

(2020) 07 GUJ CK 0111

In the Gujarat High Court

Case No : R/Special Criminal Application No. 9653 Of 2019

Rameshbhai Jujarbhaj Taral

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 30-07-2020

Acts Referred:

Constitution Of India, 1950 — Article 226
Protection Of Children From Sexual Offences Act, 2012 — Section 8, 12, 17
Indian Penal Code, 1860 — Section 366, 376
Code Of Criminal Procedure, 1973 — Section 164

Citation : (2020) 07 GUJ CK 0111

Hon'ble Judges : Sonia Gokani, J;N.V.Anjaria, J

Bench : Division Bench

Advocate : Dipmala S Desai, Kumar H Trivedi, Manan Mehta

Final Decision : Disposed Of

Judgement

Sonia Gokani, J

1. This petition seeking writ of habeas corpus or any other appropriate writ under Article 226 of the Constitution of India is aimed against the

respondent nos. 4 to 6 for allegedly having illegally and unlawfully confined the minor daughter of the petitioner who was 17 years of age when she

was allegedly abducted.

2. This Court (Coram: - Mr. S.R.Brahmbhatt and Mr. V.P.Patel, JJ.) issued notice on 25.10.2019. Thereafter, many efforts were made to trace the

corpus and eventually the Superintendent of Police, Aravalli was directed to supervise the entire process by order dated 25.06.2020 and the corpus

was presented before this Court on 20.07.2020. This Court passed a detailed order on 20.07.2020 which deserves reproduction at this stage: -

1. This Court on 25.6.2020 directed the SP, Aravalli to supervise the entire process of investigation and bring the corpus before this Court by detail order which deserves reproduction at this stage.

On 15.06.2020, this Court had passed following order:

By way of the present application, the petitioner seeks to issue a writ of habeas corpus or any other appropriate writ against respondent No.4 to 6 for having illegally and unlawfully confined his minor daughter.

1. This Court issued notice on 25.10.2019 and directed respondent No.2 to bring the corpus before this Court failing which, the action taken report was directed to be submitted where the court notices with action taken report has been submitted by the concerned officer on the last occasion i.e. on 17.03.2020.

2. This Court could notice that action taken report lastly submitted was on 02.06.2020. Therefore, the Investigating Officer was directed to remain present on 20.03.2020. Due to pandemic of Covid-19, the matter could not be conducted and today, for the first time, it has appeared.

3. Learned Additional Public Prosecutor requires time as according to him, Investigating Officer is on leave. He also does not have any report submitted by the Investigating Officer and urges that due to pandemic, the Investigating Officer could not conduct further process.

4. Noticing the fact that before Isari police station at Aravalli on 11.08.2019 for the offences punishable under section 8,12 and 17 of the Protection of Children from Sexual Offences Act and sections 366 and 376 of the Indian Penal Code, let the Superintendent of Police, Aravalli look into this matter.

He shall ensure production of action taken report on the next date of hearing and shall supervise the investigation of the matter himself.

5. Matter is fixed on 25.06.2020. Superintendent of Police, Aravalli shall remain present through video conferencing on the adjourned date. Copy of the action taken report shall also be submitted through the learned Additional Public Prosecutor before the adjourned date.

6. Copy of this order shall be also furnished to learned Additional Public Prosecutor for onward communication and due execution.

2. Today, we have before us, SP, Aravalli, Mr. Mayur Patil, through the medium of Video Conferencing who has urged that all possible attempts are being made to trace the corpus. He, further, submits that the wife of respondent

No.4- also had been contacted, who has children, and she is not in a position deliver any goods. He is required to send a team to Malabar area. However, since, the pandemic is prevalent due to outbreak of Covid-19 virus, he requires about three weeksâ?? time. He is aware that much time has elapsed, but, according to him, it is the corpus, which had gone away with him an year back, and therefore, it has become difficult for the police to trace the corpus, who has left out of her own wish, as is apparent from the material on record.

3. Learned Advocate, Ms. Desai, urges that she was minor, at the time, when she was taken away by respondent No.4 and therefore, she has fervently urged before this Court that the corpus should be produced at the earliest or there may be a change of investigating agency.

4. Learned APP requests for time, as is prayed for by the SP, Arvalli.

5. Noticing the present pandemic due to outbreak of Covid-19 virus and also the situation in the State of Maharashtra and in the State of Gujarat, we deem it appropriate to grant three weeksâ?? time, as required for this time, with no likelihood of extension of this period.

7. Let all possible attempts be made to bring the corpus before this Court. SP, Arvalli, himself shall supervise the entire process of investigation, which is going on. Further, he may request for assistance and help of the other agencies of the state, including Anti-human Trafficking Cell etc., if, he so deems it appropriate.

8. Let the corpus be produced before us through video conference, on the next date or earlier at the nearest court premise. S.O. to 20TH JULY, 2020.â??

2. Today the corpus is before this Court presented through the Video Conferencing arranged at District Court: Modasa in the presence of learned PDJ, Mr. Vora. He has ensured that none else remains in his chamber and accordingly the corpus has been presented who admitted having being taken by the respondent No.4 Mahendrabhai Bamania. She is aware of the fact that Mahendra is married and has got children. She has yet wished to stay at Women Protection Home instead of joining her parents. As the district Modasa does not have any Women Protection Home for us to house her, we have made a request to learned PDJ to find out from the neighboring district as to whether there is any feasibility of accommodating her and

whether there are any instances of COVID-19 cases. He on receiving necessary instructions has submitted that there are no positive cases of

COVID-19 virus at Himmatnagar, Women Protection Home and the same is in position to accommodate the girl.

3. Considering the fact that the corpus is back and she wishes not to join her parents and instead is desirous to stay at Women Protection Home, let

the same be done without any further loss of time. She has already been tested for COVID-19 virus and the report has come negative. Her statement

under Section 164 of the CRPC and other necessary medical tests also shall be carried out keeping all required precautions, bearing in mind the

pandemic prevalent these days. Her basic clothing, if is an issue, the SP, Modasa shall make necessary financial arrangement for atleast 3 pairs of

clothing through a woman police officer and then afterwards, the parents can provide the same to her.

4. Let the meeting with the parents be also permitted at the Women Protection Home and this matter is kept after 10 days to know her wish at the end of this cooling period.

5. The copy of this shall also be furnished to learned APP Mr. Manan Mehta for onward communication to the SP, Modasa and for due execution of the order.

6. We also place on record a word of appreciation for the Learned Principal District Judge shri Vora for arrangement of VC and other assistance to this court.

7. Stand over to 30.7.2020.â??

3. The corpus was housed at Women Protection Home, Himmatnagar. It is given to understand today by the corpus herself that there had a

miscarriage soon before she was brought before this court the first time and she was treated at Civil Hospital, Himmatnagar, however, that aspect

was not revealed either by her or the police officer who brought her before the court.

3.1. The Police Officer Mr. Taviyad investigating the matter is before us today confirms this aspect. According to him, the report of Gynecologist and

Radiologist and others had been already taken which is forming part of papers of investigation. With regard to the DNA testing, he has not taken any

initiative, however, he ensures that if there is still possibility for him to send the

sample to the Forensic Science Laboratory, he shall do the needful. We would have appreciated if the officer concerned would have apprised this court of such vital information.

4. The corpus is quite young and has also recently undergone the trauma of miscarriage. She though has shown her desire to study further, she was pursuing her ITI industrial raining. She also has shown her willingness to continue her studies and also to do the computer course as well as the vocational training. We have requested the learned Principal District Judge, Mr. Vora to coordinate and if need be so, by coordinating with the learned Principal District Judge, Himmatnagar, through the Secretary District Legal Service Authority, she shall be given admission in ITI, if online classes are permissible. For computer classes which are arranged at the Women Protection Home, Himmatnagar and also the vocational training, she shall be trained properly so that she can lead her life with economic independence and dignity.

As the respondent accused had already been arrested and now has been enlarged on bail, when there is already a direction in the order of grant of bail by the POCSO Court, Let the prosecution witnesses be not tampered with in any manner.

5. The police authority shall ensure due protection and expedite the process of completion of investigation. The corpus presently is not desirous of joining her parents. We still direct the Administrator, Women Protection Home to permit the parents to meet her, if she chooses to do that at some point of time. She continued to be housed at the Women Protection Home till she attains capability of being on her own and can sustain herself.

7. Let the Superintendent of Police, Aravalli supervise the investigation of this matter and shall also ensure the wellbeing of the corpus.

8. At this stage, learned advocate Ms. Deepmala Desai has requested this Court to allow some volunteers working at Bachpan Bachavo Andolan to meet the corpus for the purpose of counseling. If any of such volunteers are wanting to undertake this task, let this be done in coordination with the Superintendent of Police, Aravalli.

9. With the above directions and observations, this petition stands disposed of.