

**Court No. - 15**

**Case :-** APPLICATION U/S 482 No. - 1646 of 2022

**Applicant :-** Abhay Pratap Mishra @ Ujjwal Mishra

**Opposite Party :-** State Of U.P Thru. A.C.S./Prin. Secy.  
Homeand Another

**Counsel for Applicant :-** Manuvendra Singh,Rajeev  
Pandey

**Counsel for Opposite Party :-** G.A.

**Hon'ble Suresh Kumar Gupta,J.**

Heard learned counsel for the applicant and learned A.G.A.

This petition has been filed for quashing the order dated 22.2.2022 passed by the Additional Session Judge/Special Judge (POCSO Act), Court No. 12, District- Sultanpur in S.T. No. 202 of 2022 in case crime no. 395 of 2021 under Sections 363, 366, 376 I.P.C. and 5/6 of the POCSO Act, Police Station- Kurebhar, District- Sultanpur.

Brief facts of the case emerges as such that F.I.R. was lodged by the father of the victim against the applicant- Abhay Pratap Mishra with the allegation that his daughter was kidnapped by the applicant applicant- Abhay Pratap Mishra and the F.I.R. was lodged on 27.12.2021 under Sections 363, 366, 506 I.P.C. After recovery of the girl statement of victim was recorded under Section 161 Cr.P.C. in which she stated that she voluntarily entered into the relationship with the applicant and both of them solemnized marriage in Devkali Mandir. In her statement recorded under Section 164 Cr.P.C. in which she supported the statement recorded under Section 161 Cr.P.C. An application was filed on 15.2.022 by the applicant to release the girl in favour of the applicant. The trial court without knowing the wishes of the victim sent the victim to Nari Niketan, Ayodhya.

Being aggrieved the applicant has filed the present petition that the trial court has passed the order without any basis and further submitted that as per medical report the age of the victim is 18 years. In support of his submission learned counsel for the applicant relied upon the judgment of the Hon'ble Apex Court passed in the case of ***Smt. Parvati Devi Vs. State of U.P. reported in 1992 All Cri Cases 32*** wherein it has been held that confinement of victim in Nari Niketan against her wishes cannot be authorized either under Section 97 or under Section 171 Cr.P.C. and the respondents

failed to bring to the notice of the court any legal provision where under the Magistrate has been authorized to issue direction that a minor female shall against her wishes be kept in Nari Niketan. Identically in the case of ***Mrs. Kalyani Chaudhory Vs State of U.P. and others reported in 1978 Criminal Law Journal 103*** a Division Bench of this Court held that no person can be kept in protective home unless she is required to be kept there either in pursuance of the Suppression of Immoral Traffic in Women and Girls Act or under some other law permitting her detention in such a Home. In such cases the question of minority is irrelevant as even a minor cannot be detained against her will or at the will of her father in a Protective Home.

This Court has also passed the order dated 23.1.2015 in the case of ***Gajraj Singh Vs. State Of U.P. in the Application under Section 482 Cr.P.C. No. 50877 of 2014*** in which this Court after relying of the aforesaid two judgments passed the following order:-

*"In the case in hand, the question of the applicant being a minor is irrelevant as even a minor cannot be kept in protective home against her will. The applicant may hardly be said that she is not a women or girl which come within a preview of Suppression of Immoral Traffic in Women and Girls Act. Thus, it is clear cut case of illegal confinement of minor against her wishes violating fundamental right. Hence, the impugned order dated 26.05.2014 passed by the Special Judge/ Additional Sessions Judge, Court No.1, Kasganj is hereby quashed and it is directed the Superintendent of Nari Niketan, Mathura to release the victim Dolly daughter of Gajraj Sing be set at liberty to go in according to her own wish."*

On the perusal of the impugned order, it is not clear that girl was sent to the Nari Niketan on her wishes and it is also not clear that any application was moved by the father of victim for taking custody. It is, therefore, directed the trial court to call the victim from the Nari Niketan for taking her wishes and pass an appropriate order for her custody in accordance with law keeping the wishes of victim.

The petition is, accordingly, **disposed of.**

**Order Date :- 8.4.2022**

Anuj Singh