

(2010) 11 GUJ CK 0081
In the Gujarat High Court

Case No : Special Criminal Application No. 2127 of 2010

Bhuraji Bheraji Marwadi

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 18-11-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 11 GUJ CK 0081

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

Bench : Division Bench

Advocate : B.S. Khatana, for the Appellant; Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

A.M. Kapadia, J.—By filing this petition under Article 226 of the Constitution of India, the Petitioner Bhuraji Bheraji Marwadi, father of the corpus Hinaben has prayed to issue a writ of habeas corpus or a writ, order or directing in the nature of habeas corpus directing Respondent Nos. 1 and 2, particularly, Respondent No. 2, to search and find out the whereabouts of his minor daughter Hinaben and produce her before this Court who is allegedly in illegal detention of Respondent No. 3 and further prayed to handover her custody to the Petitioner.

2. As per the averment made in this petition on 16.3.2010 the Petitioner's minor daughter had gone missing. Hence a missing complaint was lodged at Ellisbridge Police Station.

3. During the course of inquiry, it is learnt by him that Respondent No. 3 had induced Hinaben by making false promises of marriage and thereby kidnapping her and illegally and wrongfully detaining her with the aid of Respondent Nos. 4 to 7.

4. The Petitioner had made numerous attempts to register an F.I.R. However, the same was not registered by the Police.

5. The Petitioner, therefore, sent a complaint to the Police Inspector, Ellisbridge Police Station on 13.10.2010 stating that her daughter has been kidnapped and illegally detained by Respondent Nos. 3 to 7 and thereby requested the Police Inspector, Ellisbridge Police Station, to search and find his daughter.

6. However, as no steps have been taken by the police and the Petitioner's daughter has been kidnapped and illegally detained by Respondent No. 3 with the support and help of Respondent No. 4 to 7, the Petitioner has filed this petition and prayed for the relief to which a reference has been made in the earlier paragraph.

7. This Court has issued rule vide order dated 27.10.2010 which was made returnable on 18.10.2010.

8. Today when the matter is called out, Mr. J.B. Gadhvi, Police Inspector of Ellisbridge Police Station, who is personally present before this Court, produced minor Hinaben with the assistance of woman police constable, who was allegedly in illegal detention of Respondent No. 3.

9. We have ascertained her willingness and wish. Hinaben has in unequivocal terms stated before us that she has been forcibly taken by Respondent No. 3 and kept under illegal detention. Today with the assistance of a woman police constable, she could be relieved from the custody of Respondent No. 3 and produced before this Court by the Police Inspector. She has further stated that she wants to go with the Petitioner who is her father.

10. So far as the age of Hinaben is concerned, admittedly, she is aged 16 years and 2 months which is not disputed by Mr. Divesh Joshi, learned advocate for Respondent Nos. 4 to 7. Therefore, admittedly, she is a minor. In view of this since the corpus is minor and also shown her willingness to go with the Petitioner who is her father we have permitted her to go with her father.

11. Mr. Sejpal, learned APP, states that a complaint in this connection has already been registered against Respondent No. 3 and investigation is under progress. The Investigating Officer is, therefore, directed to conclude the investigation and file the report of his investigation before the appropriate Magistrate Court.

12. With the aforesaid observations and directions, this habeas corpus petition succeeds and accordingly it is allowed. The corpus is permitted to go with her father.

13. Rule is made absolute accordingly.