

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION NO. 4248 of 2020

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THAKOR SANJAYBHAI BHEMABHAI

Versus

STATE OF GUJARAT

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Appearance:

MR ASIF A GHANCHI(6488) for the Applicant(s) No. 1

MR KAMLESH S KOTAI(6150) for the Applicant(s) No. 1

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

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

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CORAM:HONOURABLE MS. JUSTICE SONIA GOKANI

and

HONOURABLE MR. JUSTICE N.V.ANJARIA

Date : 11/09/2020

ORAL ORDER

(PER : HONOURABLE MS. JUSTICE SONIA GOKANI)

1. Leave to **AMEND** the address is permitted.

1.1 In this petition, seeking custody of his legally wedded wife, this Court had issued notice on 08.09.2020 and passed the following order:

“1. Leave to amend Paragraph-3 is **PERMITTED**.

2. This is a petition under Article 226 of the Constitution of India, seeking writ of habeas corpus or any other appropriate writ.

2. It is the grievance on the part of the petitioner that he has already married to the corpus. However, as the parents of the corpus are not willing and wants to marry her to a third person, they have forcibly taken her away from her matrimonial home. The corpus, herself, also has given a complaint to the police with regard to the threat, they have been experiencing from her parents. Presently, also she is alleged to have been kept locked in a room.

3. **NOTICE**, returnable on **11TH SEPTEMBER, 2020**. Learned APP waives service of notice for the respondent-State.

4. On the next date, either the corpus shall be **PRODUCED** through video conference, which is to be arranged at a nearest Court, or the action taken report shall be **SUBMITTED** by the concerned authority.”

2. Today, the corpus is produced before this Court through video conference arranged at the District Court, Patan, in the presence of the learned Principal District Judge. She, in no uncertain terms, stated before this Court that she is keen to join the petitioner-Sanjay. She, however, appeared to be scared to openly defy her parents because, according to her, she was particularly asked, not to reveal, what she desires, before the Court of law.

3. We also had an occasion to meet the parents through video conference, as we had requested the learned PDJ to arrange a meeting and accordingly, it became possible to speak to the parents so also the petitioner, who joined us from the office of the learned Advocate representing him. The parents agreed that the corpus was married before about 5 years and it was a marriage in exchange, as the sister of her husband got married with her own brother. However, shortly after the marriage, there were disputes between the sister-in-law and the brother of the corpus and that resulted into the couple separating from each other and for the past about 4 years, she has not resided with her husband. Therefore, the parents eventually decided to finalize the procedure of divorce.

3.1 In their community, in the presence of their caste leaders, in a temple an amount of Rs.5000/- requires to be donated for the deity and that brings an end to the relationship and rest of the aspects also have been completed. However, as is pointed out to this Court by the corpus and which is also quite apparent from the conversation with her parents that they chose not to complete the last stage since, they have not found any match for the corpus, so far. Further, they know fully well that, if, the amount is donated in the temple, then, the corpus would become free to marry anyone and then, the parents may not have any hold in decision

making, and therefore, they chose to retain this as a trump card. Even before this Court, they went on insisting that the last procedure is yet to be completed.

3.2 This Court recognizes the fact that the corpus, who is about 23 years of age, is desirous to join the petitioner, with whom, she has got married in a temple, while permitting her to join the petitioner, it is to be mentioned that formal seal of approval to her choice would be feasible only once the penultimate stage of her customary divorce is finalised. It would also pave a way to her peaceful and happy life with the Petitioner.

3.3 We have noticed certain aspects, in our conversation, which are quite disturbing and one of them is payment, purportedly, made by the petitioner to the parents of the corpus through one of the leaders of the caste of Rs.3/- lakh. According to the petitioner, the amount was given to one Babu Shiva. However, the parents of the corpus refused to have received any such amount. It is quite shockingly apparent that the areas of the State, where, there is depletion in sex ratio, more and more such illegal and unpalatable incidents are being noticed and the saddest part is that the legal battles are fought over daughters, neither for protecting her nor with a desire to ensure her happiness, but only with a view that the giving away of the bride in lieu of monetary consideration become

possible. Malice of exchange marriages, payment of consideration to the parents of girls and changing money for marrying a girl, child marriages, multiple marriages of the girl in a very young age are some of the startling revelations noticed in the Habeas corpus Petitions.

3.4 In wake of the above, we request the learned PDJ to call both the sides and **MEDIATE** and file her report to this Court within **TWO WEEKS**.

4. The matter is fixed for hearing on **28TH SEPTEMBER, 2020**.

5. Since, the petitioner **ENSURES** to take the corpus with him, at the address given in the cause-title, let her be dropped there with the police protection. Further, such protection shall continue for a period of **TWO MONTHS**, initially, the Superintendent of Police concerned shall, then, **REVIEW** the situation and shall decide the continue the same, accordingly.

(SONIA GOKANI, J)

(N.V.ANJARIA, J)

MISHRA AMIT V./UMESH