

Court No. - 43

Case :- HABEAS CORPUS WRIT PETITION No. - 745 of 2020

Petitioner :- Smt. Shikha (Corpus) And Another

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Manoj Kumar Tiwari

Counsel for Respondent :- G.A.

Hon'ble Pankaj Naqvi,J.

Hon'ble Vivek Agarwal,J.

1. Heard Sri Manoj Kumar Tiwari, learned counsel for the petitioners, Sri Ajay Vikram Yadav, learned counsel for the informant and Sri Gambhir Singh, learned AGA for the State.

2. This writ petition has been filed, seeking a writ of direction in the nature of mandamus directing to the Respondent No. 2 and 3 to produce the corpus.

3. Sri Vipin Kumar, the I.O. along with the corpus is present, pursuant to our previous order. He produced case diary in which certificate issued by Head Master, Higher Primary Education, Etah is enclosed in which it is clearly mentioned that corpus had taken admission in said school on 14.07.2005 in class I vide serial no is 616 in the scholar register wherein her date of birth is mentioned as 04.10.1999. Copy of scholar register is enclosed along with the case diary. Therefore, requirement of Section 94 of the Juvenile Justice Act, 2015 in regard to presumption and determination of age are fulfilled.

4. Learned C.J.M., in not appreciating the provisions of Section 94 of the J.J.Act held that when a certificate from school is available then any other evidence becomes secondary in nature and should not be relied especially when the birth certificate produced by respondent on 25.03.2019 issued by the competent authority and the date of registration of birth is mentioned as 17.03.2019. This certificate will not taken precedence over the school entry register and the certificate issued on the basis of scholar register.

5. We interacted with the corpus who submits that she is a major, her date of birth is 04.10.1999, she has attained the age of majority and has entered into a wedlock. He submits that she wants to live with her husband namely Salman @ Karan who is also present in the Court.

6. As the corpus has attained the age of majority and she has a

choice to live her life on her own terms and she has expressed that she wants to live with her husband Salman @ Karan she is free to move as per her own choice without any restriction or hinderance being created by third party.

7. The learned C.J.M. Etah vide order dated 07.12.2020 had handed over the corpus in the custody of C.W.C., Etah. which on passed 08.12.2020 handed over the custody to her parents without any application of mind and against her wish.

8. The act of C.J.M., Etah and that of the C.W.C., Etah reflects lack of appreciation of legal provisions.

9. The petition is **allowed**. The FIR dated 27.09.2020 registered as F.I.R. No. 0371 of 2020, under Sections 366 I.P.C., Police Station- Kotwali Dehat, District Etah are hereby quashed.

10. The I.O. will ensure that appropriate protection is granted to the corpus and her husband till they return to their residence.

11. The S.S.P, Prayagraj is directed to provide necessary police security for safe passage of the couple.

Order Date :- 18.12.2020

Ujjawal