

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Case:- CRM(M) No. 817/2023
CrIM No. 1588/2023
CrIM No. 1702/2023
c/w
CRM(M) No. 869/2023
CrIM No. 1696/2023

Shahida Bano and others

.....Petitioners

Through: Mr. Dar Khurshid, Advocate

Vs

UT of J&K and others

..... Respondents

Through: Mr. Irfan Inqlabi, GA
Investigating Officer – ASI Mohd. Ibqal
present in person.

Coram: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

ORDER

20.12.2023

01. FIR no. 106/2023 came to be registered with the Police Station Mahore for alleged commission of offences under section 454, 380, 363 & 109 of the Indian Penal Code got registered by Mehtabi Begum w/o Abdul Rasheed, who is the respondent no. 2 in CRM(M) no. 817/2023 and respondent no. 4 in CRM(M) no. 869/2023. In this FIR 10 persons have been named as accused persons.

02. CRM(M) no.817/2023 has been filed by seven out of ten accused persons whereas CRM(M) no.869/2023 has been filed by two of the ten accused persons.

03. The alleged incident of registration of FIR is that the respondent - Mehtabi Begum came to allege that her daughter Mustoor Bano has been kidnapped by the named accused persons who in the process have committed the alleged commission of offences under section 380, 454, 109 besides the offence under section 363 of the Indian Penal Code. In this FIR, the respondent - Mehtabi Begum alleged the fact that her kidnapped daughter Mustoor Bano is of minor being aged sixteen.

04. This court, in terms of an order dated 20.09.2023 passed in CRM(M) no. 817/2023, came to order stay of investigation of the FIR with respect to the accused persons figuring as petitioners in the said petition CRM(M) no. 817/2023.

05. Similarly, in terms of an order dated 06.10.2023 passed in CRM(M) no. 869/2023, the Court came to stay the investigation of the FIR with respect to the accused persons figuring as petitioners in this petition. Both petitions i.e. CRM(M) no. 817/2023 & CRM(M) no. 869/2023 came to be clubbed together.

06. After passing of the order dated 20.09.2023 in CRM(M) No. 817/2023, a writ petition WP(C) no. 2389/2023 came to be filed by the respondent no. 4 - Mehtabi Begum's allegedly kidnapped daughter Mustoor Bano joined by Shakeel Ahmad with whom

Mustoor Bano claimed to have solemnized marriage on their free will and volition and sought a protection order through the medium of the said writ petition.

07. Said writ petition came to be disposed of on 18.09.2023 by holding that Mustoor Bano and Shakeel Ahmad having solemnized marriage as being major and are therefore, deserving of protection against any harassment from the Police. The marriage between Mustoor Bano and Shakeel Ahmad is claimed to have been solemnized on 10.08.2023.

08. Before disposing of the writ petition WP(C) no. 2389/2023, in terms of order dated 18.09.2023. The writ court in terms of an order dated 13.09.2023 had directed the Principal Govt. Medical College, Srinagar to get Mustoor Bano examined by a Medical Board for the purpose of her age determination which came to be carried out resulting in conformation of the fact that Mustoor Bano was major. The medical certificate to this effect came to be submitted by the Standing Medical Board, Govt. SMHS Hospital, Srinagar with an opinion that Mustoor Bano was of 23 years of age approximately.

09. The disposal of the writ petition WP(C) no. 2389/2023 in terms of order dated 18.09.2023 became subject matter of LPA no. 203/2023 before the Srinagar Bench preferred by Abdul Rashid, the

father of Mustoor Bano alleging that the appellant's daughter Mustoor Bano as per the Govt. High School Nihoch, Zone Mahore, Reasi was reflected to be having date of birth 02.03.2007 as evidenced by a school certificate dated 31.08.2023.

10. The Hon'ble Division Bench came to direct verification of genuineness and correctness of the said certificate so produced by the appellant Abdul Rashid, the father of Mustoor Bano with a direction to the SHO Police Station concerned to produce the relevant records including the record of CRM(M) no. 817/2023. The matter in the form of letters latent appeal (LPA) is still subjudiced before the Hon'ble Division Bench.

11. Today, the Investigating Officer – ASI Mohd. Iqbal of Mahore Police Station has come forward with production of person of Mustoor Bano, who, infact, had come to be recovered and was registering her unwillingness to go with her parents which resulted in passing of an order dated 13.12.2023 for lodgment of Mustoor Bano with the Neha Ghar, Kachi Chawni, Jammu till further orders.

12. Today, the Investigating Officer – ASI Mohd. Iqbal of Mahore Police Station is present in person along with Mustoor Bano.

13. This Court has examined Mustoor Bano in chambers and from her examination it is revealed that she has a strong reservation against her father whom she alleges to be interested in getting her married against her wishes to a person of his choice. Mustoor Bano submits that at no point of time in her life she has ever gone to any school much less to the school from where her father has been able to procure the date of birth certificate showing her to be born on 02.03.2007.

14. Mustoor Bano submits that she is eldest of six children, as she has two younger sisters and two younger brothers and none of three sisters i.e. herself as well as two sisters have ever gone to school and are therefore, unlettered. In fact Mustoor Bano submits that the aadhar cards were got prepared by her father for the family in which the petitioner's age has been recorded to be 07.07.2005 and her aadhar card number is 8413 3523 6098, meaning, thus, the father of Mustoor Bano is getting the date of birth of his daughter reflected by different dates whereas medically examined Mustoor Bano is found to be 23 years approximately in her age.

15. It is in this aforesaid scenario that this Court has to deal with adjudication of the two clubbed petition i.e. CRM(M) no. 817/2023 & CRM(M) no. 869/2023.

16. Now, since the Hon'ble Division Bench is seized of the LPA no. 203/2023, as such, it would be in the fitness of things to await for adjudication of the said LPA as that would have the bearing on the adjudication of the said two connected petitions with respect to the quashment of FIR.

17. However, in the facts and circumstances of the case, it is deemed fit to let Mustoor Bano go along with her husband Shakeel Ahmad from Neha Ghar, Kachi Chawni, Jammu and to this effect Investigating Officer – ASI Mohd. Iqbal of Mahore Police Station shall ensure that Neha Ghar, Kachi Chawni, Jammu lets Mustoor Bano go from there along with her husband Shakeel Ahmad against a joint written acknowledgment to be furnished by both Mustoor Bano and her husband Shakeel Ahmad for the sake of record of Investigating Officer – ASI Mohd. Iqbal that both are going on their free will and in sound health.

18. CrIM No. 1702/2023 seeking modification of order dated 20.09.2023 is, therefore, **dismissed**.

19. In the meantime, investigation for the time being shall remain on hold.

20. List on 31.01.2024.

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CrIM No. 1702/2023
c/w
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CrIM No. 1696/2023

Copy of this order be provided to Investigating Officer – ASI Mohd. Iqbal of Police Station Mahore under the seal and signatures of the Bench Secretary of this Court for compliance.

(RAHUL BHARTI)
JUDGE

JAMMU
20.12.2023
Muneesh

