



2026:AHC:130283-DB

Reserved
A.F.R.

HIGH COURT OF JUDICATURE AT ALLAHABAD
CRIMINAL MISC. WRIT PETITION No. - 4846 of 2026

Rubi and others

.....Petitioners

Versus

State of U.P. and others

.....Respondents

Counsel for the Petitioners : Pooja
Counsel for the Respondents : G.A.

Court No. – 2

HON'BLE J.J. MUNIR, J.
HON'BLE ACHAL SACHDEV, J.
(Delivered by Hon'ble J.J. Munir, J.)

1. This writ petition has been instituted with a prayer that the First Information Report (for short, 'FIR') dated 15.02.2026, giving rise to Crime No. 54 of 2026, under Sections 191(2), 132, 121(1), 352 and 351(2) of the Bharatiya Nyaya Sanhita, 2023 ('BNS', in short), Police Station Kakor, District Bulandshahr, be quashed.

2. The petitioners are nineteen in number. The FIR in this case has been lodged by Sub-Inspector Vinay Kumar, posted at P.S. Kakor, District Bulandshahr. The FIR is about the Police and the Child Line Team endeavouring to prevent the petitioners from going ahead with the marriage of a minor, Sonam daughter of Taufiq and the offence that was allegedly committed by the petitioners, *vis-a-vis* the police personnel and the Child Line Team as they went about the enterprise of preventing this child marriage. According to the Sub-Inspector Vinay Kumar, in his FIR addressed to the Station House Officer, P.S. Kakor, District Bulandshahr, he has said that the informant along with the In-

charge of the Child Line Team, Bulandshahr, Abhishek Kumar, Neeraj Kumar Sharma, case worker, Km. Gulista, case worker and Sub-Inspector Dhani Ram, also from P.S. Kakor, Bulandshahr, proceeded together to Village Sunpeda Baksuwa, the place about which they had received information of the impending child marriage of Sonam daughter of Taufiq aged about 16 years. They left P.S. Kakor *vide* G.D. Entry No.18 dated 15.02.2026 at 11.29 a.m. Their object was to prevent the child marriage. They reached the victim's house in Village Sunpeda Baksuwa and members of the Child Line Team spoke to Sonam's parents, besides the victim herself. After inquiries into the matter, the members of the Child Line Team disclosed their intention of producing her before the Child Welfare Committee, Bulandshahr, and asked the victim and her parents to come along with them for the purpose of the aforesaid production. Thereupon, men and women present there, nineteen of whom are named and are the writ petitioners here, besides fifty others unknown, abused the Police and the Child Line Team personnel, threatened them and forcibly took away the victim from the custody of Km. Gulista of the Child Line Committee.

3. The Police and members of the Child Line Team, facing aggression of the petitioners, somehow escaped in order to save their life. This act of the petitioners, according to the informant, constituted obstruction in the discharge of duties by a public servant. The Police and the Child Line Team, tiding over these odds, somehow managed to rescue Sonam and in the safekeeping of Km. Gulista (Member, Child Line Team), brought her away. The nineteen of the petitioners are nominated in the FIR, as already said, besides the fifty other offenders, whose identity could not be ascertained. It is said by the first informant that he has video-graphed the entire occurrence, which is available with him. It is on these allegations that the impugned FIR has been registered against the petitioners.

4. Heard Ms. Pooja, learned Counsel for the petitioners in support of the motion to admit this petition to hearing and Mr. Ghanshyam Kumar, learned Additional Government Advocate-I along with Mr. Shashi Shekhar Tiwari, learned Additional Government Advocate, who have opposed the motion.

5. Ms. Pooja, learned Counsel for the petitioners, has been at pains to show to us that under the Shariat Law applicable to Muslims, a girl, after she attains the age of puberty generally regarded as 15 years, is competent to marry. The Prohibition of Child Marriage Act, 2006 (for short, 'the PCMA') would not affect the personal law of the petitioners about marriage. It has been pointed out that under Section 3 of the Majority Act, 1875, though the age of majority stipulated for a person is 18 years, Section 2 thereof carries a *non obstante* clause, excluding laws relating to marriage, dower, divorce and adoption from the purview of the said Act. Learned Counsel for the petitioners has also referred to us Section 2 of the Muslim Personal Law (Shariat) Application Act, 1937 (for short, 'the Shariat Law') to submit that the aforesaid provision too carries a *non obstante* clause, which reads:

"2. Application of Personal Law to Muslims.—Notwithstanding any custom or usage to the contrary, in all questions (save questions relating to agricultural land) regarding intestate succession, special property of females, including personal property inherited or obtained under contract or gift or any other provision of Personal Law. marriage, dissolution of marriage, including talaq, ıla, zihar, lian, khula and mubaraat, maintenance, dower, guardianship, gifts, trusts and trust properties, and wakfs (other than charities and charitable institutions and charitable and religious endowments) the rule of decision in cases where the parties are Muslims shall be the Muslim Personal Law (Shariat)."

6. Speaking for ourselves, though we are aware that there is division of opinion amongst the High Courts, whether a minor who is married under the Muslim Law, would be governed by the provisions of the Personal Law or the Protection of Children from Sexual Offences Act, 2012 (for short, 'POCSO Act') and the PCMA. If we may dare say, we are in complete agreement with

the reasoning of P.V. Kunhikrishnan, J. in **Moidutty Musliyar and others v. Sub Inspector Vadakkencherry Police Station and others, 2024 SCC OnLine Ker 4188** that no personal law can wipe out the prohibition of child marriage brought about by the PCMA, and the effect of the POCSO Act, which renders sexual intercourse with a child, that is a person below 18 years, a crime under that statute. The age of marriage, in our considered opinion, for every citizen of the country, irrespective of religion, is that, that is spelt out by the PCMA. Also, it is equally true that if the marriage of a person below 18 years were permitted, carnal relations being inseparable almost from the institution of marriage, it would be an acknowledged violation of the POCSO Act. The PCMA and the POCSO Act are statutes that are based on public health and national policy in this regard. They have a scientific understanding to them, legislatively translated into prohibitory statutes and there can be no escape from it for anyone.

7. Given the fact that the Majority Act by Section 2(a) makes the stipulated age inapplicable to the capacity of persons to act in the matter of marriage, amongst others, is besides the point because the PCMA is a much later statute and so is the POCSO Act. By Section 1(2) of the PCMA, it extends to the whole of India and apply also to all citizens of India, without and beyond India. A later statute, which is all encompassing, that is for all citizens, would prevail over the exception made in the Majority Act, 1875. It may also be noted that the marriage performed in violation of the PCMA may be voidable and not void, but the act of performing such a marriage by different parties is punishable by law. The offences under the PCMA are cognizable and non-bailable by virtue of Section 15 thereof. Despite the clear exposition of the law by the Supreme Court in **Independent Thought v. Union of India and another, (2017) 10 SCC 800**, the controversy has continued with some High Courts opining that age of majority and the capacity to marry for Muslims would be governed by the

Shariat Law, nonetheless. This question again arose before the Supreme Court in **Society For Enlightenment & Voluntary Action v. Union of India, 2024 SCC OnLine SC 2922**. In that case, their Lordships have struck a note of doubt pending passage of the Prohibition of Child Marriage (Amending) Bill 2021, introduced in Parliament on 21st December 2021. The following remarks of their Lordships in **Society For Enlightenment** (*supra*) are relevant:

"X. Suggestions

212. In the course of this judgment, we have traced the full breadth of the law against child marriage. The PCMA is the central legislation governing the issue on the subject. In light of the Constitutional guarantees accruing to children, we observe certain gaps in the PCMA. Absent a Constitutional challenge or a case being argued, we resist from making declarations and restrict ourselves to making suggestions for the scrutiny of the Union. The legal question on these issues, however, is kept open if it were to come before a Constitutional court in an appropriate proceeding.

213. The issue of the interface of personal laws with the prohibition of child marriage under the PCMA has been a subject of some confusion. The Union in its note of submission filed after the judgment was reserved in the case has stated that this Court may direct that the PCMA prevails over personal law. The note states as follows:

"9. As a way forward, Ministry of Women & Child Development has following inputs to provide for kind consideration of the Hon'ble Court—

i. There are conflicting pronouncements by various High Courts about the precedence of the Prohibition of Child Marriage Act (PCMA), 2006 over the personal laws. Hence, Hon'ble Court may consider issuing directions pronouncing that the PCMA will prevail over the personal laws governing marriage.

..."

214. Details of the conflicting opinions were not furnished in the submissions by either party to these proceedings. The PCMA states nothing on the validity of the marriage as we have noted above. The Prohibition of Child Marriage (Amending) Bill 2021 was introduced in Parliament on 21 December 2021. The Bill was referred for examination to the Department Related Standing Committee on Education, Women, Children, Youth and Sports. The Bill sought to amend the PCMA to expressly state the overriding effect of the statute over various personal laws. The issue, therefore, is pending consideration before Parliament.

215. Lastly, we note that while the PCMA seeks to prohibit child marriages, it does not stipulate on betrothals. Marriages fixed in the minority of a child

also have the effect of violating their rights to free choice, autonomy, agency and childhood. It takes away from them their choice of partner and life paths before they mature and form the ability to assert their agency. International law such as CEDAW stipulates against betrothals of minors. Parliament may consider outlawing child betrothals which may be used to evade penalty under the PCMA. While a betrothed child may be protected as a child in need of care and protection under the JJ Act, the practice also requires targeted remedies for its elimination.

XI. Conclusion

216. A copy of this Judgment will be transmitted to the Secretaries of all concerned Ministries, the Government of India which includes the Ministry of Home Affairs, Ministry of Women and Child Development, Ministry of Panchayati Raj, Ministry of Education, Ministry of Information and Broadcasting, Ministry of Rural Development, statutory authorities, institutions, and organizations under the control of the respective ministries.

217. The Ministry of Women and Child Development is directed to circulate this judgment to the Chief Secretaries/Administrators of all the States and Union Territories, as well as NALSA, and NCPCR for strict compliance with the directions. This shall be done within a period of four weeks from the date of delivery of this judgment.

218. The writ petition is disposed of.

219. Pending application(s), if any, stand disposed of."

8. We were informed during the hearing and we believe not without basis that the Prohibition of Child Marriage (Amending) Bill 2021 has lapsed with the dissolution of the 17th Lok Sabha. We have not been shown anything that the Bill is still pending consideration before the Parliament. The controversy has again surfaced before the Supreme Court, when the Punjab & Haryana High Court in **Javed v. State of Haryana and others, CRWP No. 7426-2022 (O&M) dated 30.09.2022** held that a Muslim female aged 15 years could marry a person of her choice, on her own willingness and consent, and the marriage would not be affected by Section 12 of the PCMA. This judgment has been impugned before the Supreme Court in **National Commission For Protection Of Child v. Javed and others, Special Leave Petition (criminal) Diary No.35376 of 2022**, where their Lordships issued notice and passed the following order on 13.01.2023:

"UPON hearing the counsel the Court made the following

O R D E R

1 We are inclined to entertain the Special Leave Petition which has been instituted by the National Commission for Protection of Child Rights (NCPCR) with a view to resolving the question of law which is raised.

2 Issue notice.

3 Mr Rajshekhar Rao, senior counsel, who has been appointed as Amicus Curiae in SLP (Crl) No 10036 of 2022 raising a similar issue, is requested to assist the Court in the present case as well.

4 Tag with SLP (Crl) No 10036 of 2022.

5 SLP (Crl) No 10036 of 2022 is de-tagged from Item No 31 [TP (C) Nos 1249- 1250 of 2020].

6 Pending further orders, the impugned judgment of the High Court dated 30 September 2022, shall not be relied on as a precedent in any other case.

7 List the Special Leave Petitions on 6 February 2023.

Diary No 1156/2023, Diary No 1205/2023 and Diary No 1208/2023

1 On mentioning, these matters are taken on Board.

2 Tag with SLP (Crl) Diary No 35376/2022."

9. Taking note of the development and the law until that time, the Delhi High Court in Mohd. Amaan Malik v. State (NCT of Delhi), 2023 SCC OnLine Del 3870 observed:

"12. It is also the case of the petitioner that the parties in the present case will be governed by the Muslim personal laws and the POCSO Act will have no applicability in the present case. In this regard, this Court notes that this issue has been a contentious one and remains at the heart of controversy in several cases decided by the High Courts across the country. The Hon'ble Karnataka High Court in *Aleem Pasha v. State of Karnataka*, 2022 SCC OnLine Kar 1588 observed that the POCSO Act, being a special legislation to protect children from sexual offences, will have an overriding effect on Muslim personal law. Earlier also, similar observations were made by Hon'ble Karnataka High Court in *Rahul v. State of Karnataka*, 2021 SCC OnLine Kar 12728. Recently, the Hon'ble Kerala High Court in *Khaledur Rahman v. State of Kerala*, 2022 SCC OnLine Ker 5833 also held that the marriage between Muslims under personal law is not excluded from the scope of the POCSO Act and if one of the parties to the marriage is a minor, irrespective of the validity or otherwise of the marriage, offences under the POCSO Act will apply. The Court, while referring to Section 42-A of the POCSO Act observed that the POCSO Act will prevail over personal laws and customary laws. To the

contrary, this Court in *Fija v. State (NCT of Delhi)*, 2022 SCC OnLine Del 2527 had observed that where the accused, who was a Muslim, had sexual intercourse during the course of marriage with his wife who was a minor Muslim, he was not guilty under the POCSO Act as the personal law has an overriding effect on special laws. Further, the Hon'ble Punjab and Haryana High Court in case of *Gulam Deen v. State of Punjab*, 2022 SCC OnLine P&H 1485 had taken a view that the marriage of a Muslim girl is governed by Muslim personal law, and a Muslim girl above 15 years of age is competent to enter into marriage. However, in *Special Leave Petition (Criminal) No. 26834/2022* filed by National Commission for Protection of Child Rights (NCPCR) against the said decision, the Hon'ble Apex Court had agreed to examine the question if a minor Muslim girl can marry on attaining puberty. Similarly, the Hon'ble Punjab and Haryana High Court in *Javed v. State of Haryana CRWP-7426-2022(O&M)* also had held that Muslim female aged 15 years and above could marry a person of her choice on her own willingness and consent, and such a marriage would not be void in terms of Section 12 of the Prohibition of Child Marriage Act, 2006. However, *vide* order dated 13.01.2023 in *Special Leave Petition (Criminal) No. 35376/2022* filed by NCPCR, the Hon'ble Apex Court ordered that the judgment in case of *Javed* (*supra*) should not be relied upon as a precedent in any other case. In a nutshell, as on date, the issue as to whether a girl attaining age of majority as per puberty after 15 years of age would be governed by the provisions of the POCSO Act/Child Marriage Restraint Act or not, is pending for consideration and adjudication before the hon'ble Apex Court."

10. If one were to take note of the remarks in **Mohd. Amaan Malik** (*supra*), Swarana Kanta Sharma, J. has taken note of the flux in the state of law on the subject because of the pending question before the Supreme Court and the conflict of opinion amongst the High Courts. We note that neither the Parliament have legislated in terms of what the Supreme Court was expecting in **Society For Enlightenment & Voluntary Action** (*supra*) nor the question seems to have been settled by an authoritative pronouncement of the Supreme Court so far. What the Delhi High Court noticed to be a pending question before the Supreme Court in **Mohd. Amaan Malik** (*supra*) does not appear to have been decided finally. A number of connected matters, which include the Special Leave Petition arising out of the judgment and order of the Punjab and Haryana High Court in CRWP No. 7426 of 2022 (O&M), *Javed v. State of Haryana and others*, decided on 30.09.2022, came to be dismissed by the Supreme Court mostly

on the question of *locus standi vide* order dated 19.08.2025. The only case where the question seems to be involved is W.P. (C) No. 814/2023 (PIL-W), which, by the order dated 19.08.2025, was adjourned to 26.08.2025. The order dated 19.08.2025 passed in Special Leave to Appeal (Crl.) No(s). 10036/2022, **National Commission For Protection Of Child Rights (NCPCR) v. Gulaam Deen & Ors.**, reads:

“UPON hearing the counsel the Court made the following

O R D E R

SLP (Crl.) Nos. 10036/2022 and 2206/2023

The petitioners herein are National Commission for Protection of Child Rights (NCPCR) and National Commission for Women (NCW) respectively.

The writ petition before the High Court, being CRWP No.5744/2022, was filed by Gulaam Deen and another under Articles 226/227 of the Constitution of India seeking a writ of Mandamus directing respondent nos.2 to 4 therein to protect their life and liberty owing to their apprehensions as a result of threats at the instance of private respondent nos.5 and 7 therein. The High Court has granted the prayer(s) of the petitioner(s) therein.

We fail to see as to how the petitioners herein can be aggrieved by such an order. If the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India seeks to extend protection to two individuals, it is strange that the petitioners are challenging such an order. The petitioners herein, in fact, have no locus standi to challenge the same.

It is strange that if the High Court has extended relief to minor children, the NCPCR, which is meant for protection of children assails such an order of the High Court. Hence, the special leave petitions are dismissed.

Pending application(s) shall stand disposed of.

Diary No. 35376/2022 and SLP(Crl) No. 2207/2023

Permission to file Special Leave Petition(s) is granted.

The petitioners herein are National Commission for Protection of Child Rights (NCPCR) and National Commission for Women (NCW) respectively.

The writ petition before the High Court, being CRWP No.7426/2022, was filed by Javed under Articles 226/227 of the Constitution of India seeking a writ in the nature of Habeas Corpus directing respondent nos.2 and 3 therein to release the detinue, who was stated to be in the custody of Ashiana, Sector 16, Panchkula. The

High Court in exercise of its jurisdiction under Articles 226/227 of the Constitution of India directed that the custody of detinue be handed over to the petitioner therein. The said order has been assailed by the petitioners herein. We find that the petitioners have no locus standi to challenge the same.

Hence, the special leave petitions are dismissed.

Pending application(s) including the application for intervention/impleadment shall stand disposed of.

SLP(Crl) No. 1934/2023

The petitioner herein is National Commission for Women (NCW).

The writ petition before the High Court being W.P. (Crl.) No.763/2022 was filed by Fija and another seeking a writ of Mandamus or any other writ directing respondent nos.1 to 3 therein to grant protection to the petitioners therein and further directing them to ensure that nobody separates the petitioners therein from each other.

We fail to see as to how the petitioner herein can be aggrieved by such an order. If the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India seeks to grant the prayer(s) sought for by the petitioner(s) therein, it is strange that the petitioner is challenging such an order. The petitioner herein has no locus standi to challenge the same.

Learned counsel for respondent nos.1 and 2 submitted that the said respondents are happily married and also have a girl child of two years. The said fact is also placed on record.

Hence, the special leave petition is dismissed.

Pending application(s) shall stand disposed of.

We place on record our sincere appreciation to the assistance rendered by Shri Rajshekhar Rao, learned senior counsel as Amicus Curiae of this Court in these matters.

W.P.(C) No. 814/2023

De-tagged from rest of the matters.

Learned senior counsel for the petitioner submitted that he would place on record the judgments/orders passed by this Court in the context of the prayers sought for by the petitioner herein and on that basis possibly the writ petition could be disposed of.

Hence, list on 26.08.2025."

11. It, therefore, appears that there is no authoritative pronouncement by the Supreme Court on the point, but that does not preclude us from holding on the question involved the correct

view of the law. We have already expressed it and we say it again in tune with the line of authority that has held likewise, and that is that the Shariat Law providing for puberty as the competent age under the law permissible for a girl to marry or be married, runs clearly in the teeth of the PCMA as well as the POCSO Act.

12. Turning to the facts of the present case, what we find is that there was a determined attempt to marry a girl of by her parents and the community while she was below 18 years of age. She was being married contrary to the mandate of the PCMA, and if married, in all likelihood and even logically, would have led to a transgression of the POCSO Act. Marriages solemnized are consummated as well, and once consummated, the POCSO Act comes into play. If, therefore, in a position as the present one, the Police and the Child Line Team swung into action and rescued the victim, they were indeed acting within the four corners of law and most certainly in the *bona fide* discharge of their duties under the law. The Police as well as the Child Line Team were conscious of their duties under the PCMA and also acting to prevent a possible violation of the POCSO Act. While their action is certainly commendable, what lies at the bottom of the FIR here is, is an assault on the police party and the Child Line Team. While they were about their task in rescuing the victim, they were abused and threatened, and according to the allegations in the FIR, had to save their lives from the aggression of the petitioners and the other unnamed offenders. The victim was forcibly taken away from their care and custody, till she was finally rescued. This is certainly a case where obstruction in the performance of duties of a government servant is *prima facie* made out. The other offences disclosed also require thorough investigation.

13. It has been argued that there is no medical report on record to justify the invocation of Sections 121(1) and 132 BNS, no overt acts having been assigned. It is also argued that the ingredients

of Section 351(2) BNS are not disclosed as no alarm was caused in the mind of the informant. The submission is that there is no independent witness of the incident. We regret, we cannot agree. The offences are clearly disclosed. It maybe not one offence more or one less, but, that ultimately would be the subject matter of the charge-sheet submitted after investigation, or may be, the charge, if framed by the Trial Court. It is also possible that some of the petitioners might not be found involved in the occurrence. But, whatever it is, the nature of the allegations and the *corpus delicti* is such that it is not at all a fit case, where we ought interdict investigation at an incipient stage by quashing the FIR and setting at naught the process of investigation.

14. In the result, we do not find any good ground to interfere with the FIR impugned. This writ petition is **dismissed**.

15. The interim stay order dated 06.04.2026 is hereby vacated.

16. Let this order be communicated to the Senior Superintendent of Police, Bulandshahr and the Station House Officer, P.S. Kakor, District Bulandshahr, both through the learned Chief Judicial Magistrate, Bulandshahr by the Registrar (Compliance).

(Achal Sachdev,J.) (J.J. Munir,J.)

July 01, 2026

Anoop