
(2013) 05 AHC CK 0296

In the Allahabad High Court

Case No : Civil Miscellaneous Habeas Corpus Writ Petition No. 19738 of 2013

Rajni @ Achchu

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 08-05-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164

Citation : (2013) 05 AHC CK 0296

Hon'ble Judges : Rakesh Tiwari, J and Karuna Nand Bajpayee, J

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.

Heard learned counsel for the petitioner and perused the record.

Pursuant to order of the Court dated 10.4.2013, detenue has been produced before the Court under police custody from Rajkiya Mahila Shardanlya Evam Praveshalya, Mathura.

We find from the record that the order dated 10.4.2013 has not been complied with by the learned counsel for the petitioner as no steps have been taken by him for service upon respondent no.4, the father of the girl, who is claimed to be minor by him. Even though the Court below on the basis of School Leaving Certificate as well as on the basis of medical certificate found her to be below 18 years of age, yet she claims to be of 19 years of age. We, therefore, do not take her statement that she is 19 years of age, as correct, she prima facie being a minor.

The contention of learned counsel for the petitioner is that detenue has been kept in illegal detention at Rajkiya Mahila Shardanlya Evam Praveshalya, Mathura under the orders of the Court and she being above 18 years of age as per her statement recorded under Section 164 Cr.P.C. be allowed by this Court to go with her alleged husband Harveer son of Karar Singh through whose brother this petition has been filed particularly when she is pregnant.

We have considered the contention of learned counsel for the petitioner and perused the record. In the School Transfer Certificate filed by the father, her date of birth is recorded as 1.3.1996, therefore, she was less than 17 years of age when she was alleged to have been abducted by Harveer and two others on gun point when she had gone to the fields with her mother on nature's call. The medical examination shows that she is less than 18 years of age and not above as word "above" in the certificate has been scored out. The Court below has, therefore, rightly taken to be her less than 18 years of age as there is documentary proof as well as medical proof in support of her being minor.

In this backdrop, her statement recorded under Section 164 Cr.P.C. loses its significance and she cannot be permitted to go at her own free will being a minor. There is also no proof of marriage of her and Harveer in any temple as claimed in the petition.

As stated earlier, learned counsel for the petitioner has not taken steps for service upon respondent no.4, the father of the girl probably with the intention to avoid his presence in Court, hence in the circumstances, we direct the police to escort the detainee to Rajkiya Mahila Shardanlya Evam Praveshalya, Mathura safely. We further direct the Superintendent Rajkiya Mahila Shardanlya Evam Praveshalya, Mathura to ensure that she being pregnant is provided nutritious food and proper medical care in the Rajkiya Mahila Shardanlya Evam Praveshalya till she is major i.e. 18 years as per the date in her School Leaving Certificate and only thereafter her statement may be again recorded by the Court below. In the mean time, proceedings against the petitioner shall continue. The City Magistrate, Mathura is also directed to visit the detainee and enquire about her health & of her child in womb and ensure nutritious food to her, every 15 days. If required medical care & attention will also be provided to her in a good Government hospital free of cost at government expenses.

For the reasons stated above, the writ petition is dismissed.

Let a copy of this order be provided to Sri Vimlendu Tripathi, learned AGA also for communication to the Superintendent Rajkiya Mahila Shardanlya Evam Praveshalya, Mathura & City Magistrate.