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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION NO. 1404 of 2021

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SAMIRKHAN FAIZULLAHKHAN PATHAN

Versus

STATE OF GUJARAT

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Appearance:

MUHAMMADYUSUF M KHARADI(9509) for the Applicant(s) No. 1
NOTICE NOT RECD BACK(3) for the Respondent(s) No. 2,3,4,5,6,7,8
MS JIRGA JHAVERI, PUBLIC PROSECUTOR(2) for the Respondent(s) No. 1

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CORAM: **HONOURABLE MS. JUSTICE SONIA GOKANI**

and

HONOURABLE MS. JUSTICE SANGEETA K. VISHEN

Date : 08/02/2021

ORAL ORDER

(PER : HONOURABLE MS. JUSTICE SONIA GOKANI)

1. This is a petition under Article 226 of the Constitution of India, seeking following reliefs:

“8. ...

(A) Admit this petition.

(B) Allow this petition by directing respondent authorities to produce respondent no. 7 (corpus) before this Hon'ble Court and after ascertaining her wish and appropriate direction may be issued to the respondent no.8 to solemnize the marriage of the petitioner with the respondent no. 7 (corpus) before the expiry of three months of the notice given under Section 5 of the Special Marriages Act.

(C) Allow this petition by holding the custody of the respondent no. 7 (corpus) through respondent Nos. 5 and 6 as illegal custody amounting to illegal confinement.

(D) Grant the interim relief by handing over the custody of the respondent no. 7 (corpus) to the petitioner by directing he respondent no.8 to solemnize the marriage under the

provisions of Special Marriages Act.

(E) ...”

2. We had issued notice on 04.02.2021, making the same returnable, today, since, the prescribed period of limitation, under the Special marriage Act, is expiring tomorrow.

3 Today, the corpus is produced before us through video conference, arranged at the District Court, Junagadh, in presence of the learned PDJ. We, in the breakout room, conversed with the corpus.

3.1 According to the corpus, she is presently at the Training Centre, Junagadh, after having been transferred from LRD Training Centre, Gomtipur. She, further, stated that she does not have cell phone. According to her, it is not permitted to her at the Training Centre. She also narrated, as to how, she was called at the Karanj Police Station at 08:00 p.m. with the petitioner and was allowed to go, in the early morning, at about 03:00 a.m.. She urged that she chose to be transferred to Junagadh, having felt that there was no other option, as she is desirous to continue with her service. She is presently undergoing training at Training Centre, Junagadh.

3.2 She, further, stated that she is keen to marry the petitioner and according to her, it was the resistance on the part of her family, which has the support of the community, she is unable to do so. She has, therefore, made a request to this Court to permit her to travel to Ahmedabad tomorrow, i.e. on 09.02.2021, since, it is the last date for registering the marriage under the Special Marriage Act.

4. We also conversed with the petitioner, who has shown his

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willingness to cooperate with the corpus in pursuing her training. The corpus also has ensured to complete her training and this marriage is not going to, in any manner, cause any hindrance in her pursuing her career. His family also supports her in every which way, according to him.

5. We have heard the learned Advocates on both the sides, including the learned Advocate, Ms. Dave, who represents the mother and the brother, both. We had asked the learned APP, Ms. Jhaveri, to inquire about the availability of PSI to accompany the corpus to Ahmedabad, tomorrow, and she has **ENSURED**, all possible cooperation, including the arrangements for traveling in an official vehicle, in wake of some of the averments made in the petition, itself.

5.1 Noticing that this is an inter-religion marriage, with all the details, which have been given in the petition and vetted by the corpus, we deem it appropriate to **DIRECT** a lady PSI to **ACCOMPANY** the corpus to Ahmedabad, **ALONG WITH** an employee of the District Legal Services Authority. Noticing some of the events narrated by the corpus, we found the presence of an employee of the DLSA, necessary.

5.2 We also had ventured the possibility of presentation of the spouses through video conference. However, according to the learned APP, Ms. Jhaveri, despite the best of the efforts and cooperation by the Sub-Registrar of Marriage, such presentation of the spouses through video conference would not suffice, as the signature of the spouses is a must. The Registrar concerned showed the grace and his willingness that, if required, he can travel to Junagadh. However, instead of asking him to travel to Junagadh, it is desirable that the corpus, as directed above, is permitted to go to Ahmedabad. Let her leave be **SANCTIONED** for the said purpose. Learned PDJ, Junagadh, to enure

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due **EXECUTION** of arrangements from Junagadh.

6. S.O. to **12TH FEBRUARY, 2021**.

7. The **REPORT** of the sub-Registrar of registration of marriage and affidavit of Mr. Tadvji, PSI, Karanj Police Station, shall be **TENDERED** before this Court, **EXPLAINING**, as to why the corpus was called at the police station after sunset for recording her statement, on the next date.

8. Learned APP, Ms. Jhaveri, shall **ASCERTAIN** the reason of precluding the corpus to have any communication through cell phone, while undergoing training at the Training Centre, Junagadh, when, the same is permitted, during post-training hours for other trainees and the same shall be conveyed to the Court.

8.1 Learned APP shall, further, **ENSURE** that the DCP, Zone-2, shall **AVAIL** necessary protection to the couple, during the entire process of registration of marriage and thereafter.

9. Let a copy of this order be given to the learned APP and to the learned PDJ, Junagadh, for onward communication and due compliance, **TODAY**.

(SONIA GOKANI, J)

(SANGEETA K. VISHEN, J)

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