

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CRIMINAL APPLICATION NO. 6157 of 2020**

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**CHAUDHARY DIPESHKUMAR DEVAJIBHAI KARSHANBHAI**

**Versus**

**STATE OF GUJARAT**

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**Appearance:**

MR NASIR SAIYED FOR MR EE SAIYED(725) for the Applicant(s) No. 1,2

MR SIKANDER SAIYED(3458) for the Applicant(s) No. 1,2

DS AFF.NOT FILED (N)(11) for the Respondent(s) No. 10,11,2,3,4,5,6,7,8,9

MS JIRGA JHAVERI ADDL. PUBLIC PROSECUTOR(2) for the Respondent(s) No. 1

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**CORAM: HONOURABLE MR. JUSTICE NIKHIL S. KARIEL**

**Date : 30/12/2020**

**ORAL ORDER**

1. Heard learned Advocate Shri Nasir Saiyed for the petitioners and learned APP Ms. Jirga Jhaveri for the respondent State.

2. By way of present petition, petitioners who have got married on 23.09.2019, have voiced their apprehension that since the parents of the petitioner No.2 were not in favour of the marriage between the petitioners, there was a threat to the life and property of the petitioners. Consequentially, the petitioners have prayed that this Court may direct the respondent No.2 to provide police protection to the petitioners.

3. It appears that by earlier orders of this Court, at the request of the petitioners, police protection had been granted to the petitioners at their own costs. It also appears that such police protection had been granted from 18.12.2020 to 24.12.2020 during which period, no law and order problem had been reported.

4. Learned Advocate Shri Nasir Saiyed on behalf of the petitioners, submits that while the petitioners had requested for the police protection to be provided to them at their own cost, and whereas the same had been granted by earlier orders of this Court, now while the threat to the life and property of petitioners still subsists, yet due to lack of resources, they are not able to request for police protection at their own cost, therefore, they have requested that police protection may be provided at the cost of the State.

5. Learned APP Ms. Jhaveri for the respondent State has submitted that during the period when the police protection had been granted, there was no law and order problem which had been reported and hence, as such according to the learned APP, there is no requirement for any further police protection in any case. Learned APP submits that the aspect of threat to the life and property of the petitioners may be examined by the District Superintendent of Police, Banaskantha, and in case, he is of the opinion that there appears threat to the life and property of the petitioners, he may issue appropriate orders. Learned APP has also relied upon the judgment of the Hon'ble Apex Court in the case of Shakti Vahini Vs. Union of India reported in 2018 (7) SCC 192.

6. The Hon'ble Apex Court in the case of Shakti Vahini (Supra) directed preventive, remedial and punitive measures to tackle the scourge of dishonour killing. Since the petitioners have voiced their apprehension about threat to their life and property on account of marriage between the petitioners not being approved by the parents and other family members of petitioner No.2, the direction of the Hon'ble Apex Court would also be applicable in the present instance. Steps as directed by the Hon'ble Apex Court are reproduced herein below:

***“I. Preventive Steps:-***

*(a) The State Governments should forthwith identify Districts, Sub-Divisions and/or Villages where instances of honour killing or assembly of Khap Panchayats have been reported in the recent past, e.g., in the last five years.*

*(b) The Secretary, Home Department of the concerned States shall issue directives/advisories to the Superintendent of Police of the concerned Districts for ensuring that the Officer Incharge of the Police Stations of the identified areas are extra cautious if any instance of inter-caste or interreligious marriage within their jurisdiction comes to their notice.*

*(c) If information about any proposed gathering of a Khap Panchayat comes to the knowledge of any police officer or any officer of the District Administration, he shall forthwith inform his immediate superior officer and also simultaneously intimate the jurisdictional Deputy Superintendent of Police and Superintendent of Police.*

*(d) On receiving such information, the Deputy Superintendent of Police (or such senior police officer as identified by the State Governments with respect to the area/district) shall immediately interact with the members of the Khap Panchayat and impress upon them that convening of such meeting/gathering is not permissible in law and to eschew from going ahead with such a meeting. Additionally, he should issue appropriate directions to the Officer Incharge of the jurisdictional Police Station to be vigilant and, if necessary, to deploy adequate police force for prevention of assembly of the proposed gathering.*

*(e) Despite taking such measures, if the meeting is conducted, the Deputy Superintendent of Police shall personally remain present during the meeting and impress upon the assembly that no decision can be taken to cause any harm to the couple or the family members of the couple, failing which each one participating in the*

*meeting besides the organisers would be personally liable for criminal prosecution. He shall also ensure that video recording of the discussion and participation of the members of the assembly is done on the basis of which the law enforcing machinery can resort to suitable action. (f) If the Deputy Superintendent of Police, after interaction with the members of the Khap Panchayat, has reason to believe that the gathering cannot be prevented and/or is likely to cause harm to the couple or members of their family, he shall forthwith submit a proposal to the District Magistrate/Sub-Divisional Magistrate of the District/ Competent Authority of the concerned area for issuing orders to take preventive steps under the Cr.P.C., including by invoking prohibitory orders under Section 144 Cr.P.C. and also by causing arrest of the participants in the assembly under Section 151 Cr.P.C.*

*(g) The Home Department of the Government of India must take initiative and work in coordination with the State Governments for sensitising the law enforcement agencies and by involving all the stake holders to identify the measures for prevention of such violence and to implement the constitutional goal of social justice and the rule of law.*

*(h) There should be an institutional machinery with the necessary coordination of all the stakeholders. The different State Governments and the Centre ought to work on sensitization of the law enforcement agencies to mandate social initiatives and awareness to curb such violence.*

## **II. Remedial Measures:-**

*(a) Despite the preventive measures taken by the State Police, if it comes to the notice of the local police that the Khap Panchayat has taken place and it has passed any diktat to take action against a couple/family of an inter-caste or inter-religious marriage (or any*

*other marriage which does not meet their acceptance), the jurisdictional police official shall cause to immediately lodge an F.I.R. under the appropriate provisions of the Indian Penal Code including Sections 141, 143, 503 read with 506 of IPC.*

*(b) Upon registration of F.I.R., intimation shall be simultaneously given to the Superintendent of Police/ Deputy Superintendent of Police who, in turn, shall ensure that effective investigation of the crime is done and taken to its logical end with promptitude.*

*(c) Additionally, immediate steps should be taken to provide security to the couple/family and, if necessary, to remove them to a safe house within the same district or elsewhere keeping in mind their safety and threat perception. The State Government may consider of establishing a safe house at each District Headquarter for that purpose. Such safe houses can cater to accommodate (i) young bachelor-bachelorette couples whose relationship is being opposed by their families /local community/Khaps and (ii) young married couples (of an inter-caste or inter-religious or any other marriage being opposed by their families/local community/Khaps). Such safe houses may be placed under the supervision of the jurisdictional District Magistrate and Superintendent of Police. (d) The District Magistrate/Superintendent of Police must deal with the complaint regarding threat administered to such couple/family with utmost sensitivity. It should be first ascertained whether the bachelor-bachelorette are capable adults. Thereafter, if necessary, they may be provided logistical support for solemnising their marriage and/or for being duly registered under police protection, if they so desire. After the marriage, if the couple so desire, they can be provided accommodation on payment of nominal charges in the safe house initially for a period of one month to be extended on monthly basis but not exceeding one year in aggregate, depending*

*on their threat assessment on case to case basis. (e) The initial inquiry regarding the complaint received from the couple (bachelor-bachelorette or a young married couple) or upon receiving information from an independent source that the relationship/marriage of such couple is opposed by their family members/local community/Khaps shall be entrusted by the District Magistrate/ Superintendent of Police to an officer of the rank of Additional Superintendent of Police. He shall conduct a preliminary inquiry and ascertain the authenticity, nature and gravity of threat perception. On being satisfied as to the authenticity of such threats, he shall immediately submit a report to the Superintendent of Police in not later than one week. (f) The District Superintendent of Police, upon receipt of such report, shall direct the Deputy Superintendent of Police incharge of the concerned sub-division to cause to register an F.I.R. against the persons threatening the couple(s) and, if necessary, invoke Section 151 of Cr.P.C. Additionally, the Deputy Superintendent of Police shall personally supervise the progress of investigation and ensure that the same is completed and taken to its logical end with promptitude. In the course of investigation, the concerned persons shall be booked without any exception including the members who have participated in the assembly. If the involvement of the members of Khap Panchayat comes to the fore, they shall also be charged for the offence of conspiracy or abetment, as the case may be.*

### **III. Punitive Measures:-**

*(a) Any failure by either the police or district officer/officials to comply with the aforesaid directions shall be considered as an act of deliberate negligence and/or misconduct for which departmental action must be taken under the service rules. The*

*departmental action shall be initiated and taken to its logical end, preferably not exceeding six months, by the authority of the first instance.*

*(b) In terms of the ruling of this Court in Arumugam Servai (supra), the States are directed to take disciplinary action against the concerned officials if it is found that (i) such official(s) did not prevent the incident, despite having prior knowledge of it, or (ii) where the incident had already occurred, such official(s) did not promptly apprehend and institute criminal proceedings against the culprits.*

*(c) The State Governments shall create Special Cells in every District comprising of the Superintendent of Police, the District Social Welfare Officer and District Adi-Dravidar Welfare Officer to receive petitions/complaints of harassment of and threat to couples of inter-caste marriage.*

*(d) These Special Cells shall create a 24 hour helpline to receive and register such complaints and to provide necessary assistance/advice and protection to the couple.*

*(e) The criminal cases pertaining to honour killing or violence to the couple(s) shall be tried before the designated Court/Fast Track Court earmarked for that purpose. The trial must proceed on day to day basis to be concluded preferably within six months from the date of taking cognizance of the offence. We may hasten to add that this direction shall apply even to pending cases. The concerned District Judge shall assign those cases, as far as possible, to one jurisdictional court so as to ensure expeditious disposal thereof.”*

7. Since the petitioners have expressed their apprehension about their threat from the family members of the petitioner No.2 on account of the said family members not approving of marriage between the petitioners,

therefore, the above directions of the Apex Court would have direct applicability except that there is an absence of Khap Panchayat in the present case. In view of the same, relying upon the aforesaid reproduced directions of the Hon'ble Apex Court, following directions are passed:

- (i) The District Superintendent of Police, Banaskantha, to examine the issue with reference to the apprehension voiced by the petitioners herein and decide whether there really exists any threat to the life and property of the petitioners from the family members of the petitioner No.2 and / or other community members. Such decision shall be taken within a period of one week from the date of receipt of this order and the decision shall also be communicated to the petitioners.
- (ii) If the District Superintendent of Police, Banaskantha, comes to a conclusion that the apprehension of threat is genuine, then he should first try to impress upon / counsel the family members of the petitioner No.2 and / or their community members, against causing any harm to the petitioners and / or their family members.
- (iii) Even after appropriate counseling, as directed above, if the threat to the life and property of the petitioners and / or their family members persists, the District Superintendent of Police, Banaskantha, shall provide police protection as deemed appropriate to the petitioners for such time period as he thinks fit. It would also be open to the District Superintendent of Police to direct granting of police protection to the petitioners at the first instance, based upon the threat perception, even before he counsels the family members of the respondent No.2.

8. With such direction, the present petition is disposed of. Needless to



state that it would be open for the petitioners to approach this Court in case of any grievance.

VARSHA DESAI/YNVYAS

**(NIKHIL S. KARIEL,J)**