is alleged that the parents of the corpus are unable to approve of the marriage between corpus and the petitioner primarily because the petitioner belongs to a different religion and also that the corpus is of an impressionable age i.e. 19 years when she should prioritise completing her academic career over marriage. The corpus on earlier three occasions i.e. 14.2.2022, 17.2.2022 and 21.2.2022 appeared before this Court through video conferencing from District Court, Betul. On the last occasion i.e. on 21.2.2022, this Court looking to the urgency of the matter directed

functionaries of the State to physically produce the corpus before this Court.

The corpus has been physically produced before this Court and is heard in camera.

The father and the brother of corpus were also heard in camera. The petitioner has also been heard in camera.

During in-camera proceedings, the corpus was adamant upon marrying petitioner. The corpus reveals that the petitioner has assured the corpus of physical and financial assistance for completing her education (presently corpus is pursuing the Nursing Course at undergraduate level).

The corpus has expressed certain apprehensions before this Court that petitioner may solemnize another marriage after marrying the corpus. As such this Court asked the petitioner to file an affidavit so that apprehension of corpus may be to some extent assuaged. The petitioner filed an affidavit on 18.2.2022 vide I.A.No.112/2022 which reveals thus:

शपथपत्र

(समक्ष पेश करने बाबत् माननीय उच्च न्यायालय जबलपुर)

मैं, फ़ेसल खान पिता श्री सगीर खान उम्र 23 वर्ष, निवासी – वार्ड नं. 9, इकबाल गंज, तह. इटारसी जिला होशंगाबाद, म.प्र. निम्नलिखित करता हूँ :-

1. यह कि, मेरे द्वारा माननीय उच्च न्यायालय जबलपुर के समक्ष एक बंदी प्रत्यक्षीकरण याचिका क्रमांक 3423/2022 प्रस्तुत की गई है।
2. यह कि, उक्त याचिका में दिनांक 17.02.2022 को हुई सुनवाई में माननीय उच्च न्यायालय के द्वारा याचिकाकर्ता को अपनी शिक्षा, नौकरी, आय एवं धर्म के संबंध शपथपत्र प्रस्तुत करने हेतु आदेशित किया गया।
3. यह कि, मैं वर्तमान में कला स्नातक के अंतिम वर्ष में शासकीय महात्मा गाँधी स्मृति स्नातकोत्तर महाविद्यालय इटारसी म.प्र. में अध्ययनरत हूँ।
4. यह कि, मैं आर. के. ड्रिलिंग सर्विसेस इटारसी जिला होशंगाबाद में ऑफिस के पद पर कार्यरत हूँ एवं मेरा वेतन 10,000/- प्रतिमाह है।
5. यह कि, और दीक्षा उमंग आर्य पिता श्री योगेश आर्य के साथ विशेष विवाह अधिनियम 1984 के अंतर्गत विवाह करके एक साथ रहेंगे एवं विवाह के पश्चात् मैं उसकी पढ़ाई आवश्यक रूप से करवाऊँगा एवं उसका बहुत अच्छे से ख्याल रखूँगा एवं

उसको जिस चीज की भी जरूरत होगी वह मैं अपनी समर्थता के अनुसार पूरा करूंगा।

6. यह कि, मैंने दीक्षा उमंग आर्य को भी धर्म परिवर्तन के लिए नहीं कहा है वह बालिग है और उसको कौन सा धर्म अपनाना है यह उसकी इच्छा पर निर्भर करता है एवं मैं किस धर्म का पालन करूँ यह मेरी इच्छा पर निर्भर करता है।

सत्यापन

मैं फेसल खान, उपरोक्त शपथकर्ता आज दिनांक को जबलपुर में हस्ताक्षर कर सत्यापित करता हूँ कि शपथपत्र की कंडिका क्रमांक 1 से अंत वर्णित कथन मेरी स्वयं की जानकारी में सत्य एवं सही है।

जबलपुर

दिनांक :- 18.02.2022

सत्यापनकर्ता

Copy of the aforesaid affidavit has been supplied to corpus and she was asked as to whether the said assurance in the affidavit given by petitioner satisfies her apprehension or not.

The corpus was though a little apprehensive since the issue of petitioner solemnizing multiple marriages remain unanswered by the petitioner but still insists that she would like to marry the petitioner and also pursue her academic career.

The father and brother of corpus raised apprehension about the safety and security of corpus and also revealed that their interest is in corpus completing her academic career so that she attains self-reliance and is not dependent on the petitioner who has meager source of income.

The corpus is more than 19 years of age (D.O.B. 19.10.2002) and therefore, as per law is entitled to take a decision on the choice of marriage. However, parents of corpus are equally concerned with the safety and security of their daughter and their

cause of concern cannot be belittled when compared with the desire of corpus to get married to the petitioner.

In petition seeking habeas corpus, this Court has limited jurisdiction. The corpus has already attained the age of majority and, therefore, cannot be kept confined in Nari Niketan where she was lodged since last few days awaiting resolution of the dispute that arose between the petitioner, corpus and parents of corpus.

This Court therefore issues a writ of habeas corpus directing Nari Niketan at Pathar Khera District Betul (M.P.) to release the corpus forthwith and allow her to exercise right to personal liberty. Before parting, this Court would like to add that role of the father of the corpus does not come to an end if the corpus gets married (to anyone). The father continues to be father even after marriage of his daughter and, therefore, is equally entitled to ensure the safety and security of the daughter. Thus, this Court expects that the father of the corpus shall continue to keep in touch with the corpus and provide her with the financial and emotional assistance which she requires to the extent such assistance falls short and is unable to be provided by her spouse.

The corpus is also advised by this Court to understand the priorities in life. Academics has very important role to play in the early formative years of a human being. Thus, the corpus should first concentrate on completing her education to such extent which assures her with source of livelihood to take care of her necessities and comforts without being dependent upon anyone including her husband.

Marriage is a concept which is though important in life but can very well be postponed and takes a backseat when pitched against the all important concept of education. The corpus is expected to pay heed to the aforesaid advice to gain sufficient maturity in life for understanding difference between right and wrong.

Accordingly, Nari Niketan by way of writ of habeas corpus is directed to release the corpus to enable her to exercise right to personal liberty enshrined under Article 21 of the Constitution of India.

To ensure the safety and security of the corpus at the place of her choice of residence, the councillor under the J.J. Act having territorial jurisdiction over the area where the corpus shall henceforth resides, shall submit a fortnightly report about well being of the corpus especially as to whether the corpus is pursuing academic career uninterruptedly or not.

This case is kept pending awaiting a fortnightly report of the councillor about the well being of the corpus from the place of her choice of residence.

Copy of this order be sent to the Juvenile Justice Board of District Hoshangabad.

The escort comprising of Shri Sanjay Raghuvanshi, A.S.I. and Ms. Poonam Choudhary, Lady Constable No.784 of Police Station Itarsi, District Narmadapuram, who have brought corpus to the Court are directed escort corpus to the place where the corpus wants to reside and submit the compliance report with the Registry of this Court within a week.

Registry is directed to list this matter in the **week commencing 14/03/2022** for perusal of the fortnightly report.

(SHEEL NAGU)
JUDGE

(MANINDER SINGH BHATTI)
JUDGE

P/-

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