

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CRIMINAL APPLICATION NO. 3058 of 2022**

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SULTANA JAHANGIRBHAI MIRZA
Versus
STATE OF GUJARAT

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Appearance:

O I PATHAN(7684) for the Applicant(s) No. 1

for the Respondent(s) No. 3,4,5,6

NOTICE SERVED for the Respondent(s) No. 2,3,5,6,7

NOTICE UNSERVED for the Respondent(s) No. 4

MS JIRGA JHAVERI, ADDL.PUBLIC PROSECUTOR for the Respondent(s)
No. 1,2

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CORAM: HONOURABLE MS. JUSTICE SONIA GOKANI

and

HONOURABLE MRS. JUSTICE MAUNA M. BHATT

Date : 04/04/2022

ORAL ORDER

(PER : HONOURABLE MS. JUSTICE SONIA GOKANI)

1. This petition is preferred by the mother of the corpus alleging that she had been kidnapped by the respondent No.4.

Therefore, she has sought the Writ of Habeas Corpus by way of following prayers:

“7...

(a) Be pleased Your Lordships to admit this petition;

(b) Be pleased Your Lordships to issue a writ of Habeas Corpus or any other appropriate writ order or direction to the respondent no.1 to 3 to trace out the daughter of the petitioner namely Maheen D/o Jahangirbhai Mirza and respondent no.3 to produce the daughter of the petitioner Maheen D/o Jahangirbhai Mirza before this Hon'ble Court and free her as per her wish.

(c) Be pleased Your Lordships to pass any other and further order considering the facts and circumstances of the case in the interest of justice.”

2. On issuance of notice by this Court on 23.03.2022 today the corpus is presented before us, she has expressed her clear wish to join respondent No.4. They both belong to different faith and have expressed that neither of them is desirous of changing the faith of other.

3. Noticing the fact that the couple of interfaith marriage would require the registration of the marriage under the Special Marriage Act, 1954, they are determined to move an application for the said purpose.

3.1 We had attempted to reconcile as the petitioner and her husband are quite

disappointed and angry with the daughter. They have also stated before this Court that the family of the respondent No.4 is known to them for the past more than 16 years as his family resided in the vicinity of the petitioner's residence. They also shared good and friendly terms, however, marriage of both the corpus and respondent No.4 is unacceptable. Today, the couple since is quite firm in their decision and the girl is not willing to go to the Women Shelter Home though we tried quite much to persuade her, she is being permitted to join the respondent No.4.

4. Learned advocate, Mr.Maulik Soni appears for respondent No.4. According to him, he is also undertaking the proceeding of moving an application before the office

of the Sub Registrar. The couple will also be entitled to the Legal Aid. Learned advocate, Mr.Soni is appointed in Legal Aid to perform this task. Wherever necessary, the Secretary, High Court Legal Services Committee shall provide him the logistic support.

5. Learned APP, Ms.Jhaveri shall be provided a copy of this order and the request shall be made that couple shall be escorted and both of them and the family of the respondent No.4 shall be provided protection initially for a period of four months. After once, whichever place they attempt to settle, the SP/ACP of the concerned Zone shall look into the matter.

6. We are given to understand that the application for police protection to the

Commissioner of Police, Ahmedabad City has been moved. Once this order is passed and if the couple continues to be at Ahmedabad, Commissioner of Police, Ahmedabad City shall take a call after four months whether to continue such protection or not.

7. Noticing the decision of the Apex Court rendered in case of *Laxmibai Chandaragi B. and Anr. vs. State of Karnataka and others*, reported in (2021) 3 SCC 360, where the Court had equated the right to marry a person of one's choice being an integral to Article 21 of the Constitution of India, Some of the relevant findings and observation of the Apex Court deserves reproduction which are as follow:

“10. Educated younger boys and girls are choosing their life partners which, in turn is a departure from the earlier norms of society where caste and community play a

major role. Possibly, this is the way forward where caste and community tension will reduce by such inter-marriage but in the meantime these youngsters face threats from the elders and the courts have been coming to the aid of these youngsters.

11. *We are fortified in our view by earlier judicial pronouncements of this Court clearly elucidating that the consent of the family or the community or the clan is not necessary once the two adult individuals agree to enter into a wedlock and that their consent has to be piously given primacy. It is in that context it was further observed that the choice of an individual is an inextricable part of dignity, for dignity cannot be thought of where there is erosion of choice. Such a right or choice is not expected to succumb to the concept of “class honour” or “group thinking”.*

12. *In Shafin Jahan vs. Asokan K.M. this Court noticed that the society was emerging through a crucial transformational period. Intimacies of marriage lie within a core zone of privacy, which is inviolable and even matters of faith held to be integral to Article 21 of the Constitution of India. In this behalf, the judgment of the nine-Judge Bench in K.S.Puttaswamy (Privacy-9 J.) v. Union of India may also be referred to where the autonomy of an individual inter alia in relation to family and marriage were held to be integral to the dignity of the individual.”*

5. We chose to dispose of this petition with a direction that the copy of the notice for the marriage and that of the registration of the marriage (once received) shall be produced before the Registrar (Judicial).

6. In the event of any difficulties because of the interfaith marriage bearing in mind the decision of *Laxmibai Chandaragi B. and Anr. (supra)* as well as the decision of the *Shakti Vahini vs. Union of India*, reported in *(2018) 7 SCC 192* where the Apex Court has observed and held as under:

“51. We may note with profit that honour killings are condemned as a serious human rights violation and are addressed by certain international instruments. The Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence addresses this issue. [Article 42](#) reads thus:-

“[Article 42](#) - Unacceptable justifications for crimes, including crimes committed in the name of so-called “honour” 44

(1) Parties shall take the necessary legislative or other measures to ensure that, in criminal proceedings initiated following the commission of any of the acts of violence covered by the scope of this Convention, culture, custom, religion, tradition or so-called

“honour” shall not be regarded as justification for such acts. This covers, in particular, claims that the victim has transgressed cultural, religious, social or traditional norms or customs of appropriate behaviour.

(2) Parties shall take the necessary legislative or other measures to ensure that incitement by any person of a child to commit any of the acts referred to in paragraph 1 shall not diminish the criminal liability of that person for the acts committed.”

52. Once the fundamental right is inherent in a person, the intolerant groups who subscribe to the view of superiority class complex or higher clan cannot scuttle the right of a person by leaning on any kind of philosophy, moral or social, or self-proclaimed elevation. Therefore, for the sustenance of the legitimate rights of young couples or anyone associated with them and keeping in view the role of this Court as the guardian and protector of the constitutional rights of the citizens and further to usher in an atmosphere where the fear to get into wedlock because of the threat of the collective is dispelled, it is necessary to issue directives and we do so on the foundation of the principle stated in [Lakshmi Kant Pandey v. Union of India](#)¹⁵, [Vishaka and others v. State of Rajasthan](#) and others¹⁶ and [Prakash Singh and others v. Union of India](#) and others¹⁷.

53. It is worthy to note that certain legislations have come into existence to do away with social menaces like “Sati” and “Dowry”. It is because such legislations are in accord with our Constitution. Similarly, protection of human rights is the élan vital of our Constitution that epitomizes humanness and the said conceptual epitome of humanity completely ostracizes any idea or prohibition or edict that creates a hollowness in the inalienable rights of the citizens who enjoy their rights on the foundation of freedom and on the fulcrum of justice that is fair, equitable and proportionate. There cannot be any assault on human dignity as it has the potentiality to choke the majesty of law. Therefore, we would recommend to the legislature to bring law appositely covering the field of honour killing.

54. In this regard, we may usefully refer to the authority wherein this 15 (1984) 2 SCC 244 16 (1997) 6 SCC 241 17 (2006) 8 SCC 1 46 Court has made such recommendation. [In Samrendra Beura v. Union of India](#) and others¹⁸, this Court held:-

“16. Though such amendments have been made by Parliament under the 1950 Act and the 1957 Act, yet no such amendment has been incorporated in the [Air Force Act](#), 1950. The aforesaid provisions, as we perceive, have been incorporated in both the statutes to avoid hardship to persons convicted by the Court Martial. Similar hardship is suffered by the persons who are sentenced to imprisonment under various provisions of the Act. Keeping in view the aforesaid amendment in the other two enactments and regard being had to the purpose of the amendment and the totality of the circumstances, we think it apt to recommend the Union of India to seriously consider to bring an amendment in the Act so that the hardships faced by the persons convicted by the Court Martial are avoided.”

55. Mr. Raju Ramachandran, learned senior counsel being assisted by Mr. Gaurav Agarwal, has filed certain suggestions for issuing guidelines. The Union of India has also given certain suggestions to be taken into account till the legislation is made. To meet the challenges of the agonising effect of honour crime, we think that there has to be preventive, remedial and punitive measures and, accordingly, we state the broad contours and the modalities with liberty to the executive and the police administration of 18 (2013) 14 SCC 672 the concerned States to add further measures to evolve a robust mechanism for the stated purposes.

55.1 Preventive Steps:-

55.1.1. The State Governments should forthwith identify Districts, Sub-Divisions and/or Villages where instances of honour killing or assembly of Khap Panchayats have been reported in the recent past, e.g., in the last five years.

55.1.2. The Secretary, Home Department of the concerned States shall issue directives/advisories to the Superintendent of Police of the concerned Districts for ensuring that the Officer Incharge of the Police Stations of the identified areas are extra cautious if any instance of inter-caste or inter-religious marriage within their jurisdiction comes to their notice.

55.1.3. If information about any proposed gathering of a Khap Panchayat comes to the knowledge of any police officer or any officer of the District Administration, he shall forthwith inform

his immediate superior officer and also simultaneously intimate the jurisdictional Deputy Superintendent of Police and Superintendent of Police.

55.1.4. On receiving such information, the Deputy Superintendent of Police (or such senior police officer as identified by the State Governments with respect to the area/district) shall immediately interact with the members of the Khap Panchayat and impress upon them that convening of such meeting/gathering is not permissible in law and to eschew from going ahead with such a meeting. Additionally, he should issue appropriate directions to the Officer Incharge of the jurisdictional Police Station to be vigilant and, if necessary, to deploy adequate police force for prevention of assembly of the proposed gathering.

55.1.5. Despite taking such measures, if the meeting is conducted, the Deputy Superintendent of Police shall personally remain present during the meeting and impress upon the assembly that no decision can be taken to cause any harm to the couple or the family members of the couple, failing which each one participating in the meeting besides the organisers would be personally liable for criminal prosecution. He shall also ensure that video recording of the discussion and participation of the members of the assembly is done on the basis of which the law enforcing machinery can resort to suitable action.

55.1.6. If the Deputy Superintendent of Police, after interaction with the members of the Khap Panchayat, has reason to believe that the gathering cannot be prevented and/or is likely to cause harm to the couple or members of their family, he shall forthwith submit a proposal to the District Magistrate/Sub-Divisional Magistrate of the District/ Competent Authority of the concerned area for issuing orders to take preventive steps under the [Cr.P.C.](#), including by invoking prohibitory orders under [Section 144](#) Cr.P.C. and also by causing arrest of the participants in the assembly under [Section 151](#) Cr.P.C.

55.1.7. The Home Department of the Government of India must take initiative and work in coordination with the State Governments for sensitising the law enforcement agencies and by involving all the stake holders to identify the measures for prevention of such violence and to implement the constitutional goal of social justice and the rule of law.

55.1.8. There should be an institutional machinery with the necessary coordination of all the stakeholders. The different State Governments and the Centre ought to work on sensitization of the law enforcement agencies to mandate social initiatives and awareness to curb such violence.

55.2. Remedial Measures:-

55.2.1 Despite the preventive measures taken by the State Police, if it comes to the notice of the local police that the Khap Panchayat has taken place and it has passed any diktat to take action against a couple/family of an inter-caste or inter-religious marriage (or any other marriage which does not meet their acceptance), the jurisdictional police official shall cause to immediately lodge an F.I.R. under the appropriate provisions [of the Indian Penal Code](#) including [Sections 141, 143, 503](#) read with 506 of [IPC](#).

55.2.2 Upon registration of F.I.R., intimation shall be simultaneously given to the Superintendent of Police/ Deputy Superintendent of Police who, in turn, shall ensure that effective investigation of the crime is done and taken to its logical end with promptitude.

55.2.3 Additionally, immediate steps should be taken to provide security to the couple/family and, if necessary, to remove them to a safe house within the same district or elsewhere keeping in mind their safety and threat perception. The State Government may consider of establishing a safe house at each District Headquarter for that purpose. Such safe houses can cater to accommodate (i) young bachelor-bachelorette couples whose relationship is being opposed by their families /local community/Khaps and (ii) young married couples (of an inter-caste or inter-religious or any other marriage being opposed by their families/local community/Khaps). Such safe houses may be placed under the supervision of the jurisdictional District Magistrate and Superintendent of Police.

55.2.4 The District Magistrate/Superintendent of Police must deal with the complaint regarding threat administered to such couple/family with utmost sensitivity. It should be first ascertained whether the bachelor-bachelorette are capable adults. Thereafter, if necessary, they may be provided

logistical support for solemnising their marriage and/or for being duly registered under police protection, if they so desire. After the marriage, if the couple so desire, they can be provided accommodation on payment of nominal charges in the safe house initially for a period of one month to be extended on monthly basis but not exceeding one year in aggregate, depending on their threat assessment on case to case basis.

55.2.5 The initial inquiry regarding the complaint received from the couple (bachelor-bachelorette or a young married couple) or upon receiving information from an independent source that the relationship/marriage of such couple is opposed by their family members/local community/Khaps shall be entrusted by the District Magistrate/ Superintendent of Police to an officer of the rank of Additional Superintendent of Police. He shall conduct a preliminary inquiry and ascertain the authenticity, nature and gravity of threat perception. On being satisfied as to the authenticity of such threats, he shall immediately submit a report to the Superintendent of Police in not later than one week.

55.2.6 The District Superintendent of Police, upon receipt of such report, shall direct the Deputy Superintendent of Police incharge of the concerned sub-division to cause to register an F.I.R. against the persons threatening the couple(s) and, if necessary, invoke [Section 151](#) of Cr.P.C. Additionally, the Deputy Superintendent of Police shall personally supervise the progress of investigation and ensure that the same is completed and taken to its logical end with promptitude. In the course of investigation, the concerned persons shall be booked without any exception including the members who have participated in the assembly. If the involvement of the members of Khap Panchayat comes to the fore, they shall also be charged for the offence of conspiracy or abetment, as the case may be.

55.3. III. Punitive Measures:-

55.3.1. Any failure by either the police or district officer/officials to comply with the aforesaid directions shall be considered as an act of deliberate negligence and/or misconduct for which departmental action must be taken under the service rules. The departmental action shall be initiated and taken to its logical end, preferably not exceeding six months, by the authority of the first instance.

55.3.2 In terms of the ruling of this Court in *Arumugam Servai (supra)*, the States are directed to take disciplinary action against the concerned officials if it is found that (i) such official(s) did not prevent the incident, despite having prior knowledge of it, or (ii) where the incident had already occurred, such official(s) did not promptly apprehend and institute criminal proceedings against the culprits.

55.3.3. The State Governments shall create Special Cells in every District comprising of the Superintendent of Police, the District Social Welfare Officer and District Adi-Dravidar Welfare Officer to receive petitions/complaints of harassment of and threat to couples of inter-caste marriage.

55.3.4. These Special Cells shall create a 24 hour helpline to receive and register such complaints and to provide necessary assistance/advice and protection to the couple.

55.3.5. The criminal cases pertaining to honour killing or violence to the couple(s) shall be tried before the designated Court/Fast Track Court earmarked for that purpose. The trial must proceed on day to day basis to be concluded preferably within six months from the date of taking cognizance of the offence. We may hasten to add that this direction shall apply even to pending cases. The concerned District Judge shall assign those cases, as far as possible, to one jurisdictional court so as to ensure expeditious disposal thereof."

7. With the above direction, present petition stands disposed of.

(SONIA GOKANI, J)

(MAUNA M. BHATT, J)

M.M.MIRZA