
(1998) 07 PAT CK 0023
In the Patna High Court
Case No : Cr.W.J.C. No. 372 of 1998

Chhaya Kumari @ Banti Kumari

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 22-07-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164

Citation : (1998) 3 PLJR 384

Hon'ble Judges : P.K. Sarin, J;N.K. Sinha, J

Bench : Division Bench

Advocate : Uday Bhanu Roy and Ambrish Kr. Jha, for the Appellant; S.D. Yadav, for the Respondent

Final Decision : Allowed

Judgement

1. Head counsel for both the parties.
2. The Petitioner had filed this application for issue of writ of habeas corpus making a grievance against the orders dated 22.6.1998 and 27.6.1998 passed by the learned Chief Judicial Magistrate, Purnia in Case No. K. Hat P.S. Case No. 195 of 1998 whereby she had been remanded to After-Care Home, Patna against her will when she had filed a petition to go to her Sasural. She has also prayed for a direction to Respondent Nos. 1 and 2 to set her at liberty so that she may go to her Sasural.
3. To cut a long story short, the criminal case in question had been registered on First Information Report lodged by Respondent No. 3, father of the Petitioner alleging that the Petitioner has been abducted by one Shashi Yadav.
4. We have examined the Petitioner and her statement has been duly recorded. Respondent No. 3, despite issue of notice, did not appear. The Petitioner, in her statement claims to be aged 19 years and that she was born in the year 1973. It appears that a report was called for from the doctor which is available as Annexure-2 to this application. In the opinion of the radiologist, the Petitioner

was above 19 years of age whereas according to the dentist, she was between 16 to 17 years. The Petitioner, in her statement before the Magistrate, recorded u/s 164 of the Code of Criminal Procedure as well as before us, has given her age as 19 years. The Petitioner has categorically stated that she did not wish to stay in the After-Care Home and that she has been kept there against her wishes.

5. Without expressing any opinion with regard to the age of the Petitioner as the same will be considered in course of the criminal proceedings, we are of the opinion that she should not be confined in the After-Care Home against her wishes and she should be given the liberty to go with any one and to any place. We, therefore, direct that the Senior Superintendent of Police, Patna shall make arrangements for providing escort to take the Petitioner from the After-Care Home, Patna to the court of the Chief Judicial Magistrate, Purnea within a week from today. After the Petitioner is produced before the Chief Judicial Magistrate, Purnea, the court shall ascertain her wishes and make necessary arrangement for escorting her to a place as per her desire. The Superintendent of the After-Care Home, Gai Ghat, Patna is also directed to take necessary steps in this regard and to provide all necessary assistance in taking the Petitioner from After-Care Home to the court of the Chief Judicial Magistrate, Purnea.

6. The writ application is, therefore, allowed with the observations mentioned above.

7. Let a copy of this order be sent to the Senior Superintendent of Police, Patna and Superintendent of After-Care Home, Gai Ghat, Patna for compliance. Shri S.D. Yadav, learned Govt. Advocate is also directed to communicate this order to the authorities concerned in time.

8. Any observations made in course of this order shall not prejudice the case of the parties at any stage of the trial.