

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION NO. 9973 of 2019

With

CRIMINAL MISC.APPLICATION (DIRECTION) NO. 1 of 2020

In R/SPECIAL CRIMINAL APPLICATION NO. 9973 of 2019

With

CRIMINAL MISC.APPLICATION (FOR ORDERS) NO. 1 of 2022

In R/SPECIAL CRIMINAL APPLICATION NO. 9973 of 2019

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JANARDHANA RAMKRISHNA SHARMA

Versus

STATE OF GUJARAT

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Appearance:

PRITESH M SHAH(8405) for the Applicant(s) No. 1

KSHITIJ M AMIN(7572) for the Respondent(s) No. 10

MR. RAHUL R DHOLAKIA(6765) for the Respondent(s) No. 7

NOTICE NOT RECD BACK for the Respondent(s) No. 8,9

NOTICE SERVED BY DS for the Respondent(s) No. 2,3,4,5

MR MITESH AMIN, PUBLIC PROSECUTOR assisted by MR MANAN

MEHTA, APP for the Respondent(s) No. 1

SERVED BY AFFIX(N) for the Respondent(s) No. 6

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CORAM:HONOURABLE MR. JUSTICE N.V.ANJARIA

and

HONOURABLE MR. JUSTICE NIRAL R. MEHTA

Date : 12/01/2023

ORAL ORDER

(PER : HONOURABLE MR. JUSTICE N.V.ANJARIA)

Filed before a long gap of four years, in this Special Criminal Application, the petitioner father wanted production of his two daughters, namely, Lopamudra and Nandhitha, stated to be aged 21 and 18 years respectively, who went missing, according to the petitioner in mysterious circumstances.

1.1 The father attributed role of respondent no.6 to allege that the daughters were forcibly taken away and enticed for the purposes other than lawful.

2. The proceedings of habeas corpus petition witnessed several orders. Even as the same comes up for consideration today after long drawn time, nothing has yielded. On the contrary, the state of affairs obtained could not be said to be welcom.

3. While it was stated by learned Public Prosecutor Mr. Mitesh Amin assisted by learned Addl. Public Prosecutor Mr. Manan Mehta that the police had filed investigation reports, the affidavits by none of the respondent authorities have been so far filed. Looking to the nature of the controversy and the developments, which have taken place right from the stage of filing of FIR by the father in respect of missing daughters, it is incumbent on the part of the authorities to file their affidavit in reply and to put forth their stand forthright indicating the efforts they had put in to trace corpuses.

3. The Ministry of Home Affairs is already impleaded, however, it has also not filed any affidavit. The authorities are prima face seen to be falling short in performance of their duties towards investigation and to secure personal liberty of the corpuses and to address concern of the worrying fathter-the petitioner.

4. Learned Public Prosecutor however submitted that

he would submit all the investigation reports compiled before the Court and shall also ensure the filing of affidavit by the competent officer showing the efforts taken out in the investigation.

5. The Ministry of Home Affairs shall also file an affidavit, more particularly when the corpuses are stated to be out of the country and as per the allegations of the father, under unlawful confinement of some persons claiming to be exercising religious authority over the corpuses.

6. As such, the corpuses are represented by learned senior advocate Mr. B.B. Naik. Learned senior advocate was at his receiving end when asked by the Court as to whether the corpuses would be brought, if outside country, on virtual mode before the Court to enable the Court to know about their status and to ascertain their wish. He stated that he was not in contact with corpuses since April 2022, however, shall see to it that the contact is maintained and proper response is given to the Court.

6.1 He however submitted that he has preliminary objection to the maintainability of the present petition. According to him, this Court does not have territorial jurisdiction to deal with the petition.

7. While the Court would consider the said preliminary objection on the next date of hearing, simultaneously, the Court finds it fit in totality of

facts and circumstances also to simultaneously require the authorities to file their respective affidavits even if the preliminary issue raised is to be considered *a priori*. Stand over to 06.02.2023 as requested by the learned advocates.

(N.V.ANJARIA, J)

(NIRAL R. MEHTA, J)

BIJOY B. PILLAI