


HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Criminal Writ Petition No. 1537/2025

1. Priya Suman D/o Shri Giriraj Suman, Aged About 18 Years, R/o 11, Bagli, Chardana, Atroo, Dist. Baran, Rajasthan, Currently Residing At Balita Road, Kacchi Basti, Kunadi, Kota, Rajasthan
2. Rahul Prajapati S/o Shri Raju Prajapati, Aged About 19 Years, R/O Balita Road, Kacchi Basti, Kunadi, Kota, Rajasthan.

----Petitioners

Versus

1. State of Rajasthan, Through P.P.
2. Director General of Police, (Rajasthan), Police Headquarters, Jaipur, Rajasthan
3. Station House Officer, Police Station-Kunadi, Kota, Rajasthan
4. Nodal Officer Cum Dy. Superintendent of Police, Kunadi, Kota
5. Superintendent of Police, Kota City (Rajasthan)
6. Giriraj S/o Late Shri Amar Lal, aged about 49 Years, 11, Bagli, Chardana, Atroo, Dist. Baran, Rajasthan, Currently Residing At Balita Road, Kacchi Basti, Kunadi, Kota, Rajasthan
7. Smt. Mamta W/o Giriraj, Aged About 42 Years, 11, Bagli, Chardana, Atroo, Dist. Baran, Rajasthan, Currently Residing At Balita Road, Kacchi Basti, Kunadi, Kota, Rajasthan
8. Smt. Anita W/o Ramcharan, Aged About 40 Years, R/o Balita Road, Kacchi Basti, Kunadi, Kota, Rajasthan.

----Respondents

For Petitioner(s) : Mr.Satyam Khandelwal
For Respondent(s) : Mr.Vivek Choudhary, PP

JUSTICE ANOOP KUMAR DHAND

01/12/2025

Reportable

1. The instant criminal writ petition has been preferred by the petitioners with the following prayer:-

“It is therefore, humbly prayed that your Lordships ma kindly be pleased to accept and allow this criminal writ petition and direct Respondent No.3 to 5 to provide protection to the petitioners from private respondents as well as other family members/relatives/associates of the private respondents from bringing harm to the petitioners. Further, the respondent authorities be directed not to harass or unduly detain the petitioners against their will.

Any other relief, order or direction, which your lordships may deem just and proper in the facts and circumstances of the case, be passed in favour of the humble petitioners in the interest of justice.”

2. By way of filing the instant criminal writ petition, a prayer has been made for issuing direction to the respondent Nos.3 to 5 to provide protection to the petitioners from the private respondents.

3. Learned counsel for the petitioners submits that the petitioner No.1 is 18 years old and the petitioner No.2 is of the age of 19 years and they want to perform marriage, after attaining the eligible age of marriage of the petitioner No.2 and till then, they have decided to stay together in a live in-relationship and for the said purpose, they have also executed a live in-relationship agreement on 27.10.2025. Counsel submits that the family members of the petitioner No.1 have not consented for

such act of the petitioners and have threatened them to harm their life and personal liberty. Under these circumstances, the petitioners had approached the Nodal Officer, i.e., SHO Police Station Kunhadi, Kota protection by way of filing representations on 13.11.2025 & 17.11.2025 respectively, but no heed has been paid. Under these compelling circumstances, they have approached this Court by way of filing the instant petition.

4. Counsel submits that the Hon'ble Apex Court in the case of **Nandakumar & Anr. Vs. The State of Kerala & Ors.** while deciding **Criminal Appeal No.597 of 2018** vide order dated 20.04.2018 has dealt with the identical situation, wherein the groom did not attain the age of 21 years and in spite of above, he performed marriage. The father of the girl submitted a Habeas Corpus Petition seeking custody of the girl, before the Kerala High Court and the Court while allowing the said petition, filed by the father of the girl, handed over custody of the girl to the father. The husband of the said girl approached the Hon'ble Apex Court by way of filing Criminal Appeal No.597 of 2018, wherein the Hon'ble Apex Court observed that such marriage is not void, but may be voidable marriage in terms of Sections 5 and 12 of the Hindu Marriage Act, 1955. However, such couples will still have a right to live together even outside the wedlock, as live in-relationships have been recognized by the Legislature, under the provisions of the Protection of Women from Domestic Violence Act, 2005.

Counsel submits that under these circumstances, appropriate directions be issued to the Authorities concerned to provide protection to the petitioners.

5. *Per contra*, learned Public Prosecutor opposed the prayer and submitted that the petitioner No.2 is not eligible to perform the marriage inasmuch as according to the Act/ Rules, the minimum age of eligibility for marriage in the case of male is 21 years and for a female is 18 years. Since the petitioner No.2 has not attained the age of marriage, therefore, under such circumstances, neither he can perform marriage nor he can be allowed to stay in a live in-relationship. Hence, the instant petition does not deserve any indulgence and is liable to be rejected.

6. Heard and considered the submissions made at the Bar and perused the material available on record.

7. As per Section 5 of the Hindu Marriage Act, 1955, the minimum age of the bride and bridegroom should be 18 years and 21 years respectively to perform marriage. It is admitted case of the petitioners that both of them are major and have attained the age of majority and maturity and they have decided to perform marriage with each other. The only hurdle and rider between solemnization of their marriage is the age of the petitioner No.2, who has not attained the eligible age of 21 years to perform marriage with the petitioner No.1. Hence, they cannot be left at the mercy of the private respondents, who are against their aforesaid decision.

8. In **Lata Singh Vs. State of UP & Anr.**, reported in **AIR 2006 SC 2522**, the Hon'ble Apex Court has held that a live in-

relationship between two consensual adults of heterogenic sex does not amount to any offence. In the case at hand, the petitioner No.2 has not yet attained the age of 21 years, therefore, he not being of marriageable age, the petitioners cannot be deprived to live together in such type of relationship.

9. Even, the Co-ordinate Bench of this Court at Principal Seat, Jodhpur in the case of **Rekha Meghwanshi & Anr. Vs. The State of Rajasthan & Ors.** while deciding **S.B. Criminal Writ Petition No.1730/2024** vide order dated 21.08.2024 dealt with the identical situation, has held in Para Nos.5 to 12 as under:-

“5. Facts, as pleaded in the petition, succinctly are that petitioner No.1 born on 02.01.2004 and petitioner No.2, born on 08.05.2005, are purportedly in love with each other. They have been living together in relationship for past couple of days.

6. Petitioners have decided to get married once petitioner No.2 attains the marriageable age but parents of petitioner No.1 are against their marriage. Ever since they started staying together in a live-in relationship, private respondents Nos.6 to 9 have been threatening them with dire consequences. Apprehension is that parents may even will kill both petitioners by tracing them from wherever they are.

7. In the circumstances, the petitioners approached the police authorities with necessary documents to safeguard their life and liberty, but no action is being taken on same. Hence, the instant petition.

8. The petitioners state that they are living in constant danger of their life, as they have every apprehension that private respondents will catch them and carry out their threats and may go to the extent of even committing their murder. The petitioners are,

therefore, running here and there and unable to find any safe place to live in the absence of protection of their life and liberty. Hence the present writ petition seeking appropriate directions to the official respondents to provide protection qua their life and liberty.

9. Controversy that needs adjudication now thus is whether an appropriate writ/direction or order is warranted to allay the apprehension of the petitioners for granting protection to them for enforcement of their fundamental rights under Article 21 of the Constitution of India. The issue in hand, however, is not marriage of the petitioners, but the deprivation of fundamental right of seeking protection of life and liberty. I have no hesitation to hold that Constitutional Fundamental Right under Article 21 of Constitution of India stands on a much higher pedestal. Being sacrosanct under the Constitutional Scheme it must be protected, regardless of the solemnization of an invalid or void marriage or even the absence of any marriage between the parties.

10. It is the bounden duty of the State, as per the Constitutional obligations casted upon it, to protect the life and liberty of every citizen. Right to human life is to be treated on much higher pedestal, regardless of a citizen being minor or major. Mere fact that petitioners are not of marriageable age in the present case would not deprive them of their fundamental right, as envisaged in Constitution of India, being citizens of India.

11. Reference may be had, in the aforesaid context, to a judgment rendered by Punjab & Haryana High Court in CRWP No.4725 of 2021 titled "**Seema Kaur and another v. State of Punjab and others**", wherein, speaking for court, Sant Parkash, J., opined as under :-

“This Court in the past and also recently has allowed protection to those runaway couples, even though they were not married and were in a live-in relationship, and in cases where the marriage was invalid (as one of the parties though a major, was not of age as per Section 5 of the Hindu Marriage Act). Reference in this regard can be made to the judgment rendered by the Division Bench in **Rajwinder Kaur and another Versus State of Punjab, 2014 (4) RCR (Criminal) 785** where it was held that marriage is not a must for security to be provided to a runaway couple. The police authorities were directed to ensure that no harm was caused by any one to the life and liberty of the couple. Similar views have been taken by the Coordinate Benches in the case of **Rajveer Kaur Versus State of Punjab, 2019 (3) RCR (Civil) 478** and in **Priyapreet Kaur Versus State of Punjab, 2021 (1) RCR (Civil) 604** amongst others. Different High Courts too have allowed protection to runaway couples who are not married. Again reference can be made to a recent judgment rendered by the Allahabad High Court in **Kamini Devi vs. State of UP, 2021(1) RCR (Civil) 421** and in **Bhagwan Dass v. State (NCT of Delhi), (2011) 6 SCC 396**.

The concept of a live in relationship may not be acceptable to all, but it cannot be said that such a relationship is an illegal one or that living together without the sanctity of marriage constitutes an offence. Even under The Protection of Women from Domestic Violence Act, 2005, a woman who is in a 'domestic relationship' has been provided protection, maintenance etc. It is interesting to note that the word 'wife' has not been used under the said Act. Thus, the female live-in-partners and the children of live-in couples have been accorded adequate protection by the Parliament.

Article 21 as enshrined in the Constitution of India provides for its citizen to a right to life and personal liberty, with a stipulation that they shall not be deprived of it except according to a procedure established by law. In the case of **Shakti Vahini Versus Union of India and others, 2018 (5) R.C.R (Criminal) 981**, the Supreme court has held "The right to exercise Assertion of choice is an in segregable facet of liberty and dignity. That is why the French philosopher and thinker, Simone Weil, has said:-"Liberty, taking the word in its concrete sense consists in the ability to choose." At this stage, one cannot also lose sight of honour killings which are prevalent in northern parts of India, particularly in parts of States of Punjab, Haryana, Rajasthan and Uttar Pradesh. Honour killing is a result of people marrying without their family's acceptance, and sometimes for marrying outside their caste or religion. Once an individual, who is a major, has chosen his/her partner, it is not for any other person, be it a family member, to object and cause a hindrance to their peaceful existence. It is for the State at this juncture, to ensure their protection and their personal liberty. It would be a travesty of justice in case protection is denied to persons who have opted to reside together without the sanctity of marriage and such persons have to face dire consequences at the hands of persons from whom protection is sought. In case such a course is adopted and protection denied, the courts would also be failing in their duty to provide its citizens a right to their life and liberty as enshrined under Article 21 of the Constitution of India and to uphold to the Rule of law".

I am in respectful agreement with the views expressed in the judgment *ibid*.

12. As an upshot, the Superintendent of Police, Jodhpur Rural and Superintendent of Police, Bhilwara

are directed to verify the contents of the petition, particularly the threat perception of the petitioners, and thereafter, provide necessary protection qua their life and liberty, if deemed fit.”

10. In the case of **Mafi & Anr. Vs. State of Harayana & Ors.** while deciding **CRWP No.691/2021** vide order dated 25.01.2021 has held as under:

“In the present case, this Court, without expressing any opinion on the validity of the relationship of the petitioners, is required to consider whether the apprehension of the petitioners needs to be redressed. Petitioner No.1 in the present case is more than 18 years of age and is a major. She is well within her right to decide what is good for her and what is not. She has decided to take a step to be in a live-in relationship with petitioner No.2, who is also major, though may not be of a marriageable age. Be that as it may, the fact remains that both the petitioners in the present case are major and have a right to live their lives on their own terms. The private respondent Nos.4 to 8 being relatives of petitioner No.1, who is a major, cannot dictate to her how and with whom she should spend her life. Parents cannot compel a child to live a life on their terms. Every adult individual has a right to live his or her life as he or she deems fit. The petitioners are both major and have every right to live their lives as they desire within the four corners of the law. The society cannot determine how an individual should live her or his life. A person with whom someone chooses to spend his or her life with cannot be determined by what society wants. Parents don't accept their daughter's choices only because of fear that it is not acceptable to the society.

The Constitution of India guarantees every individual the right to life and the choice of a partner is an important facet of the right to life. The petitioners are seeking protection of their lives and liberty as envisaged under Article 21 of the Constitution of India. Article 21 of the

Constitution of India provides for protection of life and personal liberty and further lays down that no person shall be deprived of his or her personal liberty except as per the procedure established by law. No doubt petitioner No.2 is not of marriageable age, however, admittedly, he is a major. Merely because of the fact that petitioner No.2 is not of a marriageable age the petitioners cannot possibly be denied enforcement of their fundamental rights as envisaged under Article 21 of the Constitution of India. The petitioners, both being major, have decided to live together in a live-in relationship and there possibly cannot be any legally justifiable reason for the respondents to object to the same.”

11. Considering the arguments put forward by learned counsel for the petitioners and looking to the fact that the Hon’ble Apex Court has dealt with and decided the identical issue as involved in the instant petition in the case of **Nandakumar** (supra) by holding and observing as under:

“Learned counsel for the appellants is right in his submission. Even the counsel for the State did not dispute the aforesaid position in law and, in fact, supported this submission of the learned counsel for the appellants. Insofar as marriage of appellant No. 1 (who was less than 21 years of age on the date of marriage and was not of marriageable age) with Thushara is concerned, it cannot be said that merely because appellant No. 1 was less than 21 years of age, marriage between the parties is null and void. Appellant No. 1 as well as Thushara are Hindus. Such a marriage is not a void marriage under the Hindu Marriage Act, 1955, and as per the provisions of section 12, which can be attracted in such a case, at the most, the marriage would be a voidable marriage.

Section 5 and Section 12 of the Hindu Marriage Act make this position clear which are reproduced below:

“5. Conditions for a Hindu marriage. - A Marriage may be solemnised between any two Hindus, if the following conditions are fulfilled, namely-

XXXX XXXX XXXX XXXX

(iii) the bridegroom has completed the age of twenty one years and the bride, the age of eighteen years at the time of the marriage;”

12. Voidable marriages.-(1) Any marriage solemnised, whether before or after the commencement of this Act, shall be voidable and may be annulled by a decree of nullity on any of the following grounds, namely:-

1(a) that the marriage has not been consummated owing to the impotence of the respondent; or

(b) that the marriage is in contravention of the condition specified in clause (ii) of section 5; or

(c) that the consent of the petitioner, or where the consent of the guardian in marriage of the petitioner was required under section 5 as it stood immediately before the commencement of the Child Marriage Restraint (Amendment) Act, the 1978 (2 of 1978), the consent of such guardian was obtained by force or by fraud as to the nature of the ceremony or as to any material fact or circumstance concerning the respondent; or

(d) that the respondent was at the time of the marriage pregnant by some person other than the petitioner.”

We need not go into this aspect in detail. For our purposes, it is sufficient to note that both appellant No. 1 and Thushara are major. Even if they were not competent to enter into wedlock (which position itself is disputed), they have right to live together even outside

wedlock. It would not be out of place to mention that 'live-in relationship' is now recognized by the Legislature itself which has found its place under the provisions of the Protection of Women from Domestic Violence Act, 2005."

12. Article 21 of the Constitution of India guarantees the right to life and personal liberty under the ambit of the fundamental rights, and any threat to these rights constitutes violation of the same.

13. It is a well settled legal position, as expounded by the Hon'ble Supreme Court in the cases of **Lata Singh Vs. State of UP & Anr.**, reported in **AIR 2006 SC 2522**, **S. Khushboo Vs. Kanniammal & ors.**, reported in **(2010) 5 SCC 600**, **Indra Sarma Vs. V.K.V. Sarma** reported in **(2013) 15 SCC 755** and **Shafin Jahan Vs. Asokan KM & Ors.** reported in **(2018) 16 SCC 368** and passed by the Co-ordinate Bench of this Court in the case of **Suman Meena vs. State of Rajasthan** while deciding **S.B. Criminal Writ Petition No.792/2024** decided on 03.03.2025, that the life and personal liberty of individuals has to be protected, except according to procedure established by law, as mandated by Article 21 of the Constitution of India. Further, as per Section 29 of the Rajasthan Police Act, 2007 every police officer is duty bound to protect the life and personal liberty of the citizens.

14. This Court finds no valid reason to take a different view and accordingly, looking to the fact that the petitioners have already approached the Nodal Officer, by way of filing a representation, it is expected from the Nodal Officer to decide the representation so submitted by them in accordance with law and ensure that after

analyzing the threat perceptions, if necessitated, he may pass necessary orders to provide adequate security and protection to the petitioners.

15. With the aforesaid observations, the instant criminal writ petition stands disposed of. The stay application and all pending applications, if any, also stand disposed of.

16. However, it is made clear that whatever has been observed by this Court in the present order is only for the purpose of disposal of the instant criminal writ petition and the same shall not affect any criminal and civil proceedings initiated, if any, against the petitioners.

(ANOOP KUMAR DHAND),J