



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CRIMINAL APPLICATION NO. 7864 of 2020

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LILABHAI SHANKARBHAI SAPARIYA (VALMIKI)
Versus
STATE OF GUJARAT

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Appearance:

MR.DIPEN F CHAUDHARI(6740) for the Applicant(s) No. 1
for the Respondent(s) No. 2,3,4
HASMUKH V PARMAR(8378) for the Respondent(s) No. 6
MR RAJESH M CHAUHAN(2470) for the Respondent(s) No. 6
MS JK HINGORANI(2491) for the Respondent(s) No. 7,8
NOTICE UNSERVED for the Respondent(s) No. 5,9
MR BHARGAV PANDYA APP for the Respondent(s) No. 1

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CORAM: HONOURABLE MR. JUSTICE UMESH A. TRIVEDI
and
HONOURABLE MRS. JUSTICE M. K. THAKKER

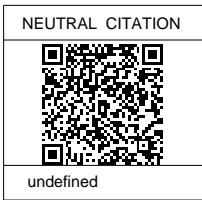
Date : 01/08/2023

ORAL ORDER
(PER : HONOURABLE MR. JUSTICE UMESH A. TRIVEDI)

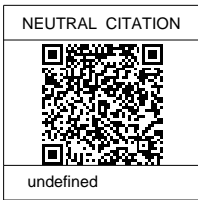
1. This petition is filed by the father for writ of Habeas Corpus as his major daughter went missing according to the case of the petitioner on 15.10.2020 from the house of Respondent No.7.

2. Facts of the case are as under:

2.1 The Corpus, namely, Rekhaben got married with Respondent No.7. On 14th October, 2020, there was some quarrel between Respondent No.7-husband and Corpus regarding habit



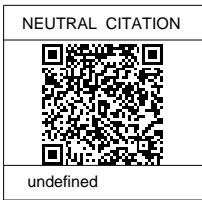
of chewing Gutkha of the Corpus. As per the allegation made in the petition, she was beaten by Respondent No.7 and on 15th October, 2020, when Respondent No.7 returned to the home from his job, the Corpus-wife was not available, therefore, 'Janvajog' application was given by Respondent No.7- husband with Vadaj Police Station on 16th October, 2020 bearing Janvajog No.117 of 2020. The petitioner, who is father of the Corpus, was also informed on 15th October, 2020 by Respondent No.8, father of the husband about nonavailability of the daughter in-law from the matrimonial house. The petitioner waited at his house for the Corpus and also tried to contact on her phone, however, her phone was found switched off and she did not return to her parental house. On making inquiry, the petitioner came to know that there was some relationship between Respondent No.5 and the Corpus and he came to know that Respondent No.5 had abducted the girl / corpus. It is contended in the petition that the Corpus was illegally confined by Respondent Nos.5 to 8 and though the missing complaint was lodged with the Vadaj Police Station, no any fruitful efforts were made. Hence, this writ petition under Article 226 of the Constitution of India seeking writ



of Habeas Corpus is filed by the father-petitioner herein praying to produce the Corpus, Rekhaben, daughter of the petitioner before the Hon'ble Court.

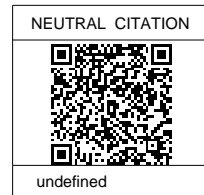
3. That 'Notice' was issued by this Court on 4th December, 2020 with a direction to Authority to make all attempts to trace out the Corpus and produce the Corpus before the Court. Time to time, Investigating Authority submitted the Report with regard to the attempts made to trace out the Corpus. Reports suggest that Deputy Commissioner of Police, Zone-I, Ahmedabad city was supervising the investigation and constituted a team led by Police Inspector, Vadaj Police Station coordinated by Assistant Commissioner of Police of the concerned zone. Necessary aid from the State C.I.D. Crime (Missing Cell) was also sought to trace out the corpus.

4. Mr.Dipen F. Chaudhari, learned advocate for the petitioner submitted that there is no sincere efforts made by the police agency to trace out the Corpus - daughter. Mr.Chaudhari, learned advocate further submitted that the Corpus was missing from the house of Respondent No.7, and Respondent No.5 is also

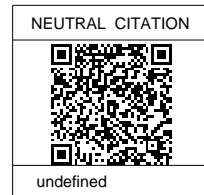


missing. As on date, though more than 2 ½ years has passed by now, police agency has failed to trace out the whereabouts of the Corpus. Mr.Chaudhari, learned advocate further submits that though specific allegations are made against Respondent Nos.5 and 8 with regard to the illegal confinement, no actions were taken against Respondent Nos.5 and 8 and simply Reports are submitted by the police agency without any fruitful action. Mr.Chaudhari, learned advocate further submitted that there is a clear allegation of illegal confinement by the private respondent and therefore, it is prayed that this writ of habeas corpus petition be kindly allowed and appropriate order be passed directing the agency to produce the corpus.

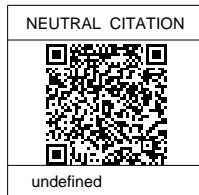
5. On the other hand, Mr.Bhargav Pandya, learned APP has relied on the affidavit submitted by Dr.Lavina Sinha, Deputy Commissioner of Police, Zone-I, Ahmedabad (City) narrating the efforts made by Investigating Agency. It is contended in the affidavit that missing complaint being No.117 of 2020 was received by the Head Constable of the Police Station and thereafter all concerned police stations of Ahmedabad city and



districts were intimated in respects of missing corpus. Investigating Officer also collected CDR details of the mobile numbers which was being used by Respondent No.5 for the period between 1.10.2020 to 23.10.2020. Thereafter, time to time, further CDR was called for and scrutinized by the Investigating Officer. It is found that the cell phone of Respondent No.5 was constantly switched off. The IMEI details was also called for from the mobile operator company but the number was found inactive. Further, Investigating Officer of Vadaj Police Station had sent detailed Report with photographs of the corpus and forwarded it to all police stations of Ahmedabad city as well as all districts of the State of Gujarat and it was also sent to all leading news channels and news papers for publication. The Deputy Commissioner of Police also constituted a team and gathered the information from the reliable informers with regard to the corpus and respondent No.5. The team had also visited different districts of the State of Gujarat to search the corpus. The report further suggests that there are statement of 23 different persons recorded and details of unidentified dead bodies of all ages are collected, records of accidental death are



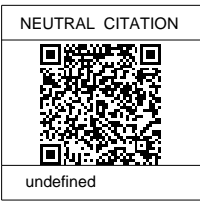
also checked with different police stations. It is found that Gandhinagar (Rural) Adalaj Police Station had maintained accidental death records where at serial number 59, accidental dead body was found to be similar to the body of the corpus described in missing complaint. In that, along with the female dead body, there was also a male body found, and therefore, details of the aforesaid dead bodies were collected to compare with the description of the corpus and to get identified by the relatives of the corpus. On receipt of the photographs of the dead body and other details, husband of the corpus was called to identify the dead body on 20th February, 2023 as well as relatives of the Respondent No.5 were also called to identify the dead body of the Respondent No.5. The husband, mother-in-law and sister-in-law had identified the corpus dead body with the clothes and also noticed that there was 'R' mentioned on the left wrist of the body. They had identified the body of the corpus i.e. Rekhaben and the sister of respondent No.5 identified the dead body of Respondent No.5 and statement of the relatives with regard to the same was recorded. It is further reported by the Investigating Officer in the affidavit that though the corpus was



found dead and identified by the in-laws, the petitioner-father disputed the same. Therefore, the DNA test of the corpus - dead body was carried out with petitioner and his wife on 23.2.2023. The Report with regard to DNA was received on 29th April, 2023 wherein result of the analysis was mentioned herein below:

“Partial DNA profile obtained from Exhibit - 2 Tooth (Source of Unknown Female, connected case No.DFS/EE/2020/DNA/838) was might be due to sever degradation of sample. Hence, these exhibit could not found suitable for comparison with DNA profile of Exhibit-1: Blood (Source of Lilabhai Shanakerbhai Sapariya) and Exhibit - 2 Blood (Source of Champaben Lilabhai Sapariya(of this case”.

6. Considering the submissions and affidavit filed by the Investigating Officer, it transpires that all sincere attempts were made by the Investigating Agency from the date of missing till date and they had also traced out the dead body, which was stated to be of the Corpus and Respondent No.5, however, the same was disputed by the petitioner with regard to the dead body of the corpus. Therefore, DNA Report was called for to get it further confirm. However, sample was not found to be suitable due to severe degradation. Hence, no any opinion was given by



the Forensic Expert/s. It is required to be kept in mind that inquiry in Habeas Corpus is required to be initiated to ascertain that whether a Corpus is illegally detained by any person or authority or not. The idea of writ of Habeas Corpus is to ensure freedom and to restore liberty of a person in somebody's custody against his or her wish. From the facts narrated herein above, this Court is satisfied with the investigation and the Report and it is found that there is no illegal or unauthorized confinement of the adult Corpus. It is open for the petitioner to initiate appropriate proceedings, if he is aggrieved with the Report submitted by the Investigating Agency in accordance with law but writ of Habeas Corpus cannot be entertained and therefore, it is hereby rejected.

(UMESH A. TRIVEDI, J)

(M. K. THAKKER, J)

ASHISH M. GADHIYA