

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CRIMINAL APPLICATION NO. 1717 of 2022

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VAISHALI NISHIT PATEL
 Versus
 STATE OF GUJARAT

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Appearance:

ZAINAB I BHARMAL(9298) for the Applicant(s) No. 1

for the Respondent(s) No. 2,3.1,3.2

MR PRAVIN GONDALIYA(1974) for the Respondent(s) No. 3

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 : 05/05/2022

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

1. This Court, while issuing notice on 10.02.2022, in a petition preferred by the mother for the custody of both the daughters passed the following order:

"1. This is a petition preferred by an American Citizen, who has an Indian original. She is aggrieved by the contravention of the order dated 21.01.2022 passed by the Superior Court of New Jersey, Chancery Division Family Part Middlesex Country granting in person parenting time to the petitioner from 30.01.2022 to 27.02.2022 with the following prayers:

"12... (A) Your Lordships be pleased to Admit and Allow this petition;

(B) Your Lordships be pleased to issue a writ of habeas corpus or any other appropriate writ, order in the nature of mandamus, directing the respondents No.1 to 3 to keep respondents No.3.1 to 3.2 before this Hon'ble Court forthwith and appropriate order may be passed for handing over

the custody of respondents No.3.1 to 3.2 to the petitioner in the interest of justice;

(C) Pending admission hearing and final disposal of this petition, Your Lordships be pleased to direct the respondents No.3 to release the respondents No.3.1 to 3.2 from their illegal confinement forthwith;

(D) Your Lordship be pleased to pass such other and further orders as may be deemed fit, just and proper in the peculiar facts and circumstances of the present case.”

2. We have heard the learned senior advocate, Mr.Mihir Thakore appearing with learned advocate, Ms.Zainab Bharmal.

3. Before we could proceed with the advance hearing, learned advocate, Mr.Pravin Gondaliya appearing for the private respondent No.3 has fairly submitted that arrangements have been made for the weekend meeting for the wife to come over and meet the children.

3. We also have expressed our desire that the parties can also venture into the possibility of amicable settlement on the issues, where there are serious disputes. The good offices of the learned advocates could be used for the said purpose.

4. Presently, the matter is adjourned to 16.02.2022.”

2. The petitioner visited Mumbai where respondent husband and the children are staying and talk of settlement was on. This Court also was of the opinion that any family dispute and, more particularly, when it concerns the custody of children, we expect the parties to explore possibility of settlement. We appreciate the manner in which the learned advocates on both the sides promptly responded and made the best possible

efforts for the same. The Mediator, High Court Mediation Centre and Secretary, High Court Legal Services Committee, endeavoured to bring about such settlement with the assistance of learned advocates on both the sides. However, the same yielded no success.

3. The parties completed the pleadings and on the last occasion, learned advocate Mr. Pravin Gondaliya, learned advocate for the respondent No.3 had ventilated the grievance that in the process of getting Overseas Citizenship of India (OCI) Card, the petitioner is not cooperating and has raised objections. This may become the reason for the process of issuance of OCI Card not to sail through smoothly.

4. We, therefore, had fixed the matter for final hearing, as parties have already completed the pleadings. Learned advocate for the petitioner, on instructions, today, has sought withdrawal of this petition, according to her, the petitioner is back to USA and shall take recourse to legal proceedings. It is strongly objected by other side urging that it is the petitioner's design to derail the process of OCI Card and her ill intention was to

somehow ensure that children do not continue to stay in India.

5. According to us, pendency of divorce petition along with child custody matters before the competent Courts if is the reason for such request, the same needs to be regarded. Custody of both the daughters by way of a temporary restrain was denied by Superior Court of New Jersey, Chancery Division, Family Part, Middlesex County USA on 06.10.2021.
6. While permitting withdrawal, which is the right of every party, this Court is of the opinion that to both the parties need to act in the best interest of their children and it is therefore desirable for them to attempt an amicable settlement.
7. Let the proceedings before the Family Court be expedited, considering the young age of the children, parties will be at liberty to request to the concerned authority issuing the OCI Card of the pendency of various litigations by and between the parties.
8. Petition is dismissed and disposed of as withdrawn. The petitioner also may cooperate in the process of OCI

card.

(MS. SONIA GOKANI, J.)

SUDHIR

(MAUNA M. BHATT,J)

