

THE HIGH COURT OF MADHYA PRADESH**M.Cr.C. No.38918/2018****(Smt. Samiksha Jain vs. State of M.P.)****Gwalior, Dated : 30.11.2018**

Shri Anil Mishra with Shri F.A. Shah, Advocate for the applicant.

Shri Devendra Choubey, Public Prosecutor for the respondent/State.

Shri Sanjay Bahirani, counsel for the father of the applicant.

This petition under Section 482 of Cr.P.C. has been filed by the applicant seeking her release from the Nari Niketan Gwalior.

The necessary facts for the disposal of the present application in short are that the father of the applicant lodged a missing person report alleging that one Mohd. Adil who was pressurizing his daughter to marry him might have abducted her. Accordingly, the police registered the offence in Crime No.269/2018 at Police Station Mungawali, District Ashok Nagar. Later on, the applicant was recovered and her statement under Sections 161 and 164 of Cr.P.C. was recorded. In her statement under Section 161 of Cr.P.C. she has stated that Mohd. Adil by pressurizing and threatening her had forcibly compelled her to deboard the train at Khandwa from where he took her to Nasik and Hyderabad and all the time he was promising that he would marry her. Under the threat, she was kept in a hotel and on 15-16.5.2018 the police brought them to Ashoknagar. Thereafter, the statement of the applicant was recorded under Section 164 of Cr.P.C. The statement of the applicant under Section 164 reads as under:-

“1. मैं वार्ड नंबर 9 औषधालय रोड मुंगावली में रहती हूँ। मेरे परिवार में मेरे पापा, भाई, दादा दादी तथा चाचा चाची एवं दो चाचा और उनके तीन बच्चे हैं हमारी चाची अलग रहती है और हम साथ में सभी रहते हैं। मैं मुंगावली जीवाली विश्वविद्यालय में बी.एस.सी. द्वितीय वर्ष में अध्ययनरत हूँ। मैं मोहम्मद आदिल को 6 वर्षों से जानती हूँ जो मुंगावली का ही रहने वाला है। मैं मोहम्मद आदिल से लगभग 5 वर्षों से प्यार करती हूँ दोनों के मध्य बहुत अच्छे संबंध हैं। मेरा एवं मोहम्मद

आदिल को शादी करने का काफी समय से प्लान चल रहा था किन्तु दोनो के मध्य मौका नहीं मिला था इसलिए पहले विवाह नहीं कर पाये थे।

2. मैं मेरे नाना नानी बमनावर तहसील ईसागढ़ में रहते है जिन्होंने सात आठ दिन पूर्व मुझे कहा कि अपने को पूना मामा मामी के पास जाना है। दिनांक 07.05.18 को हम जोधपुर भोपाल ट्रेन से हम भोपाल पहुंच गए थे फिर भोपाल हम पूरे दिन रुके और रात्रि 11 बजे हमारी ट्रेन पूना के लिए थी हम उस ट्रेन में बैठ गए और मेरे प्लान के मुताबिक मोहम्मद आदिल बीना से उसी ट्रेन में बैठ गया था उसके बाद हबीबगंज से हम जिस कोच में सवार थे उसी कोच में मोहम्मद आदिल भी आ गया उसके बाद खण्डवा स्टेशन पर मैं और मोहम्मद आदिल ट्रेन से उतर गए उस मेरे नाना नानी ट्रेन मे ही सो रहे थे।

3. हम लोगों को नासिक जाना था इसलिए हमने बस का पता लगाया जहा हमें बस नहीं मिली तब हमने एक कार किराए से ली और हम भुसावल सुबह लगभग साढ़े छः बजे पहुंच गए थे। जहां से हमें नासिक के लिए बस मिल गई। हम उस बस में बैठकर लगभग दोपहर में तीन बजे पहुंच गए थे। फिर हम एक होटल में ठहरे जहां पर हम दो घंटे रुके और एक कार किराए से की और उसमें बैठकर गए और दिनांक 09.05.2018 को दिन के लगभग डेढ़ बजे हैदराबाद पहुंच गए जहां पर हमने कमरा किराए से लिया फिर हमने हैदराबाद में एक एडवोकेट्स से बात कर ली थी तब वकील साहब ने हमको रात में नौ बजे उनके ऑफिस में बुलाया था किन्तु रात्रि होने को कारण हम लोग वहां नहीं गए।

4. दिनांक 10.05.2018 को सुबह आठ बजे वकीलसाहब के यहां पहुंच गए थे फिर उससे बातचीत की तब मुझे वकीलसाहब ने कहा कि तुम्हें इस्लाम कबूल करना पड़ेगा उसके बाद मोहम्मद आदिल से तुम्हारा निकाह हो सकता है उसी दिनांक को दोपहर 2 बजे मोल्हवी साहब के यहां बुलाया जहां पर मुझसे एक शपथ पत्र लिखवाया और कहा कि आप इस्लाम धर्म कबूल करना चाहती हो या नहीं फिर मैंने कहा कि मुझे इस्लाम धर्म अपनी मर्जी से कबूल है। फिर मुझसे एक मिनट तक कुरान शरीफ पढाया । उसके बाद मुझे इस्लाम धर्म का प्रमाण पत्र दिया जो उर्दू में लिखा हुआ था उसके बाद हम दूसरे दिन एक और मोल्हवी के पास गए तो उसने भी एक शपथ पत्र लिया कि अपनी मर्जी से निकाह कर रही हो या दबाव में कर रही हो।

5. मैंने अपनी मर्जी से निकाह करने बावत् शपथ पत्र लिखा जिस पर मैंने हस्ताक्षर किए थे तथा मोहम्मद आदिल से भी मोलवी साहब ने शपथ पत्र लिखवाया था कि अपनी मर्जी से निकाह कर रहे हो या दबाव में कर रहे हो तब उसने अपनी मर्जी से निकाह करना लिखवाया था जिस पर उसके हस्ताक्षर हैं उसके बाद दोनो से मोलवी साहब ने प्रश्न पूछे और वीडियो बनाया था। दूसरे दिना मोलवी साहब के यहां निकाह के लिए हम दोनो को बुलाया था फिर मुस्लिम रीति-रिवाज अनुसार हमारा निकाह हुआ मुझसे एवं मोहम्मद आदिल से पूछा था कि तुम्हें निकाह कबूल है तब मैंने निकाह कबूल होना बताया और मोहम्मद आदिल ने भी निकाह कबूल होना बताया उसके बाद शनिवार, रविवार की छुट्टी होने के कारण हमने हज हॉउस हैदराबाद में सोमवार को निकाह कबूल एवं इस्लाम धर्म कबूल का प्रमाण पत्र दिनांक 15.05.2018 को दिया।

6. फिर वकील साहब ने हमको कहा कि कमिश्नर ऑफिस

हैदराबाद में जाकर पूरी जानकारी दें। फिर हम रात्रि लगभग 9 बजे कमिश्नर ऑफिस गए जहां पर कमिश्नर साहब नहीं मिले और उनके पी.ए. ने कहा कि जिस क्षेत्र में रह रहे हो वहां के थाने में रिपोर्ट दर्ज करा दें। फिर हमने नामपल्ली थाने में जाकर रिपोर्ट दर्ज कराने गए किन्तु उस क्षेत्र का थाना हबीबनगर होने के कारण नामपल्ली के थाना प्रभारी ने हबीबनगर थाने में फोन द्वारा सूचना दी थी फिर हम लोग हबीबनगर थाने में गए जहां पर पुलिस सुरक्षा मांगी तब उन्होंने पुलिस वाहन से हमें हमारी होटल में छोड़ दिया और होटल वाले को कहा कि यदि इनसे कोई मिलने आवे तो बिना पुलिस को सूचना दिए मिलने न दें।

7. उसके दूसरे दिन हबीबनगर थाने पर हमें बुलाया और कहा कि जिस क्षेत्र के आप रहने वाले हैं वहीं आपको अपने बयान देने होंगे जिसके लिए पुलिस सुरक्षा आवश्यक है तब अशोकनगर थाने से पुलिस की पूरी टीम हैदराबाद रवाना हो गई थी तब वहां के टी.आई. ने फोन द्वारा टीम को सूचना दी तब इन्होंने कहा कि हम आधे घंटे में पहुंच रहे हैं फिर मैं पुलिस बल के साथ दिनांक 17.05.2018 को दिन में 3 बजे अशोकनगर आ गए थे और मैं एस.डी.ओ.पी. कार्यालय में नीतू सिंह मैडम एवं दो और इंस्पेक्टर थे उनके साथ गई।

8. मैंने अपने मर्जी से मोहम्मद आदिल से निकाह किया है मुझे पर किसी ने दबाव नहीं बनाया है। मैं मोहम्मद आदिल के साथ रहना चाहती हूं। मैं मेरे परिवार में नहीं रह सकती हूं तथा मोहम्मद आदिल के परिवार वाले मुझे स्वीकार नहीं कर रहे हैं इसलिए मैं आदिल के परिवार में भी नहीं रह सकती तथा मोहम्मद आदिल अभी कहां पर है मुझे मालूम नहीं है। मुझे पुलिस अभिरक्षा की सख्त आवश्यकता है यदि मुझे पुलिस अभिरक्षा नहीं दी जाती है तो मेरी जान को खतरा है तथा मोहम्मद आदिल की जान को भी खतरा है।”

It appears that there was some unrest in the locality because of inter caste marriage, accordingly, the Court by order dated 18.5.2018 directed that the applicant be kept in Nari Niketan at Gwalior because in the assessment of the Court the security of the applicant was in danger.

Being aggrieved by order dated 18.05.2018 passed by the JMFC Ashok Nagar in Criminal Case No.269/2018, the applicant filed an application under Section 482 of Cr.P.C. which was registered as M.Cr.C.No.22659/2018. The said application was allowed by order dated 20.06.18 and the applicant was permitted to file a fresh application before the Court below seeking permission to go to the place of her choice and in case if such an application is filed, then the trial court/committal court was directed to reconsider the law and order situation and it was also directed that if it is found that the security of the applicant is not in jeopardy,

then she may be allowed to go as per the law by taking into consideration the welfare of the applicant. It appears that thereafter a fresh application was filed which has been dismissed by the Court below by order dated 6.9.2018. The Trial Court before considering the application, recorded the statement of the applicant through video conferencing. It was submitted by the applicant that she is a major and she specifically stated that she does not want to stay with her parents. It was contended by the father of the applicant that the mental condition of his daughter/applicant is not fit, therefore, she should be given in his custody.

Considering the statement of the applicant in which she had specifically refused to stay with her father, the Court below rejected the application filed by the father of the applicant for giving her in his custody.

An application was also filed by Mohd. Adil seeking the custody of the applicant on the ground that he is the husband of the applicant. The father of the applicant opposed the said application by filing a written reply and submitted that before conversion of religion, the permission of the Collector was not taken and even the fraud was played by disclosing the name of the mother of the applicant as Bharti Hussain in place of Bharti Jain. It was further submitted that therefore it cannot be said that the applicant is legally wedded wife of Mohd. Adil. The application filed by Mohd. Adil was rejected by the Court below on the ground that whether the applicant is the legally wedded wife of Mohd. Adil or not is a disputed question of fact and prima facie it has not been proved that she is the legally wedded wife. Accordingly, the application filed by Mohd. Adil to give the interim custody of Samiksha to him was rejected.

Thereafter, the application filed by the applicant for releasing her from the Nari Niketan, Gwalior was taken up. A report from the Police Station Mungawali, District Ashoknagar was called. It was also held by the Court below

that since the applicant is a major lady therefore she is free to go anywhere as per her wishes. It was mentioned in the order that according to the report given by the Police Station Mungawali, District Ashoknagar the security of the applicant is in danger and because of the possibility of religious unrest in the society, the police was also feeling uneasy in producing the applicant before the Court and accordingly her statement was recorded through video conferencing. The application filed by the applicant was rejected by the Court below on the ground that since there is a possibility of religious clash between the members of two different communities and although the applicant is free to go to anywhere as she is major but considering her security it would not be proper to release her from Nari Niketan.

Challenging the order passed by the Court below it is submitted by the counsel for the applicant that in the present case the applicant has married to Mohd. Adil. The Supreme Court in the case of **Shakti Vahini vs. Union of India & Ors.** reported in (2018) 7 SCC 192 has held that freedom to marry is an integral part of Article 21, 19 1-A,14 of Constitution of India.

By relying on the judgment passed by the Supreme Court in the case of **Gian Devi vs. The Superintendent, Nari Niketan, Delhi & Ors. reported in (1976) 3 SCC 234**, it is submitted by the counsel for the applicant that a woman who has attained majority is free to stay in any place she likes without constraint by her parents or alleged husband. The Supreme Court in the case of **Gian Devi** has held as under:-

7. It is the case of the petitioner that she was born on June 5, 1954. As against that, the plea of Sheesh Pal Singh, father of the petitioner, is that she was born on April 20, 1956. Whatever may be the date of birth of the petitioner, the fact remains that she is at present more than 18 years of age. As the petitioner is sui juris no fetters can be placed upon her choice of the person with whom she is to stay, nor can any restriction be imposed regarding the place where she should stay. The court or the relatives of the petitioner can also not substitute their opinion or preference for that of the petitioner in such a matter. The fact that the petitioner has been cited as a witness in a case is no valid ground for her detention in Nari Niketan against her wishes.

Since the petitioner has stated unequivocally that she does not want to stay in Nari Niketan, her detention therein cannot be held to be in accordance with law. We accordingly direct that the petitioner be set at liberty.

By relying upon the judgment passed in the case of **Lata Singh vs. State of U.P. & Anr.** reported in **AIR 2006 SC 2522**, it is submitted by the counsel for the applicant that under the Hindu Marriage Act inter-caste marriage is not bar even it is not barred under any act or any other law. Major Boy or girl are free to marry any one she likes or lives with anyone she likes. The Supreme Court in case of **Lata Singh** has held as under:-

"14.This case reveals a shocking state of affairs. There is no dispute that the petitioner is a major and was at all relevant times a major. Hence she is free to marry anyone she likes or live with anyone she likes. There is no bar to an inter-caste marriage under the Hindu Marriage Act or any other law. Hence, we cannot see what offence was committed by the petitioner, her husband or her husband's relatives.

17. The caste system is a curse on the nation and the sooner it is destroyed the better. In fact, it is dividing the nation at a time when we have to be united to face the challenges before the nation unitedly. Hence, inter-caste marriages are in fact in the national interest as they will result in destroying the caste system. However, disturbing news are coming from several parts of the country that young men and women who undergo inter-caste marriage, are threatened with violence, or violence is actually committed on them. In our opinion, such acts of violence or threats or harassment are wholly illegal and those who commit them must be severely punished. This is a free and democratic country, and once a person becomes a major he or she can marry whosoever he/she likes. If the parents of the boy or girl do not approve of such inter-caste or inter-religious marriage the maximum they can do is that they can cut off social relations with the son or the daughter, but they cannot give threats or commit or instigate acts of violence and cannot harass the person who undergoes such inter-caste or inter-religious marriage. We, therefore, direct that the administration/police authorities throughout the country will see to it that if any boy or girl who is a major undergoes inter-caste or inter-religious marriage with a woman or man who is a major, the couple are not harassed by any one nor subjected to threats or acts of violence, and any one who gives such threats or harasses or commits acts of violence either himself or at his instigation, is taken to task by instituting criminal proceedings by the police against such persons and

further stern action is taken against such persons as provided by law.

18. We sometimes hear of 'honour' killings of such persons who undergo inter-caste or inter-religious marriage of their own free will. There is nothing honourable in such killings, and in fact they are nothing but barbaric and shameful acts of murder committed by brutal, feudal minded persons who deserve harsh punishment. Only in this way can we stamp out such acts of barbarism."

Thus, it is not dispute that the applicant is a major girl and accordingly she is free to move to any place as per her wishes.

The next question is that whether this Court under the apprehension of danger to the security of the applicant can compel her to live in Nari Niketan against her wishes or not? It is fairly conceded by the counsel for the parties that by keeping the applicant in Nari Niketan, her independence and freedom has been curtailed. She cannot move freely to any place as per her wishes. Providing security to citizen of India is one of the sovereign duty of the State. The State cannot keep a major person in an undeclared detention by keeping her in Nari Niketan on the ground that as she has married a boy belonging to another community, therefore, her security is in danger. The independence of an innocent person against whom no offence has been registered cannot be curtailed by keeping her under undeclared detention. If the State is so serious about the security of its citizen, then it is paramount duty of the State to provide full security to the applicant and the State cannot close its side by saying that since her security is in danger therefore she should be kept in Nari Niketan.

At this stage, it is submitted by the counsel for Mohd. Adil that Mohd. Adil with whom the applicant has married is ready to give a written undertaking before this Court that he would keep the applicant with him with full dignity and would provide full security and under the instruction of his parents he is also ready to give an undertaking in writing that the applicant shall be given full respect by her in-laws.

Accordingly, vide document No.11440/2018 an affidavit has been filed by Mohd Adil stating that he would keep the applicant with him with full dignity and respect and even his family has accepted the applicant as their daughter-in-law. A copy of the aforesaid affidavit was supplied to Shri Sanjay Bahirani, the counsel for the father of the applicant. In reply the counsel for the father of the applicant submitted that the father of the applicant is not ready and willing to give in writing ensuring the security of his daughter.

Undisputedly, the applicant is major and she cannot be kept in Nari Nikaeen against her wishes and she is free to go to any place of her choice.

In this petition also the applicant has made the following relief:-

“It is therefore humbly prayed that this Hon'ble Court may kindly be pleased to allow this petition and the impugned order may be set aside so far it relates to petitioner and petitioner may be directed to be released from Nari Niketan.”

Accordingly, it is directed that the applicant be immediately released from Nari Niketan with a direction to the Superintendent of Police, Ashoknagar to provide full security to the applicant. She may be allowed to go to any place of her choice and it shall be the duty of the Superintendent of Police, Ashoknagar to provide police force for escorting her to go to her place of choice.

From the order of the Court below, it is clear that the father of the applicant had given a reply that there is unrest in entire country because of the fact that Mohd Adil has married the applicant and had prayed for rejection of the application filed by Mohd. Adil for grant of custody of the applicant to him and thus the father of the applicant himself had expressed that the security of his daughter would be in jeopardy because of communal feelings.

Considering the facts and circumstances of the case, the present application is disposed of with the following

observations:

1. That, the applicant Samiksha be released from Nari Niketan Gwalior with immediate effect.
2. The applicant shall give in writing to the Superintendent, Nari Niketan and Superintendent of Police, Ashoknagar, disclosing the place where she wants to go.
3. The Superintendent of Police Ashoknagar is directed to ensure the security of the applicant and she be allowed to go to the place of her choice and the Superintendent of Police, Ashoknagar shall provide police escort for taking her to the place of her choice, from the Nari Niketan, Gwalior.
4. The father of the applicant is directed not to cause any harm to the applicant either by himself or through any other person and in case any harm is caused to the applicant by a person not belonging to the side of the in-laws of the applicant, then it shall be presumed that the father of the applicant is directly or indirectly responsible for causing harm to the applicant.
5. The Superintendent of Police is also directed to keep the periodical watch on the welfare and security of the applicant after every 15 days and in case if it is found that the security of the applicant is in jeopardy, then he shall provide full security to her and would ensure proper action against the persons taking law in their hands.

With the aforesaid observations, the petition is finally disposed of.

(G.S. Ahluwalia)
Judge

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