

(2010) 12 GUJ CK 0023
In the Gujarat High Court

Case No : Special Criminal Application No. 2418 of 2010

Rameshbhai Ratibhai Patel

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 13-12-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 12 GUJ CK 0023

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

Bench : Division Bench

Advocate : Pinakin M. Raval, for the Appellant; L.B. Dabhi, Assistant Public Prosecutor for Respondent Nos. 1 to 3 and B.P. Mushi, for the Respondent

Judgement

A.M. Kapadia, J.—Rule. Mr. Dabhi, learned APP appears and waives service of notice of Rule on behalf of Respondent Nos. 1 to 3, whereas Mr. BP Munshi, learned advocate appears and waives service of notice of Rule on behalf of Respondent Nos. 4 to 7.

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 directing Respondent Nos. 2 and 3 to produce the corpus Dippal -daughter of the Petitioner before this Court, who is allegedly in illegal detention of Respondent Nos. 4 to 7.

3. The Petitioner is an agriculturist having one daughter named Dippal aged about 21 years and completed her graduation with degree of B.A.

3.1 It is further averred in the petition that on 24.11.2010 at evening hours, corpus Dippal went out of the house suspiciously. The Petitioner having come to know about this unfortunate incident, on 24.11.2010 itself around 12:00 o'clock in night, he along with other relatives approached Respondent No. 3 PSI, Bayad Police Station and informed about the said incident. The Respondent No. 3 PSI, Bayad Police Station has registered Janvajog entry for the said offence.

3.2 It is further averred in the petition and on personal inquiry, the Petitioner came to know about the fact by the other villagers that about four boys (Respondent Nos. 4 to 7) came in a white accent car being registration No. MH-04 -AH - 4438 and forcibly took the daughter and started moving towards Ahmedabad highway. After making further inquiry, the Petitioner came to know that amongst all those persons, Respondent Nos. 4 and 6 are the friends of Respondent Nos. 5 to 7.

3.3 It is further averred in the petition that Respondent Nos. 4 and 6 are the permanent residents of Mumbai and they came from Mumbai to Sabarkantha with an intention to kidnap the daughter of the Petitioner. Having come to know about these details, the Petitioner again approached Respondent No. 3 PSI, Bayad Police Station to lodge a complaint against Respondent Nos. 4 to 7 for illegal detention and wrong confinement of her daughter.

3.4 It is further averred in the petition that Respondent No. 3 PSI, Bayad Police Station thereafter, informed the Petitioner that the investigation is going on and they are in search of the corpus Dippal pursuant to the Janvajogentry. The Petitioner has therefore filed this petition and prayed for the relief to which the reference is made in the earlier paragraph of this judgment.

4. This Court vide order dated 2.12.2010 issued Notice to the Respondents, which was made returnable on 13.12.2010 on condition that the applicant shall deposit Rs. 25000/- as a cost, to show his bona fide, with the Registry of this Court.

5. When the matter is called out, Mr. LB Dabhi, learned AP Pstates that pursuant to the notice issued by this Court, Mr. KR Shah, PSI, Bayad Police Station is personally present before the Court. Mr. BP Munshi, learned advocate who has entered his appearance on behalf of Respondent Nos. 4 to 7 states that Respondent No. 4 Hiral @ Hemant has brought the corpus and wants to produce her before the Court. Therefore, we have permitted him to produce corpus Dippal before the Court.

6. Prior to ascertaining wish and willingness of corpus Dippal and as to whether she is illegally detained by Respondent No. 4 Hiral @ Hemant or not, we have persuaded her to talk with the Petitioner Rameshbhai Ratibhai Patel - her father who is also present in the Court and her mother as well. She had talked with them and thereafter, we have ascertained her wish and willingness in the Chamber. She has unequivocally stated before us that her birth date is 1.5.1990 and she has solemnized the marriage with Respondent No. 4 Hiral @ Hemant on 23.11.2010. The said marriage is also registered with the Birth Registrar/Talati-cum-Mantri, Gambhoi Gram Panchayat, Gambhoi, Dist: Sabarkantha and in support of the same, she has produced xerox copy of the school leaving certificate as well as marriage registration certificate. She has further stated that she has solemnized the marriage with the Respondent No. 4 Hiral @ Hemant at her free will and she wants to permanently reside with

Respondent No. 4 Hiral @Hemant at her matrimonial home so also she is not in illegal detention of Respondent No. 4 Hiral @ Hemant with whom she wants to permanently reside at her matrimonial home.

7. 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.

8. In the facts and circumstances emerging from the record of the case and in view of the statement made by corpus Dippal before us to the effect that she is legally wedded wife of the Respondent No. 4 Hiral @ Hemant and she is not in illegal detention and she wants to permanently reside with Respondent No. 4 Hiral @ Hemant at her matrimonial home so also she is a major and above 18 years, we are satisfied that corpus Dippal is sui jur is and hence, no fetters can be placed upon her choice of the person with whom she has to stay. We have therefore, permitted her to go wherever he wants to go. In view of this, the Habeas Corpus petition lacks merit and deserves to be rejected.

9. At this state, Mr. PM Raval, learned advocate for the Petitioner, upon instructions from the Petitioner who is personally present in the Court, does not press this petition and seeks leave to withdraw the same with a prayer that the amount of Rs. 25000/- deposited by the Petitioner, as a condition precedent for issuance of notice, may be paid back to the Petitioner, as the Petitioner was constrained to file this petition with a view to ascertain the wish and willingness of her daughter corpus Dippal and also to inquire as to whether she is in illegal detention of somebody.

10. Mr. LB Dabhi, learned APP for the Respondent Nos. 1 to 3 as well as Mr. BP Munshi, learned advocate for Respondent Nos. 4 to 7 have no objection if leave as prayed for is granted.

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

12. We have permitted the corpus Dippal to go wherever she wants to go.

13. So far as the amount of Rs. 25000/- deposited by the Petitioner is concerned, according to us, amount of Rs. 15000/- is required to pay back to the Petitioner and remaining amount of Rs. 10000/- is required to pay to the corpus Dippal.

14. Registry is therefore, directed to pay back the amount of Rs. 15000/- to the Petitioner and remaining amount of Rs. 10000/- to the corpus Dippal, upon due verification.

15. The xerox copies of the School Leaving certificate and the marriage registration certificate shall be retained on record of the case.