

(2010) 11 GUJ CK 0048
In the Gujarat High Court

Case No : Special Criminal Application No. 2157 of 2010

Amarben Parshottambhai Rathod

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 16-11-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 11 GUJ CK 0048

Hon'ble Judges : Bankim N. Mehta, J;A.M. Kapadia, J

Bench : Division Bench

Advocate : Ashok N. Parmar, for the Appellant; L.B. Dabhi, Assistant Public Prosecutor for Respondents 1 and 5 and B.C. Dave, for Respondents 2 - 4., for the Respondent

Final Decision : Dismissed

Judgement

A.M. Kapadia, J.—Rule. Mr. Dabhi, learned APP appears and waives service of notice of Rule on behalf of respondent No. 1 State of Gujarat as well as respondent No. 5 Police Inspector, Saher Kotda Police Station, Ahmedabad, whereas Mr. BC Dave, learned advocate appears and waives service of notice of Rule on behalf of respondent Nos. 2 to 4.

2. By filing instant petition under Article 226 of the Constitution of India, the petitioner has prayed to issue writ of Habeas Corpus or any other appropriate writ, direction and/or order in the nature of writ of mandamus directing respondent authorities including respondent Nos. 2 to 4 to produce the corpus Manju - daughter of the petitioner before this Court.

3. It is inter alia averred in the petition that the petitioner is residing with her family and doing household work. Her husband is doing labour work. Her daughter Manju was missing since 13.10.2010 when she has gone for her admission in the college in the first year. Thereafter, they went to Saher Kotda Police Station for registering the complaint about missing of her daughter. The

police authority has taken the complaint, however, it was not registered and therefore, respondent Nos. 2 to 4 have threatened the petitioner by saying that forgot the girl, otherwise your other family members are in trouble. It is further averred in the petition that the respondent Nos. 2 to 4 are involved in the offence and they have kidnapped the daughter of the petitioner herein for threatening the petitioner and her family. Thereafter, after waiting for sometime, the petitioner has filed complaint on 13.10.2010 at Saher Kotda Police Station against respondent Nos. 2 to 4, because all are involved in the offence. The respondent No. 2 in collusion with respondent Nos. 3 and 4 has kidnapped the girl Manju.

4. It is further averred in the petition that though the complaint was given, whereabouts of the corpus Manju has not been got. Though the complaint was given on 13.10.2010, the police authority is not taking any step for finding out the missing girl Manju, therefore, the petitioner made a representation before the police commissioner to take appropriate step against the persons involved in the offence. It is further averred that the petitioner has clearly stated in the complaint as well as in the representation before the commissioner that respondent Nos. 2 to 4 has kidnapped the girl Manju.

5. It is further averred in the petition that corpus Manju is in illegal detention of respondent Nos. 2 to 4 and thereby, put the life of corpus Manju in danger. It is further averred that corpus Manju is staying with respondent Nos. 2 to 4 against her will and wish. It is therefore, prayed for the relief to which the reference is made in the earlier paragraph of the judgment.

6. This Court vide order dated 29.10.2010 issued Notice to respondents, which was made returnable on 16.11.2010 on condition that the applicant shall deposit Rs. 10,000/- as a cost, to show her bona fide, on or before 3.11.2010.

7. Pursuant to the aforesaid order and direction, Mr. RL Damor, PI of Saher Kotda Police Station with the assistance of woman Police Officer has produced the corpus Manju before this Court. He has taken the custody of the corpus from respondent No. 2 Pinto Laxmanbhai Makwana. We have ascertained her willingness through inquiry. She has unequivocally stated before us that she is lawfully wedded wife of respondent No. 2 Pinto with whom she has performed the marriage on 13.10.2010 in Gayatri Mandir, Limdi as per Hindu rights and customs. She is happy at her matrimonial home. She has authoritatively stated before us that she was never in illegal detention of respondent Nos. 3 to 4 nor she is in illegal detention of respondent No. 2, who is her lawfully wedded husband and she wants to permanently reside with him. So far as age is concerned, admittedly, she is above 18.

8. In the case of *Gian Devi v. The Superintendent, Nari Niketan, Delhi* and Ors., (1976) 3 SCC 234 the Supreme Court has observed that a woman who has attained majority is free to stay in any place she likes without constraints by her parents or husband. What is held by the Supreme Court in the above referred to

case is that against her wishes a major girl cannot be sent to Nari Niketan or to her parents house.

9. Having gone to the facts of the case, we are satisfied that corpus Manju is sui juris as she is above 18 years of age and hence, no fetters can be placed upon her choice of the person with whom she has to stay, as Manju has categorically made a statement before us to the effect that she is lawfully wedded wife of respondent No. 2 Pinto and she was never in illegal detention of respondent No. 2 so also she wants to stay permanently with him at her matrimonial home where she would be happy. We have therefore, permitted her to go with her husband - respondent No. 2.

10. In view of this, the Habeas Corpus petition lacks merit and deserves to be rejected.

11. At this stage, Mr. Ashok N. Parmar, learned advocate for the petitioner does not press this petition and seeks leave to withdraw the same with a prayer that the amount of Rs. 10000/- deposited by the petitioner may be paid back to the petitioner, as the petitioner is coming from very poor family and doing labour work. Mr. Dabhi, learned APP as well as Mr. BC Dave, learned advocate for respondent Nos. 2 to 4 have no objection if leave as prayed for is granted and also the amount of Rs. 10000/- be paid back to the petitioner.

12. In view of this, this Habeas Corpus petition is disposed of as it is withdrawn. Rule is discharged.

13. Registry is directed to pay back the amount of Rs. 10000/- to the petitioner upon due verification.