

Court No. - 13

Case :- APPLICATION U/S 528 BNSS No. - 21 of 2024

Applicant :- Kajal And Another

Opposite Party :- State Of U.P. Thru. Prin. Secy. Lko. And Another

Counsel for Applicant :- Vimlesh Kumar Kashyap, Dharmendra Kumar Bhatt

Counsel for Opposite Party :- G.A.

Hon'ble Saurabh Lavania, J.

Heard Shri Vimlesh Kumar Kashyap, learned counsel for the applicants and Shri Vinay Kumar Sahi, learned AGA-I for the State as well as perused the record.

By filing this application, the applicants- Kajal and Sunil Kumar alias Sunil have prayed to issue a direction to the Additional Chief Judicial Magistrate concerned to record the statement of the applicant no.1 under Section 183 of Bharatiya Nagrik Suraksha Sahinta, 2023 (in short "B.N.S.S.") with regard to the Case Crime No. 0320 of 2024, under Sections 137(2), 87 of Bharatiya Nyay Sahinta, 2023 (in short "B.N.S."), Police Station Sandhana, District Sitapur and also to medically examine her.

Learned counsel for the applicants submits that the applicant no.1 (prosecutrix) has been married to applicant no.2 and they are living happily a married life.

It is further submitted that an FIR was lodged by the father of applicant no.1 against the applicant no.2 and his parents stating therein that applicant no.2 had enticed away the prosecutrix (applicant no.1) on 20.08.2024 at about 14:30 hours.

It is vehemently submitted that the applicant no.1 is ready to appear before the Investigation Officer and suitable directions be given to the concerned Investigating Officer or the Chief Judicial Magistrate to get the statement of the prosecutrix (applicant no.1) recorded under Section 183 B.N.S.S. as well as to get her medically examined.

Learned AGA on the other hand raised a preliminary objection with regard to the maintainability of the instant application on the ground that still the matter is under investigation and the charge sheet has not been filed and therefore the applicants could not approach this Court under Section 528 B.N.S.S. It is further submitted that as per the instructions received by him the applicant no.1 is not traceable and therefore her statement recorded under Section 183 B.N.S.S. could not be recorded nor she could be medically examined.

Having heard learned counsel for the parties and having perused the record, it appears that applicants no. 1 and 2 have now married and the grievance of the applicant no.1 is to the tune that her statement under Section 183 B.N.S.S. is not

being recorded nor she has been medically examined. Per contra the version of the State is that applicant no.1 (prosecutrix) is herself not traceable and therefore her statement under Section 183 B.N.S.S. could not be recorded nor she could be medically examined.

So far as the submissions of learned counsel for the applicants with regard to the issuance of direction to the court to get the statement of prosecutrix recorded under Section 183 B.N.S.S. is concerned the same could not be given in view of the fact that it is the prerogative of the investigating agency to sponsor the witness whose statement they want to record under Section 183 B.N.S.S., therefore the Investigating Officer could not be forced to get the statement of any witness recorded under Section 183 B.N.S.S. and secondly the Medical Examination of the prosecutrix (applicant no.1) could also not be done because she is herself hiding and not making herself available to the Investigating Officer.

In view of the above, without going into the academic discussion of the maintainability of the petition, the petition is **disposed of** with a direction to applicant no.1 to appear before the Investigating Officer, who shall get the applicant no.1 medically examined and will produce her before the Magistrate for the purpose of recording of her statement under Section 183 B.N.S.S.

It is further provided that Investigating Officer shall maintain the decency of the applicant while taking her for medical examination or for recording her statement under Section 183 B.N.S.S. and in any case she will not be harassed, threatened and shall be given a fair treatment. A lady constable shall invariably be accompanying the prosecutrix during this period.

Need not to say that the concerned Magistrate before whom, the prosecutrix (applicant no.1) shall be produced for the purpose of recording of her statement under Section 183 B.N.S.S. shall ensure that the prosecutrix has been dealt with fairness.

The S.S.P., Sitapur shall ensure that the applicant no.1(prosecutrix) is provided adequate security and be not harassed by her parents or her family members or other persons during or after her medical examination or recording of her statement under Section 183 B.N.S.S.. The responsibility of the security of the applicant no.1/ prosecutrix shall be of the S.S.P., Sitapur.

Further custody of the applicant no.1 shall be decided by the competent court as and when the prosecutrix will be produced before it.

Order Date :- 5.9.2024

Arun/-