

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CRIMINAL APPLICATION NO. 9944 of 2019**

=====
KRUPA CHIRAG PATEL
Versus
STATE OF GUJARAT
=====

Appearance:

MR JAYPRAKASH UMOT(3581) for the Applicant(s) No. 1
LD.SR.ADV.MR.I H SYED ASSISTED BYDHURUV TOLIYA(9249) for the
Respondent(s) No. 4,5
NOTICE SERVED for the Respondent(s) No. 2,3
MS JIRGA JHAVERI, ADDL.PUBLIC PROSECUTOR for the Respondent(s)
No. 1
=====

CORAM: HONOURABLE MS. JUSTICE SONIA GOKANI
and
HONOURABLE MRS. JUSTICE MAUNA M. BHATT
Date : 31/01/2022
ORAL ORDER
(PER : HONOURABLE MS. JUSTICE SONIA GOKANI)

1. The journey which has been initiated by way of this petition under Article 226 of the Constitution of India in unfortunate circumstances has eventually culminated into an amicable end although of course with a trail of misfortune of the petitioner having ended her life in the process.

2. This is a petition preferred for the custody of the husband of the petitioner, who is no longer there. The deceased

petitioner Krupa and her husband were legally married and two daughters Devanshi aged 21 years and Yana aged 15 years were born out of their wedlock. Because of the major accident that had taken place, the husband of the petitioner had lost the memory upto 95%. The serious accident of 31.12.2018 changed the lives of the parties, where corpus was in the hospital for more than four months and eventually, he was taken for taking care by his parents, which resulted into the dispute and the petition is preferred with following prayers:

“14...

(A) YOUR LORDSHIPS may be pleased to admit this petition;

(B) YOUR LORDSHIP may be pleased to issue a writ of habeas corpus or a writ in the nature of habeas corpus or a writ in the nature of habeas corpus or any other appropriate writ, order or direction directing respondent-

State of Gujarat through police authorities to produce her husband-Chiragbhai Chandubhai Patel before this Hon'ble Court from the wrongful confinement of respondent Nos.4 & 5 herein in the interest of justice;

(C) Pending admission, hearing and final disposal of the petition, YOUR LORDSHIPS may be pleased to direct respondent-State of Gujarat through the police authorities to produce her husband – Chiragbhai Chandubhai Patel before this Hon'ble Court from the wrongful confinement of respondent Nos.4 and 5 herein in the interest of justice;

(D) YOUR LORDSHIPS may be pleased to grant any other and further reliefs as may be deemed fit and proper in the interest of justice.”

3. On various different dates different orders came to be passed by this Court. Serious attempts were also made attempting the amicable settlement the reference was also made to the mediation centre and observers also were appointed for placing the report before this Court.

4. During the course of this petition, it

was brought to the notice of the Court that the petitioner passed away, she ended her life by committing suicide on 14.10.2021. As the petition would abate unless replaced by her heirs, we had chosen to meet both the daughters and certain details were also obtained by the Court from them. Therefore, we chose to pass an order on 24.01.2022, which was as under:

“1. After having spoken to both the girls on the last occasion, we deem it appropriate to get certain details in relation to the properties of both the parents of the girls and also have chosen to make a request to learned Senior Advocate Mr. I.H.Saiyed in relation to those properties, which are exclusively in the name of the mother of the girls and which are exclusively in the ownership of father so also in the joint names of both the parents i.e. the mother and the father of the girls, and with regard to other issues, more particularly, considering the kind of health the father of these girls has. Learned advocate for the petitioner has ensured to revert back to the Court after taking necessary instructions in this regard.

2. We may place the matter on 27.02.2022.”

5. We note expressing our satisfaction and happiness that pursuant to the order passed by this Court on 24.01.2022 and the proposal made by the Court in the best interest of all concerned, learned senior advocate Mr.I.H.Syed assisted by the learned advocate, Mr.Dhruv Toliya responded quite positively and before this Court affidavit on behalf of the respondent No.4-grandfather has come, which would be necessary to be reproduced:

“1. I state that I am the Respondent No.4 herein and Respondent No.5 namely Mrs. Neeruben Chandubhai Patel is my wife. I and Respondent No.5 herein are the parents of the alleged corpus herein namely Mr. Chirag Patel and the parents-in-law of the Petitioner herein.

2. I state that we have perused the memo of the present application with the annexures and documents filed hereto rather carefully and therefore, I am competent to file the

present Affidavit-in-Reply to oppose the present application and the reliefs prayed therein.

3. At the outset, I state and submit that I do not admit any of the averments made and contentions raised in the present application as the same being misleading & incorrect and the same may be treated as traverse, seriatim and denied in toto, and my not dealing with any of the averments specifically may not be construed as having been admitted by me.

4. I state and submit that the petitioner has deliberately suppressed certain material facts from this Hon'ble Court and the application filed by the petitioner is ex-facie bogus, based on inferences, fictitious and baseless hence, the present application deserves to be rejected with costs on that ground alone.

5. With respect to the contents of paragraph no. 1, I say and submit that the contents are formal in nature and therefore I do not offer any comments on the same.

6. With respect to the contents of paragraph no. 2, I say

and submit that the petitioner has raised vague and unsupported questions and therefore, I do not offer any comments on the same. It is further submitted that a petition of Habeas Corpus can only lie if the detention of the corpus is illegal or contrary to law. In this connection, I submit that the fact that Chiragbhai is staying with his parents i.e., Respondent No.4 and 5, in view of his peculiar mental health, cannot, under any circumstances be stretched to say that the Chiragbhai is said to be illegally detained. I, therefore submit that the petition is required to be rejected on this ground alone. I say and submit that the present petition of Habeas Corpus would also not be maintainable in law because it seeks to take custody of person who's not been illegally detained.

7.I further submit that in a case of person with mental health issues as in the case of Chiragbhai, there are special laws which govern the subject of custody and which remedy have already been availed of by the present deponent. The competent authority to decide the custody of the person under mental illness or disability are governed by Special. statues or Special procedures.

The authorities under the said act are experts in the field to whom the legislature has thought it fit to be able to decide the issue of appointing a representative for Chiragbhai. I also submit that on this ground also the application is required to be rejected. I further say and submit that assuming without admitting. and only for the sake of argument this Hon'ble Court has the authority to appoint a guardian or representative of Chiragbhai to take care of his person without following the procedure laid down under the Special Acts then also it is submitted that looking to the financial capacity as well as other capacities of the Deponent, the said Chiragbhai should not been removed from his present place of residence where said Chiragbhai is being provided the best of medical facilities, best of healthcare, best of physical support, and where all his needs and requirements are being taken care of by none other than the parents (Resp.. No. 4 and 5) of Chiragbhai. It would not be in the interest of justice to change the situation which would definitely result in grave hardship to the corpus Chiragbhai. I say that I have never prevented the Petitioner who's my daughter in law

and her children who are my Grandchildren to come and visit Chiragbhai and even stay with us. The petitioner does not have adequate financial support and man power to take care of my son in this hour of grave crisis. To the best of my knowledge, the value of Income Tax returns filed by Chiragbhai and the Petitioner both are yet another. validation of the fact that the financial capacity of the Petitioner who is a housewife, would not suffice the budgetary needs to assure best of healthcare to Chiragbhai. I further say and submit that the petitioner spends considerable time after her daughter (who is also my granddaughter) but she also has to attend other commitments. The deponent does not complain about the same but petitioner would not be able to devote sufficient time to Chiragbhai. The Resp. 4 and 5 are devoting almost 24x7 hours/weel behind Chiragbhai and have also engaged 4 attendants round the clock. It is therefore in the interest of justice and in the paramount interest of Chiragbhai that considering his physical position as on today, he may not be shifted and the present status may continue. That Chiragbhai, since, more than 3 to 4

months, has regularly been taken for treatment, medicines on time, daily medical reports are to be submitted. Moreover, Resp. No. 5 is required to regularly feed him as he is not in a position to consume food by his own hands. That the care of the mother i.e., Resp. No. 5 at this crucial juncture could give a healing touch to his son. I say and submit that I have never prevented and will never prevent the Petitioner coming to my place, visiting Chiragbhai and taking care of him if she wants to. It is pertinent to note that the Petitioner has only complained after 4 months about the issue in hand and also, the Petitioner has never preferred a complaint earlier about the same which shows that had the Petitioner been really concerned, that Chiragbhai is not been taken care of properly, she would have moved before this Hon'ble Court at the earliest. In fact, in the entire petition, the Petitioner has not made a grievance that the Chiragbhai has not been taken care of properly or he's not been given medicines, food etc. regularly or he has not been taken to the hospital when required etc. In addition to that, the Petitioner has never joined the

Respondent to their follow up visits to the hospital. Despite the condition of Chiragbhai, she's sought to entangle the Respondents in frivolous legal battles. The Petitioner not only preferred a Special Civil Suit before the Ld. Court below but also during the pendency of the present petition, the Petitioner has filed a FIR against the Respondent No.4 which clearly shows mala fide on the part of the Petitioner to divest and divert the Respondent No.4 from being able to take Chiragbhai's care and take an unfair advantage of the same in the present application which act in itself is in the worst interest of Chiragbhai. The Ld. Court below has been pleased to grant an anticipatory bail to the Respondent No.4 in connection with the said concocted FIR.

8. With respect to the contents of paragraph no. 3, I say and submit that the contents are factual in nature and therefore I do not offer any comments on the same.

9. With respect to the contents of paragraph no. 4 of the present application, I say and submit that the petitioner has sought to mislead this Hon'ble Court and therefore, I

deny the same. It is hereby clarified that the petitioner has deliberately attempted to point this Hon'ble court in the wrong direction by stating that the Respondent No.4 and 5 and Chiragbhai use to have frictions. In fact, the Respondents herein and my son namely Chiragbhai have always had a smooth-sailing and an untroubled relationship. Moreover, the legality of the partition deed i signed in the year 2011 is a subject matter of a Special Civil Suit No. 560/2019 before the District Court at Mirzapur, Ahmedabad (Rural) filed by the petitioner herein before the concerned Ld. Civil Court. Thus, advancing an averment regarding the partition deed is not just immaterial but also premature in nature. Although, it is vital to put forward before this Hon'ble Court that said partition deed is not pertaining to the partitioning of the properties but the dissolution of the HUF being Respondent No.4. Since, the said civil dispute is irrelevant to the adjudication of the present application, the same has not been dealt with in detail without prejudice to the rights and contentions of the Respondents No.4. Copy of the case status of the Special Civil Suit No.560/2019

before the District Court at Mirzapur, Ahmedabad (Rural) whereby the said partition deed of the year 2011 is under challenge is annexed hereto and marked as "ANNEXURE-R1"."

6. We also noticed that both the daughters are presently pursuing their studies and Devanshi the elder daughter 21 years of age is currently pursuing her under graduation studies at UMASS Amherst University, United States of America and Yana is pursuing her secondary education at J.G.Internation School. She has agreed that her tuition fees, hostel fees and other expenditures are born by the grand parents and from the time the mother has passed away, they have been staying with the grandparents. The best medical treatment is also provided to her father and she and her younger sister wish to live with the grandparents. She has

no objection to the joint custody of the father being given to her and the grandfather and when Yana becomes major she also would have joined custody.

7. Noticing this amicable end to the dispute as ensured to this Court as the names of both the grand daughters are to be added to all the properties solely owned by the late mother or self required properties of the corpus-the father and every properties jointly owned by the mother and the father namely Krupa and Chirag Patel, let that process which has been started be ended by producing before this Court those documents where the names of daughters are mutated. Let that be completed as far as possible within a period of 10 weeks.

8. Respondent Nos.4 as the grandparent

since has already undertaken this exercise, he shall be assisted by the authorities in completing this on expeditious basis.

9. Joint custody of the corpus shall be of respondent No.4 and that of daughter Devanshi and once Yana also attains the majority, she would have the joint custody of her father and if, by then the father has completely cured and medically released, they can continue to look-after the father.

10. Petition is being disposed of with a note of appreciation of learned senior advocate, Mr.I.H.Syed assisted by the learned advocate, Mr.Dhruv Toliya in this matter.

11. We also noticed that the role of

Learned advocate, Mr.Vishrut Jani and learned advocate, Mr.JayPrakash Umot, who had represented the petitioner earlier was of guiding both the young girls positively.

12. Petition is disposed of with no order as to costs.

13. Once the papers of mutation of entries in the name of both the daughters of corpus are received, the Registry shall let it form a part of record. If the parties require certified copy of the same to be given to them. They shall be also shared with both the daughter, Devanshi and Yana.

14. Over and above the regular mode of service, direct service is permitted through speed post as well as e-mode.

(SONIA GOKANI, J)

(MAUNA M. BHATT, J)

M.M.MIRZA