

Court No. - 42

Case :- CRIMINAL MISC. WRIT PETITION No. - 12520 of 2024

Petitioner :- Mohammad Kaif And Another

Respondent :- State Of Up And 3 Others

Counsel for Petitioner :- Tahir Ali

Counsel for Respondent :- G.A.

Hon'ble Vivek Kumar Birla,J.

Hon'ble Arun Kumar Singh Deshwal,J.

1. Heard Shri Tahir Ali, learned counsel for the petitioners and Shri Pankaj Saxena, learned A.G.A. for the State and perused the record.

2. This writ petition has been filed challenging the first information report dated 5.7.2024, arising out of Case Crime No. 309 of 2024, under Section 137(2), 87 of Bhartiya Nyaya Sanhita (B.N.S.), 2023, Police Station Kotwali Fatehpur, District Fatehpur.

3. On 24.07.2024 following order was passed:-

"Heard learned counsel for the petitioners and learned AGA for the State.

This writ petition has been filed challenging the first information report dated 5.7.2024, arising out of Case Crime No. 309 of 2024, under Section 137(2), 87 of Bhartiya Nyaya Sanhita (B.N.S.), 2023, Police Station Kotwali Fatehpur, District Fatehpur.

Contention of learned counsel for the petitioners is that the petitioner no. 1 had not abducted or kidnapped the petitioner no. 2. Infact, petitioner no. 2 had gone with petitioner no. 1 of her own free will.

It would be in the interest of justice that statement of the petitioner no. 2 under Section 164 Cr.P.C. be got recorded before a competent Magistrate on or before 31.7.2024.

List this case on 2.8.2024, as fresh.

Till the next date of listing, no coercive action shall be taken against the petitioners in aforesaid case crime, subject to their cooperation in the investigation."

4. Learned counsel for the petitioners states that pursuant to this order victim was present for the purpose of recording her

statement, however, the Investigating Officer was not available and her statement as directed by this Court was not recorded.

5. Learned AGA for the State respondents submits that as per Class IX records of the victim her date of birth is 01.01.2008, therefore, she was minor at the time of incident, however, admittedly, there is no authentic proof of age of the victim.

6. At this stage, learned counsel for the petitioners has placed reliance upon a judgment of Hon'ble Supreme Court in the case of ***Suhani vs. State of U.P. reported in 2018 0 Supreme (SC) 1430*** and submits that in all such matters Hon'ble Apex Court has directed for age determination test of the girl.

7. In view thereof, we direct that the petitioner no.2-Babynazz be produced before the Magistrate concerned, for recording her statement under Section 183 Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as the "B.N.S.S.") and thereafter, she shall be brought before the Chief Medical Officer concerned by the I.O. of the case who shall constitute a panel of three doctors, for her age determination test (ossification test). Both these exercises must conclude on or before 12.09.2024 or within six weeks from today.

8. It is incumbent upon the petitioners to provide all necessary assistance to the Investigation Officer during investigation, however, the petitioners shall not be arrested during this period.

9. The arrest of the petitioners shall be subject to the 183 B.N.S.S. statement of the girl and her age.

10. In the event, if it is found that she had attained the age of majority and her 183 B.N.S.S. statement favours the petitioner no.1, then the petitioners shall not be arrested till the submission of report by the police under section 173(2) Cr.P.C. OTHERWISE, the procedure of law would follow against the petitioners and the protection given to the petitioners would automatically stands vacated.

11. With this observation, the writ petition stands **disposed of**.

Order Date :- 2.8.2024

Nitendra