

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION NO. 765 of 2020

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VIKRAMSINH CHAMPAKSINH PARMAR

Versus

STATE OF GUJARAT

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Appearance:

MR.DARSHAN A. DAVE(7921) for the Applicant(s) No. 1

NOTICE NOT RECD BACK(3) for the Respondent(s) No. 6

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

MR MANAN MEHTA, ADDL. 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 : 29/06/2020

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ORAL ORDER

(PER : HONOURABLE MS. JUSTICE SONIA GOKANI)

1. On 23.06.2020, following order came to be passed by
this Court:

“1. This Court on 04.03.2020 had directed the Dy.S.P. to take over the investigation by passing the following order:

“1. Mr. Ronal Raval, learned Additional Public Prosecutor, has furnished a report of the Incharge Circle Police Inspector, Kheralu Camp, Vadnagar, which is taken on record. In the report, it has been stated that a police team has been constituted and that the said team had even visited the residential premise of respondent No.5 for tracing out the corpus and respondent No.5 ; however, they were not found.

2. Let the concerned Dy.S.P. take over the investigation and for such purpose, he may select his own team of police officers, not below the rank of Assistant Sub Inspector. Necessary communication in writing shall also be sent to the Office of the Central Reserve Police Force at Danta since it is reported that the father of respondent No.5 is presently serving as a Head Constable with the force at Danta in order to ascertain the whereabouts of the corpus and respondent No.5. 3. List the matter on 18.03.2020. Direct service is permitted.”

2. On 18.03.2020, he submitted his report before this Court and the following order came to be passed:

“1. The Deputy Superintendent of Police, who has taken over the investigation, is before this Court with the Action Taken Report. According to him, necessary procedure to publicize the nonavailability of the corpus is already followed. The statement of the father of respondent no.5 has been recorded who played ignorance, although, he was aware of the fact situation from 17.01.2020.

2. It is given to understand that the Investigating Officer has intimated his superior of the factum of the minor girl having been abducted by his son. He himself is a part of the law and order machinery and therefore is expected to cooperate.

3. The request on the part of the learned advocate appearing for the petitioner, who is the father of the minor girl, to join the father of the respondent no.5 as a party respondent is permitted. Let the same be done forthwith.

4. Notice also be issued to the newly added respondent, returnable on 01.04.2020, to be served through the Company Commandant Head Quarter, Border Wing, Palanpur, although, he is serving at Jamnagar. Service of notice through speed post is permitted. Over and above the regular mode, service through concerned police station is also permitted.

5. Bearing in mind the young age of the corpus, the Deputy Superintendent of Police has been handed over the investigation. Let the concerted efforts be made. The aid of any agency which he requires, he shall be provided the same. 6. The matter is being fixed on 01.04.2020.”

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3. On 01.06.2020, this Court directed SP, Mehsana, to file his report and to make all efforts to trace the corpus and produce before this Court through video conference.

4. Today, we have received the report from Dr. Parthrajsinh Gohil, SP, Mehsana, where, he has given the chronology of the events, narrating as to how, in the concise manner, efforts have been made. However, his

team is not able to get the custody of the corpus, till date. He, therefore, has urged to grant some more time. He also has taken the statement of the father of the respondent-boy, who is serving with the Border Wing Force. According to him, continuous watch through technical and human intelligence is being kept.

5. We have heard the learned Advocate, Mr. Dave, for the applicant, who has urged that the corpus is not available since January, 2020. He, further, has urged that the plight of the parents of the girl can be well considered. Therefore, according to him, rigorous attempts be directed on the part of the present IO.

6. Learned APP also has been heard, who has urged that the present SP of Mehsana has taken over just 15 days back, after his transfer on the current post. Therefore, some more time be given, according to him, to the SP, Mehsana, for producing corpus before this Court.

7. Noticing six months' time, which has already passed in finding the corpus, this Court deems it appropriate to post this matter on 29TH JUNE, 2020. Let the SP, Mehsana, REMAIN PRESENT before this Court through video conference and apprise this Court, which will also enable us to know, as to whether there is requirement for adding any further directions or transferring the investigation, as urged before this Court.

8. S.O. to 29TH JUNE, 2020. In the meantime, let there be concerted efforts to TRACE and PRODUCE the corpus before this Court, on the next date. Let a copy of this order be GIVEN to the learned APP for his onward communication and due compliance.”

2. Today, the corpus is presented before us through video conference arranged at Mehsana District Court. Mr. Prithvirajsingh Gohil, the Superintendent of Police, Mehsana is also present through video Conferencing .

3. We have heard learned advocate Mr. Darshan Dave appearing for the applicant and Mr. Manan Mehta, learned Additional Public Prosecutor appearing for the State.

4. It has been gathered from the Superintendent of Police, Mehsana that the corpus is not found from the residence of respondent no.5 but she was found from some place of his relatives.

5. The corpus has shown her disinclination when inquired specifically by this Court to join the parents. She bein a minor, her wish would have no relevance, however, she cannot be forced to go to her parents, as according to her, they tried to engage her elsewhere before she turns major, so that, she may not be able to exercise her own wish and marry the person of her own choice. She has not cleared 10th

standard and presently is not keen to study further.

6. Noticing the fact that she is unwilling to join the parents, at this stage, apt would be to direct her being housed at Women Protection Home, Patan where she shall be kept for the period of 8 weeks initially.

6.1 Let good care of physical, mental and emotional health be taken. The Superintendent of Police, Mehsana shall also coordinate with the Women Protection Home, Patan to ensure her safety. He shall also make attempts to send her to the counsellors for motivating her to study further and take charge of her life for better future. . Let an arrangement of clothing and basic necessities for the corpus be made at the end of the Superintendent of Police, Mehsana considering the circumstances under which she is being sent to the Women Protection Home.

7. We notice that the respondent no.5 is himself a minor and is yet to be found. We are also at pain to learn that though himself is a minor, has chosen to take away the corpus who is a minor, lending himself in the net of law,

particularly of the Protection of Children from Sexual Offences Act (POCSO Act) .

7.1 This Act is brought on the statute book with laudable objectives, with a view to protect the girl child in the society, with more and more offences affecting the girl children.

7.2 We also notice that young boys who themselves are not major, many a times without realizing the consequences of their act, or many a times actuated by frenzy of youth, with careless approach towards stringent laws eventually label themselves as offenders in the matters of POCSO, and face serious consequences of rigorous punishment prescribed under the law.

7.3 It became expedient for us to make a specific reference of this aspect, having noticed this in many Petitions of Habeas Corpus. It is therefore, expressed that right kind of understanding needs to be given, in the form of legal awareness amongst the children and the college students so that the society can simultaneously protect very young minor

boys, who due to their lack of understanding of law, turn into the offenders in serious matters.

7.4 The Superintendent of Police, Mehsana ensures to take up this issue with the Anti Human Trafficking cell and the District Legal Services Authority for creating awareness amongst the youngsters.

8. While the corpus is at Women Protection Home, Patan she shall be engaged in some productive and constructive activities and shall be motivated to study further or take up some kind of vocational training for her better future. Endeavours shall be made to make her self-reliant eventually.

9. The parents, if are keen to meet the daughter at the Women Protection Home, let the same happen in presence of one of the office bearers of the Women Protection Home and with a clear understanding to the parents that in no manner she shall be forced to do anything against her wish and will. The parents must also furnish the undertaking before the

Superintendent of Police, Mehsana that they shall not make any attempt to engage her before she completes her age of 18 years, even when she agrees to join the parents, and if her custody eventually is handed over to the parents.

10. We place on record the appreciation for the attempts made by the Superintendent of Police, Mehsana and his team who has recently taken over the charge at Mehsana a fortnight before. We also acknowledge assistance rendered by Mr. Vyas, learned presiding officer at District Court Mehsana for assisting the cause.

12. The matter is posted on 25.08.2020.

THE HIGH COURT
OF GUJARAT

(SONIA GOKANI, J)

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(N.V.ANJARIA, J)

MISHRA AMIT V./Bhoomi