

Versus

The State of Maharashtra and Ors

.. Respondents

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Ms. Sana Raees Khan a/w Anjali Joshi, Rajesh Shirke for respondent nos.5 and 6.

Mr.D.J. Haldankar, APP for the State.

**CORAM: BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.
DATED : 13th DECEMBER, 2024**

JUDGMENT:- (PER BHARATI DANGRE J)

1. The petitioner, a young boy aged 20 years has invoked the writ jurisdiction of this Court praying for issuance of writ of habeas corpus or any other appropriate writ, order or direction commanding the respondents to produce the corpus Ms. [REDACTED], before this Court and set her at liberty forthwith.

A declaration is also sought that her detention in Shaskriya Stree Bhishekari Khikar Kendra a Government Women Centre, at Chembur, Mumbai is unlawful and hence she shall be permitted to reside at a place of her choice.

One more relief in the petition, is to provide adequate police protection to the petitioner and the corpus to ensure their safety against any threats or interference from respondents or the members of public and ensure the solemnization of their marriage in

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accordance with law as and when they fit it proper, free from any coercion or obstruction.

Apart from the Commissioner of Police for Greater Mumbai and the Senior Inspector of Police from Ghatkopar Police Station being impleaded as respondents, the Superintendent of the Women Centre is also impleaded as respondent no.4. The father and mother of the corpus, resident of Ghatkopar are impleaded as respondent nos.5 and 6.

2. We have heard Mr. Lokesh Zade a/w Advocate Asif Latif Shaikh for the petitioner and Ms. Sana Raees Khan with Advocate Anjali Joshi and Rajesh Shirke for respondent nos.5 and 6.

The State Authorities are represented by Mr. D.J. Haldankar, the learned APP.

By consent of the counsel, we issue 'Rule'. Rule is made returnable forthwith.

3. Maya Angelou, an American memoirist and civil rights activist remarked ***"Love recognizes no barriers. It jumps hurdles, leaps fences, penetrates walls to arrive at its destination full of hope."***

The aforesaid statement actually describe the story of the petitioner and the corpus a major girl, but there is a fly in the ointment.

Apart from the fact that they belong to different religions and their interse relationship is disapproved by the girl's family, another hindrance is that the petitioner, the boy is not of marriageable age.

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4. The petition proceed to state that the petitioner is in consensual relationship with the corpus for several months and both are adult, fully capable of making decisions about their lives. They mutually agreed to marry, exercising their fundamental right to choose a life partner and it is pleaded by the petitioner that their relationship had been consensual, devoid of any coercion or undue influence as evidenced by the girl's voluntary decision to leave her parental home and join the petitioner.

When she joined the company of the petitioner, her family lodged a report in Ghatkopar Police station expressing their disapproval of their relationship and it is specifically pleaded that the complaint was heavily influenced by involvement of certain members of religious factions, political and social workers etc, seeking to pressurize the girl in severing her relationship with the petitioner and returning her to her parental home. She was even summoned to the police station, but the girl remained firm on her intention to cohabit with the petitioner and refused to return to her parents.

She was therefore placed in the custody of Shaskriya Stree Bhishekari Khikar Kendra, a Government Women Hostel, at Chembur and it is the claim of the petitioner that her detention in the said home (hostel) is unlawful and violates her fundamental right to lead a free life.

Alleging that her 'Right to Life' is curtailed as she is deprived of the freedom available to her to make a choice, reliance is placed upon the decision of the Apex Court in case of *Lata Singh vs. State of Uttar Pradesh and ors*,¹ holding that consulting adults have a

¹ (2006) 5 SCC 475

fundamental right to marry who so ever they choose and the interference of the family members or societal groups is unwarranted. The law laid down in *Shafin Jahan vs. Ashokan K.M. and ors*,² is also invoked, where the Apex Court has held that the right to choose a life partner is intrinsic to the right to life and liberty under Article 21 of the Constitution of India.

5. The genesis of the petition seeking issuance of writ for securing the freedom of the corpus, is the right of two adults to marry as per their choice, which cannot be impacted by the societal disapproval. Contending that the corpus has exercised her right to choose her partner and being conscious of the fact that the marriage cannot be solemnized at present, she has expressed her desire to enter into a live in relationship and she had informed the same to Ghatkopar Police Station on 16/11/2024, through her written communication unequivocally stating that she left her parental house of her own free will and consign.

The letter of information written by the corpus is also placed on record, where she has categorically declared that she is major by age and is in love with the petitioner since long time and she had informed her parents about the same, but they are against the said relationship and are imposing restrictions upon her, due to which she had left her house and decided to reside in live in relationship with the petitioner, out of her free wish and will, without any pressure or coercion.

6. The petition is also accompanied with a deed of 'Live In Relationship' entered on 16/11/2024, between the petitioner, on one

² (2018) 16 SCC 368

part and the corpus on the second, which contain the following recital:-

“Whereas, both the parties are major, well known to each other, and having a love affair for the last several months and therefore, hereby desirous of entering into this live-in-relationship Deed.

Whereas the party of the first part having affair/relationship with the party of the second part physically and sexually and now we are living happily together from 16/11/2024, and she shall be treated as my wife.

Whereas the party of the second part is having live-in-relationship with the petitioner for last several months and we are happily leaving together from 16/11/2024, and he shall be treated as my husband.”

The deed executed on a 100 Rupees stamp paper bear the signature of the petitioner and the corpus and is notarized on 16/11/2024.

7. The detention of the corpus, in the wake of the aforesaid documents executed by her is therefore, alleged to be illegal and it is pleaded that the court must be take into account the detenue’s expectancy to lead her life as per her own desire and wishes and since the couple is facing threats from several angles, a strong apprehension is expressed that the girl may be forcibly sent to her parental home or harmed if judicial intervention is not shown.

8. On 9/12/2024, we interacted with the petitioner as well as the corpus in the chamber and on the interaction we were convinced that the corpus is not ready to accompany her parents nor she is ready to continue her stay with the respondent no.4. She is insistent in joining the company of the petitioner and his mother, despite all odds and objections and the pressure to which she is subjected to, from various factions of the society including her own parents.

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We have also interacted with the father of the girl, who informed us that she had eloped from the house to stay in the company of the petitioner, but since he belongs to distinct religion and the fact that he has not yet attained the age of majority, there is no question of solemnization of any marriage.

9. We also interacted with the mother of the petitioner, who is ready to accept the corpus in their family. Upon interaction with the parties in person, we expected the counsel for the petitioner to justify the relief sought, particularly his locus to seek freedom for the corpus.

The learned counsel for the petitioner has placed reliance upon the decision of the Apex Court in case of *Devu G. Nair vs. State of Kerala and ors*,³ which involved the appellant and the corpus both female, sharing an intimate relationship. The petition seeking habeas corpus was instituted by the appellant on the ground that the corpus was being forcibly kept by her parents in their custody, whereas she wished to remain with the appellant.

The Kerala High Court issued a direction, for the production of the corpus before the Secretary, DLSA to facilitate an interaction through video conferencing session and also to undergo a counseling session with psychologist attached to counseling centre.

On the Apex Court being approached, the Principal Judge of Family Court was directed to arrange for an interview of the corpus with a member of the judicial service of the State of Kerala and pursuant to which a report came to be submitted.

³ (2023) 12 SCC 829

Considering the intent and desire expressed by the corpus, and recording that she was living with her parents out of own volition, the Special Leave Petition was dismissed with a word of caution ‘Judges must eschew the tendency to substitute their own subjective values for the values which are protected by the Constitution.’

10. The guidelines came to be issued for the High Courts in dealing with habeas corpus petition or petitions for police protection, wherein it is directed that the habeas corpus petitions and the petitions for protection filed by the partner, friend or a natal family member must be given a priority in listing and hearing before the court. In addition, it is also directed that in evaluating the *locus standi* of a partner or friend, the court must not make a roving enquiry into the precise nature of relationship between the appellant and the person and the effort must be made to create an environment conducive for a free and uncoerced dialogue to ascertain the wishes of the corpus.

In addition, the court also issued the following direction:-

“d. The court must ensure that the corpus is produced before the court and given the opportunity to interact with the judges in-person in chambers to ensure the privacy and safety of the detained or missing person. The court must conduct in-camera proceedings. The recording of the statement must be transcribed and the recording must be secured to ensure that it is not accessible to any other party;

e. The court must ensure that the wishes of the detained person is not unduly influenced by the Court, or the police, or the natal family during the course of the proceedings.”

11. In the wake of the aforesaid decision in Devu G Nair (Supra), we do not have any doubt in our mind that petition deserve to be

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entertained.

The present writ petition filed by the petitioner, for protecting the right of the corpus whom he claims to be in relationship with deserve to be entertained.

12. The next question arises about what weightage shall be given to the desire/wishes of the corpus, who has attained the age of majority and has clearly expressed to the police station as well as before us, when we interacted with her that she intend to live with the petitioner, and when we confronted her that at this stage there can be no valid marriage between them as the petitioner has not attained the age of majority, she in very clear terms, expressed that she intend to continue to live with him in a 'live in relationship'.

13. Though the learned counsel for the petitioner would equate this relationship with a 'relationship in the nature of marriage', we do not agree with this submission as 'a relationship in the nature of marriage' is akin to a common law marriage and in case of *D Velusamy vs D Patchaiammal*,⁴ it is held that if it is akin to a common law marriage though not being formally married, it must necessarily involve- (a) The couple must hold themselves out to society as being akin to spouses (b) They must be of legal age to marry (c) They must be otherwise qualified to enter into a legal marriage, including being unmarried and (d) they must have voluntarily cohabited and held themselves out to the world as akin to spouses for a significant period of time.

Necessarily all live in relationships will not amount to 'relationship in the nature of marriage', as contemplated under the

4 (2010) 10 SCC 469

Protection of Women from Domestic Violence Act, 2005, as the terminology used in the Act being relationship in the nature of marriage and not live in relationship.

14. The corpus is clear in her thoughts, when she expressed before us, that she is ready to live with the petitioner in a live in relationship as she is an adult and so is the petitioner and she at this stage do not express her desire to enter into a marital bond. It is her decision as an 'adult' that she do not intend to stay with her parents nor does she want to continue her stay with respondent no.4, but she want to lead her life as a free person, who is not physically restricted or controlled by others and is able to make her own choice and decision. According to her, she is entitled for the freedom of making a choice of what is right for her and which shall not be determined by her natal parent nor by the society.

15. In *Nandkumar and anr vs. State of Kerala and ors*,⁵ dealing with a major girl, who claimed her freedom and her right to live her life wherever she wants to move as per her choice, who had solemnized the marriage with the appellant no.1, who was less than 21 years of age, which at the most would be a voidable marriage, the court noted that both of them are major and even if they were not competent to enter into wedlock, they would still have a right to live together even outside wedlock as 'live in relationship' is now recognized by the legislature itself, which has found its place under the provision of the Protection of Women from Domestic Violence Act, 2005.

⁵ (2018) 16 SCC 602

Reproducing the observations in its earlier decision in case of *Shafin Jahan vs. Ashokan KN and ors*⁶, their Lordships of the Apex Court highlighted the importance of the writ of habeas corpus in the following words reproduced:-

“54. It is obligatory to state here that expression of choice in accord with law is acceptance of individual identity. Curtailment of that expression and the ultimate action emanating therefrom on the conceptual structuralism of obeisance to the societal will destroy the individualistic entity of a person. The social values and morals have their space but they are not above the constitutionally guaranteed freedom. The said freedom is both a constitutional and a human right. Deprivation of that freedom which is ingrained in choice on the plea of faith is impermissible. Faith of a person is intrinsic to his/her meaningful existence. To have the freedom of faith is essential to his/her autonomy; and it strengthens the core norms of the Constitution. Choosing a faith is the substratum of individuality and sans it, the right of choice becomes a shadow. It has to be remembered that the realization of a right is more important than the conferment of the right. Such actualization indeed ostracises any kind of societal notoriety and keeps at bay the patriarchal supremacy. It is so because the individualistic faith and expression of choice are fundamental for the fructification of the right. Thus, we would like to call it indispensable preliminary condition.

55. Non-acceptance of her choice would simply mean creating discomfort to the constitutional right by a Constitutional Court which is meant to be the protector of fundamental rights. Such a situation cannot remotely be conceived. The duty of the Court is to uphold the right and not to abridge the sphere of the right unless there is a valid authority of law. Sans lawful sanction, the centripetal value of liberty should allow an individual to write his/her script. The individual signature is the insignia of the concept.”

16. The corpus, on whose behalf the writ of petition is filed, on attaining the age of majority has exercised her choice and she had made it unequivocally clear that she want to lead her life, on her own terms and conditions. Though we quite see the concern of the respondent nos.5 and 6, who are her parents and are interested in

6 2018 SCC Online SC 343

securing her future, but when she has exercised her freedom to make a choice, in our opinion it is not permissible for us to restrict her freedom of making the choice, which she is entitled to in law and definitely as indicated in *Soni Gerry vs. Gerry Douglas*⁷, 'The court should not assume the role of a super guardian being moved by any kind of sentiment of the mother or the egotism of the father.'

17. We are not getting into the issue about the marriage between the petitioner and the corpus, as what they desire is a 'live in relationship' and since this is claimed, as an integral part of their right to live with dignity, by making individual choice in personal relationship, merely because of the societal disapproval, the couple cannot be deprived of this right, which is conferred on two individuals, under the Constitution.

We have before us two adults, who consensually have chosen each other as their partners by making a conscious choice of living in a 'live in relationship' and since no law prevents them to lead life of their own choice, we deem it appropriate to direct the release of Ms. [REDACTED] from the custody of Shaskriya Stree Bhishekari Khikar Kendra, forthwith.

Upon the release, we declare that Ms. [REDACTED] is entitled to live her life according to her own choice and the decision which she will make for herself.

However, by securing her freedom, as prayed for in the petition, by issuing a writ in the nature of habeas corpus to the respondent no.4, directing that the corpus [REDACTED] shall be released forthwith, we decline the relief of providing police

⁷ (2018) 2 SCC 197



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912 WP ST 24433-24.doc

protection as claimed in the petition.

Rule is made absolute in the aforesaid terms.

(MANJUSHA DESHPANDE,J)

(BHARATI DANGRE, J.)

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