

MHPU250003572020



ORDER BELOW EXH. 1 IN CRI. M.A. NO. 106/2020.

(Passed on 04th Dec, 2020)

- 1) This is an application Under Section 97 of the Criminal Procedure Code.
- 2) It is contended that, the applicant is proper resident of Mauje Keli, Tah. Junnar. According to him, his marriage was solemnized on 17/02/2020 at Alandi Tah. Khed, Dist- Pune with Pinki Pawankumar Saini. The non-applicant no.1 is the father and non-applicant no 2 is the mother of the Pinki Saini. It is further alleged that on 21/02/2020 at about 11.30 a.m some unknown person came to the house of applicant and forcibly took away him and his wife Pinki against there wishes. Thereafter, non-applicant No 1 and 2 through some unknown persons with the help of non-applicant no 3 Police Inspector, Junnar Police station took the wife of applicant to the Jaipur State Rajsthan without her wish. According to the applicant, his wife Pinki is wrongfully confined by non-applicant No 1 and 2. The applicant was not allowed to meet his wife Pinki. Hence, this application is filed.
- 3) The non-applicant nos. 1 to 3 are served with notices. They did not appear in the matter. Therefore, I proceed to decide the application without their say.

4) Perused the application and affidavit in support and reply. Heard Learned Advocate for the applicant.

5) It is vehemently argued by learned advocate for the applicant that applicant was doing labour work at Jaipur, Rajstan and the Pinki is also proper resident of Jaipur. Applicant was married to Pinki on 17/02/2020 at Aalandi and started residing at Keli, Tah. Junnar. It further argued that Pinki is being forcibly detained by her parents in their house at Rajsthan, hence search warrant be issued against non-applicant No 1 and 2. Learned advocate for applicant has placed reliance upon the ratio laid down in the judgment of Hon'ble Allahabad High court in the case of ***Seeta Devi Vs Mata Pher, 1998 Cr.Lj. 645***. In this judgment the question came for consideration before the Hon'ble High court that whether writ of habeas corpus should be issued as a matter of course at the instance of husband who alleges that his wife is being detained against her will by her parents. In this judgment in para No 16 the Hon'ble High court has held that " In view of the above discussion, the legal position which emerges is that a writ of habeas corpus should not be issued as a matter of course at the instance of husband against the parents or other close relative of the wife. This extraordinary remedy should be confined to exceptional cases. Ordinarily the husband should peruse the remedy provided by section 97 Cr.P.C. or remedy of restitution of conjugal rights."

6) The applicant has filed an affidavit in support of his application stating that, his wife Pinki is wrongful confined by the non-applicant no. 1 and 2. In support of the application applicant has filed photographs of their marriage and certificate issued by Bhagyashri Mangal Karyalay. Applicant

has also produced on record the copy of complaint filed with Junnar police station. From the application and the affidavit and documents filed on record, prima facie it appears that, the applicant is the husband of Pinki Saini. It is alleged that the non-applicant nos. 1 and 2 have wrongfully confined her in their house. The conduct of the non-applicant nos. 1 and 2 by remaining absent tends me to infer that, the confinement of the wife of the applicant by non-applicant no. 1 and 2 appears to be wrongful. In the above cited judgment it is held by the Hon'ble High Court that in such a cases the husband can peruse the remedy provided by section 97 of Cr.P.C. Hence, in such circumstances, it is necessary to issue the search warrant under Section 97 of the Criminal Procedure Code. Hence, I pass the following order.

ORDER

1. Issue search warrant in the name of Police Inspector, Junnar Police station for causing search of Pinki Pawankumar Saini at the residence of non-applicant No 1 and 2.
2. Search warrant be issued on payment of process fee as per rules.
3. Copy of application be annexed with search warrant.

Dt. 04.12.2020

(A.M. Kulkarni)
Judicial Magistrate First Class, Junnar
Dist- Pune.