

**W.A.No.923 of 2015**

**11.03.2016**

Shri Manish Datt, learned Senior counsel with Shri Siddharth Datt, learned counsel for the appellants.

Shri Amit Seth, learned Govt. Advocate for the respondents/State.

Shri Rajendra Tiwari, learned Senior counsel with Shri Raman Patel, learned counsel for the respondent No.4.

Shri K.D.Singh, T.I., Police Station Tendukheda, Distt. Damoh is present in person.

Ms. Roopali Jain is produced before the Court by Ms. Swati Shukla, Lady Constable, Police Station Tendukheda, Distt. Damoh.

Heard counsel for the parties.

As short question is involved and also because of urgency, appeal is taken up for final disposal forthwith, by consent. Counsel for the respondents waive notice for final disposal.

This appeal arises from the decision of the learned Single Judge dated 04.11.2015 in Writ Petition No.17024/2015.

The said petition for issuance of writ of habeas corpus was filed by the paternal Aunt of Roopali Jain @

Ranu, daughter of Rajesh Jain on the assertion that Roopali has eloped with respondent No.4. She was only 14 years and 6 months, as per the Transfer Certificate of the year 2013. In this backdrop, it was prayed that writ of Habeas Corpus be issued to produce the corpus of Roopali Jain @ Ranu.

The learned Single Judge after giving opportunity to both sides to produce relevant evidence regarding age of Roopali, found that Roopali was major when she decided to go along with respondent No.4. For reaching this conclusion, the learned Single Judge relied on medical certificate in which Roopali's age was shown as 18 years. This conclusion was reached notwithstanding the authentic document produced by the appellant which would indicate that Roopali was minor and around 16 years of age. The document such as school record was relied for that purpose. The respondent No.4 no doubt had relied on Progress Report issued by the school, to counter that factual position. The learned Single Judge, in addition, relied on the statement of Roopali to conclude that her custody should remain with respondent No.4. This decision is the subject matter of challenge in the present intra-Court appeal.

During the hearing of this appeal on the earlier date, we directed the Superintendent of Police, Damoh to take steps to produce original record of Gyan Bharti Convent School Tendukheda, Damoh pertaining to Roopali Jain. Pursuant to the said direction, school record which is the admission register was produced before us in sealed cover, which indicates that Roopali Jain was born on 10.12.2000. The fact stated therein must be presumed to be correct, unless rebutted. It would necessarily follow that Roopali would be less than 18 years of age as of now. This evidence must weigh over the evidence such as Progress Report and other documents. This would be the best primary evidence besides the birth certificate of Roopali, if available. The respondent No.4, however, intends to place reliance on the affidavit of father of Roopali and other documents such as medical evidence.

For the time being, we may only observe that the analysis done by the learned Single Judge in arriving at the conclusion that Roopali was major and more than 18 years of age is based only on the medical certificate. That is not the right approach to answer this core issue. In the first place, what will have to be seen is the primary document such as birth certificate or school admission register. That

will be credible evidence. For, in law, there is presumption about the correctness of those documents, unless rebutted. The respondent No.4 may have to not only produce evidence to rebut the fact mentioned in the school admission register, but also substantiate the stand taken that Roopali was more than 18 years of age as of now.

As we are of the considered opinion that the learned Single Judge committed manifest error in merely relying on medical certificate to conclude that Roopali was more than 18 years of age, the impugned decision will have to be quashed and set aside.

The next question is about the custody of Roopali Jain @ Ranu, daughter of Rajesh Jain. Presently, she is staying with respondent No.4. The respondent No.4 claims to be her husband. If the stand taken by the respondent No.4 that Roopali Jain @ Ranu was major is to be rejected, it would necessarily follow that the so called marriage between Roopali Jain @ Ranu and respondent No.4 would not be inconsonance with Section 5 of the Hindu Marriage Act, 1955 and, in any case, Roopali cannot be permitted to take decision on her own being a minor. The only option is either to direct handing over of custody of Roopali Jain to her parents being natural guardians. However, from the

stand taken by Roopali Jain before us; and her behavior in Court and as agreed between the parties, without expressing any opinion in that behalf, we direct the Superintendent of Police to admit Roopali Jain @ Ranu daughter of Rajesh Jain in Shelter Home, near the office of Superintendent of Police, Jabalpur until further orders to be passed in the writ petition, which we propose to remit back to the learned Single Judge for reconsideration.

We make it clear that the learned Single Judge will have to decide the writ petition afresh without being influenced by the observation made in the order dated 04.11.2015 which has been set aside in terms of this order or for that matter in the present order, which is only for analyzing the correctness of the conclusion and approach of the learned Single Judge. All factual aspects and the legal position must be examined by the learned Single Judge consequent to remand of the writ petition.

We further direct that In-charge of the Shelter Home shall ensure that till further orders to be passed by the learned Single Judge in the restored writ petition, no access be provided to the relatives, friends or family members either of Roopali or the respondent No.4, as the case may be.

Counsel for the respondent No.4 submits that in that case, the matter be heard on 17.03.2016 so that the respondent No.4 will be able to produce all the relevant documents which he may like to rely in support of the stand that Roopali Jain @ Ranu is presently more than 18 years of age.

The proposed affidavit/application and documents be filed by the respondent No.4 before 15.03.2016.

**The restored writ petition No.17024/2016 be listed on 17.03.2016 before appropriate Bench (Single Judge) under caption “Top of the List”.**

**Disposed of accordingly.**

**(A. M. Khanwilkar)**  
Chief Justice

**(Sanjay Yadav)**  
Judge

AM.