

Before Arun Kumar Tyagi, J.
HARDEEP SINGH—Petitioner

versus

STATE OF PUNJAB & OTHERS.—Respondents

CRWP No. 3679 of 2021

July 26, 2021

Constitution of India, 1950—Article 226/227—Code of Criminal Procedure, 1973 —Sec. 482 — Habeas Corpus —release of detenu aged 17 and a half years — love marriage —No FIR registered against the detenu or her husband — even if the women is less than 18 years (a minor), at the time of solemnization of marriage, the marriage would still not be void but voidable at her option— Even on lack of proof of marriage, the partners can live together in a live-in relationship — prosecution cannot be ordered merely because of irregularity/illegality in the marriage certificate —Petition by father for release of her daughter – Dismissed.

Held, that when detenu Anu Rani has asserted before this Court that she has solemnized marriage with respondent No.4 and wants to live with him, it will not be expedient in the interest of justice to prosecute them for any irregularity in issuance of their marriage certificate and its presentation before this Court for seeking protection of their life and liberty particularly when they had reasonable apprehension of danger to their life and liberty or false implication at the instance of present petitioner-father of detenu Anu Rani and his other relatives. In any case in the above discussed facts and circumstances, their prosecution on the basis of any irregularity /illegality in the marriage certificate and presentation of the same before this Court for seeking protection of their life and liberty will amount to abuse of process and put detenu Anu Rani and respondent No.4 to great oppression and extreme injustice would be caused to them. Therefore, for preventing abuse of process as well as for securing ends of justice, it will be essential that the complaint made against them and also the inquiry report pending with District Attorney, Fazilka be quashed by this Court in exercise of powers under Article 226 of the Constitution of India and Section 482 of the Code of Criminal Procedure, 1973 and it is so ordered accordingly.

(Para 12)

I.P.S. Kohli, Advocate
for the petitioner.

P.S. Walia, Asstt. A.G., Punjab
for respondents No.1 to 3.

Manoj R. Sharma, Advocate
for respondent No.4.

ARUN KUMAR TYAGI, J. (ORAL)

(The case has been taken up for hearing through video conferencing.)

(1) The petitioner has filed the present petition under Article 226 of the Constitution of India seeking issuance of a writ or direction in the nature of habeas corpus for release of detenu Anu Rani aged about seventeen and half years from illegal custody of respondent No.4. Pursuant to notice of motion order dated 16.04.2021, respondent No.4 appeared through his Counsel and claimed that detenu Anu Rani had solemnized marriage with respondent No.4- Gurvinder Singh and Co-ordinate Bench of this Court had granted them protection vide order dated 31.03.2021 passed on CRWP-3103-2021.

(2) Respondent No.4 had claimed that date of birth of detenu Anu Rani is 18.06.2002 while the petitioner had claimed that detenu Anu Rani was less than 18 years.

(3) Learned Counsel for respondent No.4 had sent copies of matriculation examination certificate and Aadhaar card of detenu Anu Rani in which her date of birth is recorded as 18.06.2002.

(4) Learned Counsel for the petitioner has sent copy of birth certificate of detenu Anu Rani through e-mail print out of which is taken on record. In the above said birth certificate date of birth of detenu Anu Rani is recorded as 18.06.2003.

(5) As per the matriculation examination certificate and Aadhaar card relied upon by respondent No.4 detenu Anu Rani had attained majority on 18.06.2020 and even as per birth certificate relied upon by the petitioner detenu Anu Rani has already completed 18 years of age and has become major.

(6) In compliance with order dated 20.07.2021, respondent No.4 has produced detenu Anu Rani before this Court through video conferencing from the chamber of learned Counsel for respondent No.4.

(7) On being asked detinue Anu Rani has stated that her date of birth is 18.06.2002 and she is 19 years of age. She had gone with respondent No.4 out of her own free will and had solemnized marriage with him on 22.03.2021 and she wants to live with her husband Gurvinder Singh.

(8) Detinue Anu Rani being major is entitled to live with any person and at any place of her choice. Reference in this regard may be made to observations in *Nandakumar and another versus State of Kerala and others*¹ and *Soni Gerry versus Gerry Douglas*² Learned Counsel for the petitioner has submitted that detinue Anu Rani and respondent No.4 Gurvinder Singh had sought protection from this Court on the basis of alleged marriage certificate dated 22.03.2021 but on that date detinue Anu Rani had appeared in her examination and was present at Fazilka and on application of the petitioner, the police conducted an enquiry and during the enquiry it has been found that the said marriage certificate is fake.

(9) Learned State Counsel has submitted that complaint dated 19.04.2021 was made by Aman Kumar son of Mohan Lal resident of Shergarh, P.S. Khuian Sarwar, District Fazilka to the police regarding marriage certificate being fake. Inquiry was conducted by SHO, P.S. Khuian Sarwar and report was sent to Senior Superintendent of Police Headquarters, Fazilka which is now pending in the office of the District Attorney, Fazilka for further proceedings.

(10) Admittedly, no FIR has been registered against respondent No.4 or detinue Anu Rani or any other person on the basis of the said complaint. Detinue Anu Rani had asserted before the Coordinate Bench of this Court that she had solemnized marriage with respondent No.4 in Gurudwara Guru Nanak Niwas Sahib, Village Karor Kala, Tehsil Kharar, District Mohali. Detinue Anu Rani has also asserted before this Court having solemnized her marriage with respondent No.4-Gurvinder Singh. Photographs of detinue Anu Rani with respondent No.4-Gurvinder Singh allegedly taken at the time of marriage have been submitted before this Court. Even if detinue Anu Rani be considered to be less than 18 years of age at the time of claimed solemnization of marriage on 22.03.2021, even then her

¹ 2018(2) RCR (Civil) 899

² 2018(1) RCR (Civil) 650.

marriage would not be void and would be at the worst voidable at the option of detenu Anu Rani. Even if their claim of having solemnized marriage is not accepted for lack of any valid proof, detenu Anu Rani and respondent No.4 are entitled to live together in live-in-relationship. It is evident that the petitioner and other members of his family/relatives are annoyed with detenu Anu Rani due to her having left her parental house and having solemnized marriage with respondent No.4 against their wishes and, therefore, apprehension of respondent No.4 and detenu Anu Rani of causing of harm or false implication by the petitioner and his other relatives is not unreasonable. This apprehension is further fortified by the complaint made by Aman Kumar which is pending with the police and evidently efforts are being made to make irregularity or illegality in the marriage certificate as a ground for asserting the marriage certificate to be forged document for implicating respondent No.4 and detenu Anu Rani besides others in criminal case on the basis thereof. In the facts and circumstances of the case it would not be expedient in the interest of justice to prosecute detenu Anu Rani and respondent No.4-Gurvinder Singh merely on the basis of assertion of the marriage certificate being fake document in view of denial statement of the concerned Granthi. There are photographs supporting claim of detenu Anu Rani and respondent No.4 regarding solemnization of the marriage. The parties would be at liberty to approach the Civil Court for vindication of their rights. The petitioner is seeking to prosecute detenu Anu Rani and respondent No.4 on allegations of marriage certificate being forged document but on similar analysis even the petitioner has committed offence of fraud/forgery as at the time of admission of detenu Anu Rani in the school he had mentioned date of birth of detenu Anu Rani as 18.06.2002 instead of her date of birth recorded as 18.06.2003 in her birth certificate. However, his prosecution for the same at the present stage will not be expedient in the interest of justice. When detenu Anu Rani has asserted before this Court that she has solemnized marriage with respondent No.4 and wants to live with him, it will not be expedient in the interest of justice to prosecute them for any irregularity in issuance of their marriage certificate and its presentation before this Court for seeking protection of their life and liberty particularly when they had reasonable apprehension of danger to their life and liberty or false implication at the instance of present petitioner-father of detenu Anu Rani and his other relatives. In any case in the above discussed facts and circumstances, their prosecution on the basis of any irregularity/illegality in the marriage certificate and presentation

of the same before this Court for seeking protection of their life and liberty will amount to abuse of process and put detenu Anu Rani and respondent No.4 to great oppression and extreme injustice would be caused to them. Therefore, for preventing abuse of process as well as for securing ends of justice, it will be essential that the complaint made against them and also the inquiry report pending with District Attorney, Fazilka be quashed by this Court in exercise of powers under Article 226 of the Constitution of India and Section 482 of the Code of Criminal Procedure, 1973 and it is so ordered accordingly.

(11) In view of the allegations made by the petitioner as to respondent No.4 being a person of bad character and future of detenu Anu Rani not being safe in being with him and in order to protect the welfare of detenu Anu Rani, the petitioner and respondent No.4 were asked as to what amount can be deposited by them in FDR in her name on which, the petitioner refused to deposit any amount while respondent No.4-Gurvinder Singh has undertaken to deposit Rs.50,000/- within one week and Rs.50,000/- within one month in the name of detenu Anu Rani.

(12) At this stage, learned Counsel for the petitioner has submitted that the petitioner does not want to continue with the present petition which may be dismissed as withdrawn.

(13) Accordingly, the petition is dismissed as withdrawn.

(14) In view of statement of detenu Anu Rani, she is allowed to live with her husband Gurvinder Singh.

(15) Respondent No.4 is directed to deposit amount of Rs.50,000/- within seven days and amount of Rs.50,000/- within one month in FDR in the name of detenu Anu Rani and to submit photostat copies of the same in the Registry of this Court within 15 days after deposit of both the amounts in FDR in her name which shall be made part of the record.

(16) For the sake of abundant caution it is also clarified that detnu Anu Rani may approach this Court for appropriate directions in case the said amount is not so deposited as undertaken or for any other directions as may be required for protection of her life and liberty and ensuring her welfare.

Payel Mehta