

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CRIMINAL APPLICATION NO. 12294 of 2021**

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SENDBHAI KARSANBHAI RAVAL
Versus
STATE OF GUJARAT

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Appearance:

MR.KIRIT R CHAUDHARI(3745) for the Applicant(s) No. 1

for the Respondent(s) No. 2,3

DS AFF.NOT FILED (N) for the Respondent(s) No. 10,11,4,6,8

MR MAHENDRA U VORA(3034) for the Respondent(s) No. 5,7,9

MR HK PATEL ADDL. PUBLIC PROSECUTOR for the Respondent(s) No. 1

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CORAM:HONOURABLE MS. JUSTICE SONIA GOKANI
and
HONOURABLE MRS. JUSTICE MAUNA M. BHATT

Date : 31/01/2022

ORAL ORDER
(PER : HONOURABLE MS. JUSTICE SONIA GOKANI)

1. This petition came to be preferred by the father of the Corpus residing at village Joravargadh doing agricultural work for livelihood of his family members. The petitioner has seven children – five daughters and two boys.

2. It is the say of the petitioner that at about 2.00 O'Clock on the date of the incident the petitioner and his wife were not available at their home and at that time, Respondent Nos. 4 to 10 came to their residence with commander jeep and kidnapped the daughter. The minor girl was kidnapped during the day hours and complaint to that effect has been given to the police on 5.3.2020.

3. It is the say of the petitioner that he and his relatives are

reputed persons in the community, visited the home of respondent Nos.4 to 10 for taking of the custody of their daughter . However, they denied to give the custody of daughter and threatened the petitioner and his wife. The complaint in that regard was given to D.S.P. Banaskantha but till date the FIR has been registered and nothing concrete has come out.

4. It is however alleged that respondent No.4 has illegally raped the minor daughter of the petitioner and respondent Nos.4 to 10 never gave any chance to their daughter to visit the petitioner's home. She was not even allowed to telephonically contact the petitioners.

4.1. It is alleged that thus illegal act of respondent No.4 had led to her carrying pregnancy. She was taken to Gadhvi Hospital at Tharad and the fetus was aborted.

5. It is however his say that on 25.10.2021, the petitioner and other villagers visited respondent Nos.4 to 10. These private respondents being very head strong, they had driven away the petitioners and others. He therefore, has prayed this court with following prayers:

“8(A) Your Lordships may be pleased to issue a writ of Habeas Corpus or a writ in the nature of Habeas Corpus or any other appropriate writ, order or direction and be pleased to direct the respondent No.2 and 3 to produce the daughter of the petitioner Manjulaben (respondent No.11), who is wrongly detained by the respondent No.4

before the Hon'ble Court in the interest of justice;

(B) Your Lordships may be pleased to grant such other and further relief as may be deemed fit in the light and the circumstances of the case.”

6. This Court (Coram: Hon'ble Mr. Justice S.H.Vora and Mr. Justice Aniruddha P. Mayee) issued notice on 15.12.2021 with following order.

“Notice returnable on 09/01/2022. Learned APP waives service of notice for respondents No.1 to 3. Direct service through concerned Police Station for rest of the respondents is permitted.”

7. Mr. Mahendra Vora, learned advocate appeared for the private respondents on 7.1.2022 and sought time to take necessary instructions. The Court also directed the Corpus to be kept present through Video Conference from the nearest DLSA Centre.

8. Once again on 17.1.2022, this Court directed the Corpus to remain present in presence of Full Time Secretary, District Legal Services Authority and the matter has been posted today for that purpose.

9. It is necessary to make a mention at this stage that on 13.1.2022, in-charge Police Sub-Inspector, Suigham Police Station, reported that on 2018, a Corpus had left her residence and had joined her elder sister and a Special Criminal Application No.8865

of 2018 was preferred seeking to issue writ of habeas corpus and the same was disposed of permitting the Corpus to stay with her elder sister.

10. Today, the Corpus has been brought before us through Video Conference in presence of Full Time Secretary, District Legal Services Authority, Banaskanth from Palanpur. We had an occasion to speak to the Corpus. She has categorically stated that she was with her elder sister pursuant to the earlier directions of the Court. She had in between gone to her husband and she was married to respondent No.4 by her parents along with the marriage of her elder sister with whom she is presently residing. All the four sisters were married on one particular day. Here her marriage was an exchange marriage as her sister-in-law, aged 5 years was married to her brother who was aged 7 years and according to her, her parents later on were not agreeable to her marriage which they themselves have performed with respondent No.4. That had led to earlier petition being SCR.A No.8865 of 2018 and even to today's petition. We also had talked with elder sister with whom a Corpus has been residing and according to her, the Court may choose to send to her to her in-laws or to their parental home. She has already as an elder sister performed her role and continued to keep the younger sister as per the direction. It is further her say that her parents were well aware that she was with her elder sister all along.

11. We had an occasion to meet her mother and who was present before the Full time Secretary, DLSA Centre and she also has expressed that all four daughters were married at the time of Parvati's marriage where the corpus was also married to respondent No.4 and this was an exchange marriage. The reason for preferring

the petition was that they were not agreeable to the said marriage and the daughter was still minor. She could not have joined respondent No.4.

12. We have heard learned advocate Mr. K.R.Chaudhary. He could not answer our pertinent query as to why the writ petition in such circumstances, knowing fully well that it was an order of the Court in Special Criminal Application No.8865 of 2018 of handing over the custody of the corpus to the elder sister who had resisted to join her parents who were to get her married elsewhere. According to him the Corpus nevertheless remains the minor and nobody can enjoy the marital relationship with her. The parents were protective when they came to know of her having joined Respondent No.4.

13. Learned APP has objected strongly urging that this is nothing but a sheer misuse of process of law. The police has been unnecessarily put to the difficulty and many unrequired applications have been moved earlier also. In the past three years, on number of occasions such applications were given to the police and this has its genesis in the evil customs of exchange child marriage which has been followed in the instant case.

14. According to learned advocate Mr. Mahendra Vora the wish of the corpus would prevail. Respondent No.4 is already married to her and, therefore, this entire petition is ill conceived.

15. Having heard both the sides and also on having ascertained from the corpus and her family members all the details, it is quite apparent that the earlier petition being SCR.A No.8865 of 2018 was preferred by the very petitioner, the father of the corpus who had

sought her custody by way of an issuance of writ of habeas corpus.

16. In the earlier petition when her age was 15 years, it was his say that his daughter was engaged before 13 years when her age was 1 year with present respondent No.4. It was alleged that respondent No.4 and others had kidnapped his daughter. The FIR also came to be lodged and he had sought the direction of getting the daughter produced before the Court in the interest of justice pleading minority and evil natured customs.

17. This Court in earlier petition (Croam: Hon'ble Mr. Justice S.R. Brahmbhatt and Hon'ble Mr. Justice V.B.Mayani) noticed that the corpus was minor and ordinarily the father is the natural guardian of the corpus and will have a right of seek the custody. The corpus herself indicated that she wanted to join her sister because of certain serious grievance against her parents. The Court permitted the corpus to stay with her sister. It further permitted the parents to seek custody in accordance with law and in those proceedings the order would not enure in favour of anyone.

“7. We are mindful of the fact that corpus is minor and ordinarily the father is the natural guardian of the corpus and will have a right to seek custody of the corpus. Our this order which records the corpus's willingness to stay with the sister would not in any manner be construed by any authority or a Court of law to mean that there was a conscious consideration for handing over the custody to the sister. It is the proceeding of habeas corpus in which the primary concern of the

Court to see to it that the corpus is not detained by anyone against her will. The Court in this proceeding need not go into the nitty-gritty of the rights and the liabilities of the parties before the Court. Therefore, as the corpus has indicated clearly that she is desirous of residing with the sister on account of serious grievances against the parents and as Shri Vora, learned counsel has submitted that earlier parents' attempt to obtain the custody of the minor in the form of proceedings under the search warrant have failed. He placed on record the proceedings in form of Juvenile Criminal Misc. Application No.03/2018 to substantiate his submission.

8. In that view of the matter, we are at present, permitting the corpus to stay with the sister. However, this permission, which we have recorded herein above in this proceeding would not create any impediment in the way of the parents to seek custody of the corpus in accordance with law and in those proceedings this order would not enure in favour of anyone and the concerned Court or the forum shall decide such proceedings strictly in accordance with law without being influenced by the observations of this Court in this order.”

18. It is a matter of record that this order was passed on

24.10.2018 and from October, 2018 to October 2021, according to the police record, various applications have been moved alleging against the respondents and others and to get the custody of the corpus. Eventually, the present petition has been preferred alleging against the private respondents. This petition does not reveal anywhere the preferring of the earlier petition being SCR.A No.8865 of 2018. It does not say a whisper about the custody being with the eldest sister or her having left from sister's place or the sister having allegedly connived with her to private respondents. Alleging seriously against the respondents who have abducted the minor daughter without resemblance of reference of earlier petition their own role and the proceedings which had resulted into the Court permitting the corpus to join with her sister, as she was unwilling to join the parents because of various allegations she made against them, this petition is nothing but a sheer misuse of process of law. Not only the petitioner have misused, they have also made serious suppression of facts before this Court. This is also a clear reflection of unfortunate custom of child marriage. In the earlier petition, the petitioner had not stated to make a reference of her engagement when she was aged one year with the respondent No.4, she was barely 14 years of age when SCR.A. No.8865 of 2018 was preferred. The exchange marriage which had taken place where the brother of the present corpus was only 7 years and the bride to be was 5 years and she happens to be the sister-in-law of the corpus. Certain monetary dispute and the disputes for the exchange of other things had resulted into the parents choosing not to sent the daughter to the respondents and realizing that she is turning 18 years in a months time, where she would be free to also join the respondents, they have chosen to approach this Court. It also appears that in between she had joined the private respondents and her sister may have agreed to having joined her in those resulting

into her being pregnant and under what circumstances she got her fetus aborted, we had chosen not to go into it. It is extremely unfortunate that the legislature has fixed the age of 18 years considering the physical, mental and emotional protection a girl child would need and also bearing in mind her growth in every which way before she joins the husband and the inlaws. Here is the case where the youngest daughter who is corpus had been married when the eldest daughter was married and all the four daughters in the very wedding venue got married, the parents themselves have chosen the exchange marriage of sister-in-law of Corpus (aged 5 years at the relevant time) with their own son and brother of the Corpus who was seven years. It is again as a result of dearth of the girls and depletion of sex ratio of male-female in the State of Gujarat that this illegal, unpalatable and depreciable practices continue.

19. While dismissing this petition and directing the police to take necessary actions against all concerned for all the violations under different laws, the Corpus has chosen to join her parents as her sister is no longer desirous to take the responsibility. She is willing to go on her own and join her parents. According to her, she also needs an assurance from the private respondents particularly her husband and others that they will abide by their agreements of exchange marriage after once her sister-in-law attains the age of 18 years.

20. We are of the opinion that when the parents and particularly the father was well aware of the Corpus being with her eldest daughter by virtue of Court's directions, the writ petition seeking the writ of habeas corpus is completely ill conceived and the designed act of insisting the process of law and therefore, while

disposing of this petition, we deem it appropriate to issue the cost of Rs.25,000/- that too considering his condition we have restricted to Rs.25,000/- and not imposing more cost. Let this amount be used for the benefit of women who are house tact i.e. Women Protection Home, Palanpur. If the petitioner does not pay the cost within eight weeks, the same shall be recovered in accordance with law by the District Administration.

21. We appreciate the presence of Mr.R.R.Zimba, Full Time Secretary, District Legal Services Authority, Banaskantha at Palanpur in functioning of this case all throughout.

(SONIA GOKANI, J)

(MAUNA M. BHATT,J)

NAIR SMITA V.