

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CRIMINAL APPLICATION NO. 5444 of 2023**=====
RAJ RAMESHBHAI MISTRY

Versus

STATE OF GUJARAT
=====

Appearance:

MR SHAIVANG D MEHTA(5623) for the Petitioner(s) No. 1

for the Respondent(s) No. 2,3,4,5,6

MS JIRGA JHAVERI, ADDITIONAL PUBLIC PROSECUTOR for the
Respondent(s) No. 1
=====CORAM:**HONOURABLE MR. JUSTICE UMESH A. TRIVEDI**

and

HONOURABLE MRS. JUSTICE M. K. THAKKER**Date : 01/05/2023****ORAL ORDER****(PER : HONOURABLE MR. JUSTICE UMESH A. TRIVEDI)**

This petition is filed by the petitioner - husband of respondent no.2 herein praying for issuance of writ of habeas corpus directing the respondents to produce minor children - Dhriti and Parv, daughter and son respectively born out of the wedlock with respondent no.2 herein. However, as asserted by the learned advocate for the petitioner, respondent no.2 - wife has started living separate since 17.12.2022 out of a marital discord. As coming out from the FIR, the husband is also facing FIR filed against him and family members for the offence punishable under Sections 498 A, 323, 504, 506(2) and 114 of the Indian Penal Code. Nowhere in the petition it is

mentioned that even after the separation, the petitioner father has ever attempted to get the custody of child either permanent or interim or even sought for any visitation rights. It is only because he is facing FIR for the offences and may face other case because of marital discord, this petition under the guise of habeas corpus, for the custody of children is filed, and therefore, it cannot be entertained for the simple reason that there are several other remedies, which could have been availed earlier at the first available opportunity, which is never availed and straightway the petitioner has filed this petition in this Court, and therefore, this petition cannot be entertained. There is also no case of the petitioner that children have been abducted by the respondent wife from the established custody unlawfully and they are illegally confined. Hence, the present petition is rejected.

(UMESH A. TRIVEDI, J.)

(M. K. THAKKER, J.)

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