

1 Writ Petition No.4424/2016 (Habeas Corpus)
[Naresh Soni vs. State of M.P. and others]

HIGH COURT OF MADHYA PRADESH
BENCH GWALIOR

SINGLE BENCH:

HON. SHRI JUSTICE ROHIT ARYA

WRIT PETITION NO.4424/2016 (Habeas Corpus)

.....Petitioner: Naresh Soni

Versus

.....Respondents : The State of M.P. and others

Shri Gaurav Samadhiya, Advocate for petitioner.

Shri V.K. Bhardwaj, Senior Advocate as *amicus curiae* and Shri R.K.Soni, Advocate.

Shri Vishal Mishra, Additional Advocate General for respondents no.1 to 3/State.

Respondent No.4, Sunil Rajak in person.

Shri Pawan Dwivedi and Ms. Sonal Mittal, Advocates for respondent no.5.

Shri Devendra Sharma, Advocate for respondent no.6.

Date of hearing : 20/09/2016

Date of order : 13/10/2016

Whether approved for reporting :

ORDER
(13/10/2016)

Justice Rohit Arya,

Petitioner resident of Shri Sahab Ke Bada, Near Kapoor Photostat, Kampoo Road, Lashkar, Gwalior, has approached this Court with the grievance that his daughter Ms. Mansi Soni aged about 18 years has been missing since 19/4/2016. Despite having

searched at all possible and probable places, she could not be found. On having come to know the fact that she has been abducted by respondent no.4, he approached respondent no.3- the Station House Officer, Police Station Huzrat Kotwali, Lashkar, Gwalior with the request to trace the whereabouts of her daughter, who was in illegal confinement of respondent no.4, but he was not only ridiculed but also abused. Petitioner also approached respondent no.2 during Jan Sunvai on 14/6/2016, but all in vain. Under the circumstances, petitioner has approached this Court seeking writ of habeas corpus.

2. On 5/7/2016 learned Deputy Government Advocate sought three weeks' time to trace out and produce the corpus of the missing Ms. Mansi Soni. On 27/7/2016, corpus Ms. Mansi Soni was produced by police personnel of Police Station Kotwali, Gwalior. Respondent no.4 with his counsel was also present. He claimed to have married Ms. Mansi Soni in Arya Samaj Mandir, Pawan Sut Colony, Morar, Gwalior on 9/6/2016. Though he claimed to be working in Jaipur, but had no proof of residence even. Therefore, this Court ordered to verify the whereabouts of respondent no.4 and if need be, summon him for enquiry. Meanwhile, the corpus of Ms. Mansi Soni was ordered to be kept in Nari Niketan, Gwalior. Parents of the corpus Ms. Mansi Soni expressed ignorance about the alleged marriage. According to them, neither do they know the boy nor did they give consent for

the marriage. No one ever enquired about the family or informed about the marriage including the Arya Samaj Mandir. They claimed that their daughter has been manipulated and fraudulent marriage certificate has been obtained to deny custody of their daughter. On being summoned, one Awadhesh Sharma, claimed to be Purohit of the Arya Samaj Mandir submitted some papers, but did not produce original record for verification. Photocopies of cyclostyled printed affidavit allegedly sworn by respondent no.4 and Ms. Mansi Soni are on plain papers with Rs.10/- stamp affixed thereon. The affidavits are not notarized by the Notary, instead are shown to have been attested by the Oath Commissioner. No one has identified them muchless, by an advocate. The alleged medical age certificate though shown to have been issued on a letter-pad of one Dr. R. Bhojwani is also unsigned, unverified and with no medical documentation. No age certificate of Ms. Mansi Sonil, though photo copy of X Class marks sheet of respondent No.4 is shown. The applications for marriage are also undated. As such, *prima facie* the documents appeared to have been prepared in a slipshod manner to justify issuance of certificate by the Arya Samaj Mandir. During the course of hearing, it also transpired that there are number of places at Gwalior with the signboard of Arya Samaj Mandir where certificates of marriages are issued as a matter of course on the basis of unverified documents. Such instances are repeatedly on

rise in the city, which go unchecked and there is noticeable increase in number of writ petitions filed in this Court seeking writ of habeas corpus with complaint of missing daughters and sisters. Therefore, the local police authorities were directed to conduct a detailed enquiry in relation to such Arya Samaj Mandirs where marriage certificates are issued, the manner and the method adopted by them for issuance of certificate, whether the address of residence and details of their identity and family are verified with their parents, besides their caste, religion and whether they are the followers of Arya Samaj, i.e. they are Arya Samajist, and what kind of rituals are observed and ceremonies are organized for the marriages, in order to find out the *modus operandi* of such places issuing marriage certificates. Further, looking to the seriousness of the issue involved and to ascertain whether such marriage certificates issued at various places in Gwalior are permissible under the banner of Arya Samaj Mandir and whether the philosophy of Arya Samaj as propounded by Maharishi Swami Dayananda Saraswati, a scholar who believed in the authority of Vedas “Krinvanto Vishwam Aryam” (Rig Veda) – make all men arya (noble and cultured), permits such kind of issuance of marriage certificates on mere asking in absence of any rituals and ceremony to unidentified persons with unverified documents; a commercial venture with no sanctity, the prayer for amendment in the cause-title and for arraying the State Body of the Arya Samaj

as respondent no.5 and the Arya Samaj Mandir, which issued the certificate, as respondent no.6 was allowed.

3. Respondent no.5 in its counter affidavit has stated that :-

Respondent no.5 is the State body of Arya Samaj established to propagate the teachings and the philosophy of Maharishi Dayanand Saraswati and the Vedic Dharma. It is registered under the Society Registration Act having its head office at Arya Samaj Mandir, Tatya Tope Nagar, Room No.1, First Floor, Bhadbhada Road, Bhopal. Amongst various aims and objects the marriages are solemnized in Arya Samaj Mandir by Vedic rituals known as Saptpadi, as per the requirement of Hindu Marriage Act, 1955 and the Arya Marriage Validation Act, 1937. The marriages performed in Arya Samaj Mandirs are with customary rites and ceremonies and a record of the marriages, so performed, is also maintained. The copies of instructions are annexed as Annexure R/4. In para 9, it is fairly conceded that now-a-days some persons are misusing the name of Arya Samaj and performing marriages without verification for monetary gains. The solemnization of marriage in the name of Arya Samaj has become a business. However, it expresses its helplessness in that behalf, as unable to checkmate such misuse of name of Arya Samaj. In para 11, it is stated that there are seven Arya Samaj Mandirs in Gwalior city and two in Dabra and Bilowa. Respondent no.6 is one of the affiliated Mandirs. The show-cause notice has

been issued to respondent no.6 on 25/8/2016, Annexure R/5. Besides, letters have also been issued to the other affiliated Arya Samaj Mandirs on 27/8/2016, Annexure R/6, with exhaustive instructions.

Respondent no.5 has also placed on record the order passed by the Division Bench in Writ Appeal No.268/2013 decided on 30/10/2013 to contend that earlier directions issued in Writ Petition No.3110/2013 without notice to the respondent no.5 for observance of certain conditions were set aside.

4. Respondent no.6 has also filed counter affidavit and contended that after taking the affidavits of respondent no.4 and Ms. Mansi Soni and verification of date of birth, the marriage certificate has been issued. Hence, no illegality is committed in solemnization of the marriage and issuance of marriage certificate. It is further submitted that it shall comply with the directions as may be issued by this Court.

5. Respondent no.3 in its report has submitted that in Gwalior about 270 marriage certificates are issued during the period since 1/1/2016 to 31/7/2016 based on affidavits and mark-sheets or medical certificates. The mark-sheets of the corpus and respondent no.4 were also verified, wherein the corpus is shown as 18 years and respondent no.4 is shown as 21 years old. There is a complaint registered against respondent no.4 vide complaint No.160/2014 for the offence under Sections 151, 107, 116 (3)

IPC in Police Station Madhoganj. Though at Jaipur the place where respondent no.4 claimed to have been working was inspected and verified, however, there is no proof of residence of respondent no.4 at Jaipur. Marriages are solemnized in these places on the basis of mark-sheets and affidavits. However, no record is maintained as regards verification of details of girls and boys and marriage certificates are issued, as it was given to understand that under Bhartiya Mandir Hindu Arya Vivah Adhiniyam, 1955 there is no provision for maintenance of record. There is no provision for verification of identity of boys and girls, their parentage and residence. There is also no provision for communication to the parents for their knowledge of the alleged marriages. The mark-sheets and affidavits are the only requirement for solemnization of marriage. There is also a letter written by the SHO, Police Station Morar to respondent no.2 dated 8/9/2016, wherein it is informed that against the persons managing the respondent no.6-Mandir accusation of forgery, fraud, misrepresentation, misappropriation and mismanagement under various provisions of Indian Penal Code has been registered and the same is pending consideration.

6. HINDU MARRIAGES:

The origin of marriage amongst Aryans in India as amongst other ancient peoples is a matter for the science of anthropology. Since the time of Rig Vedic age marriage was a well established

institution and the Aryan ideal of marriage was very high. Monogamy was the rule and the approved rule, though polygamy existed to some extent. Marriage is one of the necessary SAMSKARAS or religious rites for all Hindus whatever the caste, who did not desire to adopt a life of perpetual Brahmchari or Sanyasi. According to the Hindu Law, marriage is a sacrament. It is also a civil contract which takes a form of gift in **Brahma**, sale in **Asura** and an agreement in **Gandharva**. The status of husband and wife is constituted by the performance of marriage rites whether prescribed by the Shastras or by customs. According to Shastras, there are two essential elements necessary to constitute a valid marriage; one a secular element, viz., gift of the bride or 'Kanya Daan' in the four approved forms, the transference of dominion for consideration in the 'Asura' form and mutual consent or agreement between the maiden and the bridegroom in the 'Gandharva' form. These must be supplemented by going through the form prescribed by the 'Grihyasutras' of which the essential elements are 'Panigrahana' and 'Saptpadi'. This is the religious element. Both the secular and the religious elements are essential for the validity of a marriage. Ceremonies are essential in the case of all the eight forms of marriages. The doctrine of "*factum valet*" does not validate the marriage under the Hindu Law, as it only enables to cure the violation of directory provision or a mere matter of form, but does not cure the violation of the

fundamental principles or the essence of the transaction. The Privy Council explained this doctrine in the case of **Balusu v. Balusu**, **22 Mad 398** at p.423 (W), which reads as under:-

“If there are certain essential ceremonies, which are necessary for a marriage, the non-observance of those ceremonies or religious rites cannot be overlooked by applying the doctrine of 'factum valet'. The doctrine applies only where there is no initial want of authority or where there is no positive interdiction. If, according to Manu's text, certain essential rites are necessary for a valid marriage, unless it is shown by custom that those ceremonies have been modified, it is imperative upon the parties concerned to observe the formalities laid down by law. Non-observance of those rites cannot be cured by applying the doctrine of 'factum valet'. There are very many ceremonies connected with the marriage, which are more or less non-obligatory or directory. If those ceremonies are not performed at the marriage, the omission may be cured by the doctrine of 'factum valet'.

Under the Hindu Marriage Act relevance, significance and recognition of ceremonies in Hindu marriages is given a statutory status and recognition. Section 7 of the Act provides for ceremonies, which reads as under:-

“7. Ceremonies for a Hindu marriage. - (1) A Hindu

*marriage may be **solemnized** in accordance with the **customary rites and ceremonies** of either party thereto.*

*(2) Where such rites and ceremonies include the **saptpadi** (that is, the taking of seven steps by the bridegroom and the bride jointly before the sacred fire), the marriage becomes complete and binding when the seventh step is take.”*

Hindu marriage ceremonies are colorful, and the celebration may extend for days depending upon the social and economic status of the bride and the bridegroom.

The rituals associated with Hindu marriages vary from region to region and caste to caste. However, there are a few rituals that are common to most marriages. The Hindu marriage rituals can be broadly classified into pre-marriage rituals, marriage rituals and post-marriage rituals. Marriage is the first sacrament in the life of a householder. It will be followed by others such as conception of a child, birth of a child, etc.

Pre-marriage rituals include a formal get-together of the families on both sides, usually at the bride's place, to facilitate a meeting between the bride and the groom. Once they give their mutual consent, parents proceed with other arrangement such as fixing the marriage date, writing a formal declaration of marriage called the Lagna Patrika, choosing the marriage hall (Mandap),

finalizing the guest lists, printing the invitation cards, exchanging gifts and responsibilities of both sides during the marriage function, etc.

The common marriage rituals include inviting the bridegroom to the marriage place called *Mandap*, giving away the daughter as a gift to the groom called *Kanyadan*, tying a knot called *Mangalsutra*, holding the bride's hands and accepting her called *Panigrahan*, and walking seven steps together around the fire altar called *Saptapadi*. All the rituals are performed by a Vedic priest accompanied by appropriate Vedic chants. The marriage is performed in the presence of Gods as the witnesses. As in other Vedic sacrifices, Agni; the fire God, acts as the primary recipient of the offerings that are made to Gods in the marriage. The bride is also one of the offerings. The Chants which are used in the marriage ceremony are mainly in Sanskrit. However, the priests also use native languages while giving instructions to the groom and the bride during the ceremony to help them perform the rituals, take the oaths or chant the mantras.

Common post-wedding ceremonies include, arranging some traditional games between the bride and the groom to increase their playfulness, watching the star Arundhati, sharing a meal, receiving blessings from the elders, family photographs, and driving the bride from the marriage hall to where the groom and his family stay or live. At the main entrance to the groom's house,

the newly married couple are welcomed with traditional Aarti. The bride kicks a vessel of food grains that are kept at the entrance of the house, before stepping inside first with her right foot and next with the left foot since right foot is considered auspicious. The event marks the beginning of the householder's life for the couple.

Most Hindu marriages are arranged marriages. Even in love marriages, the couple prefer marrying in the traditional style in the presence of their parents and families. A Hindu marriage is an elaborate social engagement and contract, in which elder on both sides play an important role in fixing the marriage, performing the ceremony and supporting the couple until they settle down. If any dispute arises between couples in the early stages of marriage, the elders usually interfere to save the marriage. Since elders act as counselors, marriage counseling is not a popular profession in India as it is in the West. Divorce rates in Hindu families are also comparatively less. Most couples stay in the marriage, even if they have problems of compatibility, due to social pressures and family obligations, or to save the reputation of their families. Hindu marriages are governed both by law and by tradition. Once the couple marry in the traditional manner, it is irrevocable except through a divorce either by mutual consent or by a formal decree from the court. Hindu marriage act prohibits polygamy or polyandry. A Hindu cannot marry another spouse if he or she is already married, except in some extenuating circumstances as

stated in the law.

A Hindu marriage is not just a marriage, but a covenant between two souls in the presence of Gods. Both the bride and the groom are expected to take vows to uphold the sanctity of marriage, perform their respective householder duties to ensure the continuity of their family tradition, and the order and regularity of the world.

The Hon'ble Supreme Court in the case of ***Bhaurao Shankar Lokhande and another vs. The State of Maharashtra and another, AIR 1965 SC 1564*** referred to the Oxford Dictionary meaning of word 'solemnize' in connection with the marriage, 'to celebrate the marriage with proper ceremonies in the due form', i.e., unless the marriage is celebrated or performed with proper ceremonies and due form, it cannot be said to be solemnized and it was found to be one of the essential ingredients for the purpose of Section 17 of the Hindu Marriage Act to which the provision of Section 494 of IPC is applicable. The Hon'ble Supreme Court further observed that merely going through certain ceremonies with the intention that the parties be taken to be married, will not make the ceremonies prescribed by law or approved by the custom: para 5. In paragraphs 7 and 8 referred to the Mulla's Hindu Law, 12th Edition, at p. 605 it is observed that:

"The Gandharva marriage is the voluntary union of a youth and a damsel which springs from desire and

sensual inclination. It has at times been erroneously described as an euphemism for concubinage. This view is based on a total misconception of the leading texts of the Smritis. It may be noted that the essential marriage ceremonies are as much a requisite part of this form of marriage as of any other unless it is shown that some modification of those ceremonies has been introduced by custom in any particular community or caste."

At p. 615 it is stated :

"(1) There are two ceremonies essential to the validity of a marriage, whether the marriage be in the Brahma form or the Asura form, namely-

(1) invocation before the sacred fire, and

(2) saptapadi, that is, the taking of seven steps by the bridegroom and the bride jointly before the sacred fire.

(2) A marriage may be completed by the performance of ceremonies other than those referred to in subsection (1), where it is allowed by the custom of the caste to which the parties belong."

Similar view is reiterated in the case of **Venkata Subbarayudu Chetty v. Tanguturu Venkatiah Shresthi and others, AIR 1968 AP 107**, relevant excerpt of para 5 thereof reads as under:-

"(5) In the instant case, the evidence of P. W. 5, the priest, and also the evidence of the other witnesses does not indicate that the couple went through the

required ceremonies. Mere tying of 'Tali' is not enough to establish that the marriage has been solemnized.

Further, in the case of ***Kunta Devi v. Siri Ram Kalu Ram, AIR 1963 Punjab 235*** it has been observed as under:-

“(17) Section 7 of the Hindu Marriage Act lays down that where such rites and ceremonies include the Saptapadi, the marriage becomes complete and binding when the seventh step is taken. There is no proof on the record of this case that the rite of Saptapadi, or as a matter of that, other essential rites, were performed, and I am not disposed to assume their performance from the bald statement of Pt. Dharam Pal that the marriage was according to Vedic rites.”

Section 2 of the Hindu Marriage Act declares application of the Act and *inter alia* clause 2 (1) (a) provides as under:-

*“This Act applies to any person, who is a Hindu by religion in any of its forms or developments, including a Virashaiva, A Lingayat or a follower of the Brahmo, Prarthana or **Arya Samaj.**”*

7. ARYA SAMAJ:

Arya Samaj was founded by Maharishi Swami Dayananda Saraswati, a great scholar and firm believer in the authority of the Vedas. The motto of the Arya Samaj taken from Vedas is “Krinvanto Vishwam Aryam” (Rig Veda) – make all men arya

(noble and cultured). The Arya Samaj is not a religion. It is a society that was formed, not as a new religion, but as a coming together of men and women of noble thoughts and actions who (irrespective of their social, ethnic or racial origins) believe in the underlying principles of Vaidik Satya Sanatana Dharma (commonly called "Hinduism"). In simpler terms, the Arya Samaj is a society of Hindus that propagates selfless action for the development of humanity and congregates for the common purpose of preserving the pristine values of Hinduism.

8. MARRIAGES IN ARYA SAMAJ:

Amongst its various noble objects, Arya Samaj also helps facilitate solemnization of marriages with chanting of Vedic Mantras with due observance of Saptpadi, centered around fire worship, pre-wedding, wedding and post-wedding ceremonies depending on the social and cultural background of bride and bridegroom. Pre-wedding rituals: ladies Sangeet, Mehandi, Brahmhoj, Chudha and Nath. Wedding rituals: Kanya Daan, Pratigya Mantra, Shilarohan, Parikrama, Saptapadikriya. Post-wedding rituals: reception, taking off the Chudha etc. **In Arya Samaj Mandir Pooja is not performed to any specific deity, as Arya Samaj does not believe in idol worship.**

The Arya Marriage Validation Act, 1937 was enacted on 4th April, 1937, wherein under Section 2 it is provided that marriage between **Arya Samajist** not to be invalid and provides as under:-

“2. Notwithstanding any provision of Hindu Law, usage or custom to the contrary, no marriage contracted whether before or after the commencement of this Act between two persons being at the time of the marriage Arya Samajists shall be invalid or shall be deemed ever to have been invalid by reason only of the fact that the parties at any time belonged to different caste or different sub-caste of Hindus or that either or both of the parties at any time before the marriage belonged to a religion other than Hinduism.”

Arya Samaj marriage is known for its simplicity and acquires statutory recognition if the marriage is solemnized among Arya Samajist with due observance of Saptpadi, customary rites and ceremonies under Arya Marriage Validation Act, 1937 and Hindu Marriage Act, 1955. Arya Samajists are those who have faith and belief in ideals and values of Arya Samaj. They are involved in its varying nature of spiritual and social welfare activities creating awareness of Vedic values among the community of people, attending Satsang, chanting Vedic Mantras, encouraging people to learn and read scriptures and such other like nature of discourses. Arya Samajist do not believe in idol worship, caste system, priestcraft, superstitions etc. If a person is not a Hindu and as per his or her consent intended to follow Arya Samaj, he or she has to pass through Vedic purification of rituals and then he or she becomes eligible for Arya Samaj marriage.

As such, there is sanctity attached to the concept of Arya Samaj and its values emanating from Vedic teachings. Therefore, any person cannot just walk-in the Arya Samaj temple for marriage and procure marriage certificate, as mere signing of printed forms shall not make them Arya Samajist without verification of their status as Arya Samajists coupled with their age, identity, parentage and place of residence from their families as the same not only have relevance, but also have legal sacredness, as the marriages in Arya Samaj may be treated to have equal sanctity as under the Special Marriage Act, 1954, wherein provisions as regards notice of intended marriage under Section 5, marriage notice book publication under Section 6, objection to marriage under Section 7, procedure on receipt of objection under Section 8, declaration by parties and witnesses under Section 11, solemnization of marriage under Section 12 and issuance of certificate under Section 13 are provided for purity and sanctity of marriages with social recognition. It needs no mention that Arya Samaj ideals and Vedic preaching do not approve of secretive marriages and issuance of marriage certificates in a slipshod and hot haste manner.

9. Now turning to the facts in hand. Petitioner is Hindu by religion and belongs to Soni community. Corpus-Ms. Mansi Soni is the daughter of the petitioner. Learned counsel for the petitioner during the course of arguments in presence of the petitioner

stated that petitioner and his family believe in idol worship and performs customary rituals and offers Pooja to God. He is not an Arya Samaji.

Respondent no.4 in the Court has stated that he is Hindu and of Rajak community. He has not stated that he is an Arya Samaji. He does not know about the values, ideals, noble and objects or various nature of discourses of Arya Samaj.

A complaint of missing of Ms. Mansi Soni was made to the police authorities by the petitioner on 14/06/2016. Having been shown cold shoulders by the police personnel, he has approached this Court for writ of habeas corpus. Later in time, he came to know that Ms. Mansi Soni is in illegal custody of respondent no.4. On direction of this Court, corpus of Ms. Mansi Soni was produced. Initially, respondent no.4 also appeared through counsel but thereafter power has been withdrawn. The respondent no.4 has not filed counter-affidavit. The representative of respondent no.6 produced photocopies of certain documents viz. mark-sheet of respondent no.4 showing his date of birth 5/6/1995, photocopies of two printed forms allegedly having signatures of Ms. Mansi Soni and respondent no.4 which are claimed to be the declaration made by them, two undated printed cyclostyle format of applications with dotted lines to fill-up the names, address etc. allegedly bearing the photographs of respondent no.4 and that of corpus-Ms. Mansi Soni. The letterhead of Dr. R.Bhojwani without

seal and his authenticated signatures is placed on record which mentions that Ms. Mansi Soni is assessed to be 20 years of age as on 08/06/2016. Further, photocopies of driving licence of one Rakesh Singh Kirar and Ration Card of one Shyam Mahor have been placed on record styling them as witnesses though neither have they endorsed the marriage documents or gave declarations that they personally know respondent No.4 and the corpus – Ms. Mansi Soni. A careful reading of entire documents reveals that the alleged documentations are mere formality and prepared at Mandir to facilitate issuance of marriage certificate secretly. The alleged affidavits are not even notarized. Respondent no.4 has given a false declaration that he was 23 years of age as on 9/6/2016 and Ms. Mansi Soni has also given a false declaration that she was 20 years of age as on 9/6/2016. Ms. Mansi Soni did not produce any age certificate. There is no medical documentation as regards ossification test etc., Marriage certificate dated 9/6/2016 also bears false age of respondent no.4 as 23 years and that of Ms. Mansi Soni as 20 years.

With the writ petition, petitioner; the father has annexed X class marks-sheet of Ms. Mansi Soni, wherein her date of birth is shown as 16/1/1998. Therefore, she was 18 years of age as on 9/6/2016 and not 20 years. The mark-sheet of respondent no.4 also reveals that respondent no.4 was 21 years of age and not 23 years.

- 10.** In the background of aforesaid facts, it is well evident that:
- i- Ms. Mansi Soni has made false declaration in the alleged affidavit in the matter of- (a) that she has not run away from the family, and (b) that her age is 20 years;
 - ii- there is no verification of her identity and address, besides whether the family she belongs to believes, follows and practices Arya Samaj, whereas the petitioner has stated that he is not an Arya Samaji;
 - iii- the affidavit does not bear the identification of thumb impression and signatures of Ms. Mansi Soni by a known person or an advocate as such affidavit is ineffective and cannot be relied upon for any purpose ;
 - iv- respondent no.4 has made false declaration in the alleged affidavit in the matter of- (a) that he has not run away from the family, and (b) that his age is 23 years;
 - v- there is no verification of his identity and address, besides whether the family he belongs to believes, follows and practices Arya Samaj, whereas respondent no.4 himself has stated before the Court that he is Rajak by caste and has not stated that he is an Arya Samaji;
 - vi- the affidavit does not bear identification of thumb

- impression and signatures of respondent no.4 by a known person or an advocate as such affidavit is ineffective and cannot be relied upon for any purpose ;
- vii- the affidavits are not notarized and allegedly attested by an Oath Commissioner;
 - viii- there is no evidence that marriage was solemnized and customary rites, ceremonies were organized and Saptpadi (taking of seven steps of bridegroom and bride jointly before the sacred fire) was performed;
 - ix- the letterhead of Dr. R.Bhojwani is suspicious in nature for want of seal and signatures with no relevant medical documentations; and
 - x- the alleged witnesses; Rakesh Singh and Shyam Mahor neither have endorsed the marriage documents nor identified Ms. Mansi and respondent no.4. There are no declarations that they personally know Ms. Mansi and respondent no.4 or witnessed the alleged marriage, muchless *Saptpadi*.

Under these facts and circumstances, in the opinion of this Court, respondent no.4 had taken away Ms. Mansi Soni with him without the consent and knowledge of the petitioner or other family members. He has managed and manipulated the marriage certificate with incorrect unverified facts in collusion and connivance with respondent no.6. The marriage certificate in fact

and in effect has been issued to respondent no.4 by respondent no.6 illegally; an otherwise unethical activity of respondent no.6. Moreover, respondent no.6 has not produced any record as regards the marriage. Even otherwise, as per the police report, no record is maintained by respondent no.6. This Court also cannot lose sight of the police report to the effect that during the period since 1/1/2016 to 31/7/2016 about 270 marriage certificates have been issued by the Arya Samaj Mandirs in Gwalior. As such, the marriage certificate at issue is not valid. It be noted that there is no provision under the Arya Marriage Validation Act, 1937 (Act No.19 of 1937) for issuance of marriage certificate. Therefore, this Court holds that the documents have been maneuvered and concocted only to procure the marriage certificate. No marriage has taken place between respondent no.4 and Ms. Mansi Soni. Since Ms. Mansi Soni was manipulated and eloped by respondent No.4 from the house of petitioner and therefore, petitioner being father is entitled to have the custody of Ms. Mansi Soni. Accordingly, the Station House Officer, Police Station, Huzrat Kotwali, Lashkar, Gwalior is directed to handover safe custody of Ms. Mansi Soni, to the petitioner, who is at present in the Nari Niketan, Gwalior under the Court orders after following due procedure, without further loss of time.

11. There is tremendous rise in issuance of marriage certificates from the places under the banner of Arya Samaj Mandir, as

evident from the fact that from the period since 1/1/2016 till 31/7/2016 about 270 marriage certificates have been issued from the Arya Samaj Mandirs at Gwalior without maintenance of record and details of marriages, it leads one to believe that issuance of marriage certificates has become a lucrative business; an unethical act creating serious threat to the civilized society causing disturbance and unrest in the families with social stigma; a social evil. With the licence of marriage in the form of marriage certificates boys and girls approach the Court seeking protection through police hurling wild accusations against their own parents and relatives alleging harassment and threat to their life. Time and again such accusations are found to be baseless and fabricated levelled only to seek indulgence of the Court. This Court cannot lose sight of the fact that according to the Hindu Dharma, the ceremony of marriage is firm uniting of two souls. The idea behind the institution of marriage in Hindu Dharma is to foster not self-interest, but love for the entire family that prevents breakups. During nuptial ceremonies in a Vedic marriage both; the bride and bridegroom, take an oath for the practice of self-restraint, to work together and for the welfare of the family and Dharma. The lofty ideal of sanctity attached to the Hindu marriage is a great gift of Hindu Dharma to the world at large. It is the union of two families. Marriages are not performed to cause disturbance, restlessness and sometimes violence in the society. Indiscriminate issuance of

marriage certificates by Arya Samaj Mandirs on unverified facts has triggered serious problems of varying dimensions in the society. Therefore, it is obligatory of respondent no.5 to control and checkmate such illegal activities being done in such Arya Samaj Mandirs. It is unfortunate that though respondent no.5 has the knowledge that marriage certificates are issued in the name of Arya Samaj Mandirs as a business venture, but there is nothing on record to suggest that any effective step has been taken against such wrong doers. It is strange to note that no record is maintained in the so called Arya Samaj Mandir at Gwalior wherefrom about 270 marriage certificates have been issued only during the period since 1/1/2016 to 31/7/2016.

12. A Division Bench of this Court in W.A.No.268 of 2013 (The Madhya Bharat Arya Pratinidhi Sabha Vs. Ashish Agrawal and others) decided on 30/10/2013 has taken exception to the order passed by the learned single Bench in W.P.No.3110/2013 decided on 13/05/2013 for the reason that the respondent No.5, Madhya Bharat Arya Pratinidhi Sabha – State body was not arrayed as respondent in the writ petition. Therefore, without notice and hearing to it, directions were issued and further directions so issued were without taking due notice of the provisions of the Hindu Marriage Act, 1955.

After taking into consideration the sacredness attached to the Hindu marriages and the provisions contained under the Arya

Marriage Validation Act, 1937, the Special Marriage Act, 1954 and Hindu Marriage Act, 1955 as well as social & statutory recognition, credibility & authenticity of Arya Samaj marriages and further to ensure that such marriages do not suffer the wrath of social indignation, bitterness in families, unethical and illegal relationship in the eyes of society, this Court is of the view that comprehensive directions are required to be issued. Besides, Arya Marriage Validation Act, 1937 does not contemplate issuance of marriage certificate, therefore, if sanctity is required to be attached to such marriage certificates, the provisions of the various Acts referred to above are required to be followed in the matter of solemnization of marriage. Thus, following mandatory directions are issued:-

- i- In the event bride and bridegroom present themselves before the management of the Arya Samaj Mandir with applications for solemnization of marriage as per Arya Samaj rites and rituals, it shall be the duty of the management to first issue notice affixing photographs of the bride and bridegroom to the parents/families of both at the declared address and also affix such notice in that behalf on the notice board of the Mandir inviting objections, if any, to ensure that; (i) neither party has a spouse living, (ii) neither party is incapable of giving a valid consent to it in consequence of unsoundness of

mind or though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children or has been subject to recurrent attacks of insanity, (iii) declarations must contain that the marriage is not performed by fear, threat or coercion; (iv) the male has completed the age of twenty one years and the female the age of eighteen years, and (v) the parties are not within the degrees of prohibited relationship, provided that where a custom governing at least one of the parties permits of a marriage between them, such marriage may be solemnized, notwithstanding that they are within the degrees of prohibited relationship.

A reasonable time of at least seven days be prescribed in the notice.

- ii- If objection is received, the same shall be dealt with by the Mandir management, with due verification of facts. If need be, assistance of local police may also be taken.
- iii- Declarations from the bride and bridegroom shall be obtained not on a cyclostyle format on a piece of paper, but on a non-judicial stamp paper of the value of Rs.100/- or more purchased in their names for

marriage purpose that they are aware of the noble ideals, objects, rituals, traditions of Arya Samaj and endorse faith & belief, practices & follows the same, duly notarized by a licensed Notary with due identification by an Advocate and Mandir Management shall also verify the credibility of such declaration from known sources, viz. Arya Samaj Temples mentioned by them and/or the community of Arya Samajists known to them, in writing.

- iv- The date of birth of bride and bridegroom shall be verified through the original 10th class mark-sheet of each one of them.
- v- In the event the bride and bridegroom are not educated, verification of fact of their age shall be done from the respective families or through the medical ossification at the Government Hospital or Government recognized Medical Practitioner with affixation of seal.
- vi- The original residential address of bride and bridegroom shall also be verified either through documentary evidence or through an enquiry and, if required, with the help of local police.
- vii- Upon verification of aforesaid facts and ascertainment of *bona fide* intention of bride and bridegroom for solemnization of marriage, the mandir management

shall ensure solemnization of marriage with due observance of *Saptapadi* and all customary rites, rituals and ceremonies depending upon the social and economic status of bride and bridegroom in presence of two witnesses of each side with their identity and residential proof with a separate notarized affidavit, by each of them stating on oath that the bride and / or bridegroom are personally known to them, on a non-judicial stamp paper of the value of Rs.100/- or more.

- viii- The process of Saptapadi with rituals and solemnization of marriage shall be recorded through video graphy by the Mandir Management.
- ix- Thereafter, marriage certificate may be issued to the bride and bridegroom by authorized signatory of the Mandir Management.
- x- The management shall maintain and keep a record of complete documentation and visuals of the entire process of solemnization of marriage and
- xi- The District Heads of Police shall issue necessary instructions to the Station House Officers of various police stations to conduct enquiry and verify from Arya Samaj Mandirs within the jurisdiction of their police stations in the event complaints are made of missing girls or of fraud, manipulation, etc., in the matter of

solemnization of marriages, in the police stations.

13. With the aforesaid observations and directions, the writ petition stands allowed and disposed of.

14. This Court records appreciation for the valuable assistance provided by *amicus curiae*, Shri V.K.Bhardwaj, Sr. Advocate and Shri R.K.Soni, Advocate during hearing of the case.

(Rohit Arya)
Judge

Arun* & b

31 Writ Petition No.4424/2016 (Habeas Corpus)
[Naresh Soni vs. State of M.P. and others]

**HIGH COURT OF MADHYA PRADESH, JABALPUR,
BENCH AT GWALIOR**

WRIT PETITION NO.4424/2016 (Habeas Corpus)

.....Petitioner: Naresh Soni

Versus

.....Respondents : The State of M.P. and others

ORDER post for .../10/2016

(Rohit Arya)
Judge
.../10/2016