

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CRIMINAL APPLICATION NO. 7772 of 2022**

JAYESH MANHARLAL GANDHI

Versus

STATE OF GUJARAT

Appearance:

MR. BK. RAJ(3794) for the Applicant(s) No. 1

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

MR HK PATEL, PUBLIC PROSECUTOR for the Respondent(s) No. 1

CORAM: **HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI**
and**HONOURABLE MR. JUSTICE SANDEEP N. BHATT**

Date : 03/08/2022

ORAL ORDER

(PER : HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

1. Rule. Learned APP, Mr. Patel, waives service of Rule for Respondent Nos. 1 and 2, whereas, Respondent No.3, who appears as party-in-person, waives for himself.

2. This is a petition filed under Article 226 of the Constitution of India by the petitioner-Son, seeking issuance of writ of habeas corpus or an appropriate direction to Respondent No.2 police authorities to produce the corpora, i.e. (1) Manharlal Gandhi, Age: 87 years, and (2) Pushpaben Gandhi, Age: 86 years, before this Court, who are alleged to be in illegal detention of Respondent No.3, who happens to be the elder son of the corpora.

3. Heard, learned Advocate, Mr. Raj, appearing for the petitioner, learned APP, Mr. Patel, appearing for Respondent Nos. 1 and 2 and Respondent No.3-Party-in-Person.

4. Today, this matter was taken-up for hearing in the chamber, in the presence of learned Advocate for the Petitioner, Mr. Raj, learned APP, Mr. Patel, and Respondent No.3-party-in-person as well as the petitioner.

5. Learned Advocate, Mr. Raj, appearing for the petitioner referred to the averments made in this petition and submitted that the corpora, i.e. the parents of the present petitioner are aged about 87 and 86 years, respectively.

5.1 Learned Advocate, Mr. Raj, further, submitted that the father of the petitioner-Corpus No.1 is suffering from paralysis as well as cancer and he is completely bedridden, at present. Learned Advocate, Mr. Raj, submitted that Respondent No.3, herein, happens to be the elder son of the corpora and the elder brother of the petitioner, herein. The petitioner also has two sister, who are married, and one of them is residing at USA and the other one is residing at Dubai.

5.2 Learned Advocate, Mr. Raj, submitted that the corpora stayed with the petitioner from the year 2002 to 2019. He, further, submitted that in November, 2019, the corpora visited the house of their elder son, i.e. Respondent No.3, herein, at Junagadh. At Junagadh, Respondent No.3 meted out ill-treatment to the corpora and therefore, the corpora had called the

present petitioner to take them back to Vadodara. Accordingly, the present petitioner along with his two sisters had gone to Junagadh to take back the corpora and at that time, Respondent No.3 strongly objected to the corpora being taken to Vadodara. However, the petitioner somehow managed to take them back to Vadodara on 01.02.2020.

5.3 On reaching Vadodara, Corpus No.1-Manharbhai Gandhi gave a complaint to Junagadh Police Station for the alleged ill-treatment meted out by Respondent No.3. It appears that Respondent No.3 also filed a police complaint against the petitioner and two sisters.

5.4 Learned Advocate, Mr. Raj, referring to the averments made in this petition, submitted that somewhere in January, 2022, the corpora went to Ahmedabad at the house of Respondent No.3 and since then, they are alleged to be illegally detained by Respondent No.3. Hence, the present petition.

6. When this matter came-up for hearing before this Court on 27.07.2022, this Court passed the following order;

“Learned APP to take instructions in the matter.

The Police Inspector, Juna Vadaj Police Station shall record the statements of the corpus, Manharlal Mulchand Gandhi and Pushpaben Manharlal Gandhi and produce it

before this Court on the next date of hearing.

Stand over to 29th July, 2022."

6.1 Here, it is pertinent to note that, in compliance of the order of this Court dated 27.07.2022, when the concerned police authority approached Respondent No.3 so as to record the statements of the corpora, Respondent No.3 did not permit them to record the statements of the corpora by putting forth the ground of their ill-health.

6.2 On 29.07.2022, when this matter again came-up for hearing before this Court, the aforesaid aspect was brought to the notice of this Court by the learned APP, Mr. Patel, on receiving the instructions from the concerned Police Officer, who was personally present before this Court. Therefore, this Court issued notice on 29.07.2022, making the same returnable on 02.08.2022. This Court also directed the Respondent No.2-police authorities to produce corpus No.2, i.e. the mother of the present before this Court.

6.3 It may also be noted that on 02.08.2022, when the matter was taken-up, Respondent No.3 did not produce the corpora and instead he remained present as party-in-person.

6.3.1 On 02.08.2022, learned APP, Mr. Patel,

brought to the notice of this Court the fact, under the instructions, that Respondent No.3 had informed the police authorities that his mother, i.e. Corpus No.2, is not in a position to come to the Court due to her ill-health. Therefore, the matter was adjourned to 03.08.2022, i.e. today.

6.4 Today, when the matter was taken-up in the chamber, the corpus was produced by police in wheelchair, after taking all possible medical care and caution.

6.5 We interacted with Corpus No.2, i.e. the mother of the present petitioner as well as Respondent No.3, herein, in the chamber.

6.5.1 During the course of interaction with the Court, Corpus No.2-mother narrated, in detail, as to how Respondent No.3 and his family members are meting out ill-treatment to her and her husband, i.e. corpus No.1. Corpus No.2 stated, at length, as to how Respondent No.3 and his family members are constantly harassing her and her husband.

6.5.2 When this Court made an attempt to ascertain the wish of Corpus No.2, she clearly stated that she wants to go with the petitioner and that she has no desire to stay at the house of Respondent No.3. She also stated that she had interacted with her husband, i.e. Corpus No.1-Manharbhai Gandhi, and he also expressed his desire to go to the house of the

petitioner.

6.5.2 In above view of the matter, we also interacted with the petitioner and made an attempt to ascertain, as to whether, he would be in a position to make medical and other necessary arrangements, if, the custody of the corpora is handed over to him.

6.5.3 In response to the query by this Court, the petitioner stated that he is completely aware about the physical condition of his father-Corpus No.1, who is suffering from cancer and paralysis and is completely bedridden. The petitioner assured this Court that he will make all the arrangements, necessary for the treatment and maintenance of the corpora, i.e. engaging a medical attendant, arrangements of medicines and treatment of the corpora etc..

6.5.4 The petitioner also voluntarily stated before this Court that, if, the custody of the corpora, i.e. his parents, is handed over to him, then, he shall file an undertaking before this Court within a period of ten days that he is not interested in the properties of his parents-the corpora.

7. As against this Respondent No.3-party-in-person strongly objected to this petition and referred to the reply filed by him on 02.08.2022, wherein, he has stated that because of ill-health of his mother, she may be exempted from appearing before this Court.

Respondent No.3 also referred to the documents, which are annexed with his reply and submitted that the petitioner is interested in the property of the parents. Respondent No.3 stated that he is also ready to file an undertaking that he is not interested in the property of his parents and therefore, he prayed that this Court may not entertain this petition.

8. Here, it may be noted that, as observed herein above, Respondent No.2-police authorities have taken utmost care and caution for producing Corpus No.2 before this Court, i.e. the arrangement of ambulance was made for bringing corpus No.2 to the High Court campus. Further, the arrangement of wheelchair was also made to bring Corpus No.2 to the chamber. It is pertinent to note that before bringing Corpus No.2 to this Court, police authorities also have obtained necessary opinion of the concerned doctors.

8.1 As recorded herein above, since, Corpus No.2, who is aged about 86 years of age and is able to know her well-being, expressed the desire, on her behalf as well as her husband, i.e. Corpus No.1, to go with the petitioner and as the petitioner has undertaken before this Court to look after them properly, this petition deserves to be allowed.

8.2 At this stage, we deem it proper to record the conduct of Respondent No.3, who appeared as party-in-person and who happens to be the elder son of the corpora.

8.2.1 During the course of interaction with us in the chamber, Respondent No.3 stated that "His mother, i.e. Corpus No.2, is the main villain in the entire episode".

8.2.2 The uttering of such words about his mother by Respondent No.3 shocked the conscience of the Court as well as the learned Advocate for the petitioner and the learned APP, who were also present in the chamber. Such a behavior of Respondent No.3 vindicates the complaints made by Corpus No.2 with regard to ill-treatment being meted out by Respondent No.3 and his family members.

8.2.3 At this stage, it is also pertinent to note that when the Court was dictating the order, at that point of time also, Respondent No.3 interfered and invited the attention of this court to a document, which is produced at Page-21 of the reply filed by him. By showing the said document, Respondent No.3 stated that while his father-Corpus No.1 was discharged, at the end of treatment, by the authorities of VGMERS Hospital, Vadodara, on 16.05.2020, his father-Corpus No.1 had given a statement that he does not want to go to the house of his son, i.e. the petitioner.

8.2.3.1 However, if, the aforesaid document dated 16.05.2020 is carefully examined, what Corpus No.1 has stated therein is that "On account of the family

disputes, corpus No.1-Manharbhai Gandhi refuses to go to the house of his sons".

8.2.3.2 Thus, the word used in the said document is 'Sons' and not 'son' or 'the petitioner', as was attempted to be shown by Respondent No.3.

9. We have heard the learned counsels for the parties and have also interacted, at length, with Corpus No.2-mother, the petitioner as well as Respondent No.3 and since, Corpus No.2-mother has shown willingness that she along with her husband, i.e. Corpus No.1, be allowed to go with the petitioner, this petition deserves to be allowed.

9.1 Ordinarily, this Court would have given some time to Respondent No.3 to handover the custody of the corpora to the petitioner. However, considering the extent of ill-treatment meted out to the corpora, as is disclosed by Corpus No.2 before this Court so also the conduct of Respondent No.3, as recorded herein above, we deem it appropriate that the custody of the corpora be handed over to the petitioner, forthwith.

10. Resultantly, this petition is **ALLOWED**. Respondent No.2-police authorities are **DIRECTED** to hand over the custody of the corpora, i.e. Corpus No.1-Manharbhai Gandhi and Corpus No.2-Pushpaben Gandhi, to their younger son, i.e. the petitioner, herein.

10.1 Since, the petitioner has assured this Court to take proper care his parents-the corpora, it is expected that the petitioner shall make arrangements for medical attendant for looking after his father-Corpus No.1.

10.2 In view of the fact that Corpus No.1-father is completely bedridden, the arrangements for an ambulance, i.e. ICU on wheels, shall be made for taking him to the house of the petitioner, who is staying at Vadodara. The costs towards the same shall be borne by the petitioner.

10.3 The petitioner has undertaken and assured before this Court that after ones, the custody of his parents-the corpora is handed over to him, the entire responsibility with regard to their health and physical condition shall be of his.

10.4 Respondent No.3 is, hereby, directed to handover all the medical papers, medicines and all other belongings of the corpora to the concerned police authorities, **FORTHWITH.**

10.5 As recorded herein above, the petitioner as well as Respondent No.3, herein, shall file an undertaking before this Court within **ONE WEEK**, stating that they are not interested in the property of their parents and the Registry shall accept the same.

11. At this stage, Respondent No.3-party-in-person made a request to stay this order for a period of ten days.

11.1 Considering the extent of ill-treatment meted out by Respondent No.3 to the Corpora so also the conduct of Respondent No.3 before this Court, we are not inclined to accede to the request of Respondent No.3. Hence, the request of Respondent No.3 is rejected.

Rule is made absolute, accordingly. Over and above the normal mode of service, direct service is also permitted.

(VIPUL M. PANCHOLI, J)

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(SANDEEP N. BHATT, J)

THE HIGH COURT
OF GUJARAT

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