

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CRIMINAL APPLICATION NO. 5548 of 2021****PANCHAL VIJAYKUMAR RAMESHKUMAR****Versus****STATE OF GUJARAT****Appearance:**

MR AFTABHUSEN ANSARI(5320) for the Applicant(s) No. 1
for the Respondent(s) No. 2

MR A R KADRI(7330) for the Respondent(s) No. 3

MR SHAHNAWAZ PATHAN(6024) for the Respondent(s) No. 3

MR RONAK RAVAL, APP for the Respondent(s) No. 1

CORAM:HONOURABLE MR. JUSTICE R.M.CHHAYA**and****HONOURABLE MR. JUSTICE NIRZAR S. DESAI****Date : 08/07/2021****ORAL ORDER****(PER : HONOURABLE MR. JUSTICE R.M.CHHAYA)**

1. Heard Mr. Aftabhusen Ansari, learned advocate for the petitioner, Mr. Ronak Raval, learned Additional Public Prosecutor for the respondent nos. 1 and 2 and Mr. A.R. Kadri, learned advocate for the respondent no.3.

2. By way of this petition under Article 226 of the Constitution of India, the petitioner who happens to be father has prayed for a writ of habeas corpus directing the respondent nos. 1 and 2 to produce corpus-Divyaben before this Court and to hand over her custody. Corpus- Divyaben is produced before us through video conferencing as per the earlier order dated 01.07.2021 today

again from the chamber of Mr. Hiren Vasavada, Secretary, DLSA, Ahmedabad (Rural) at Mirzapur, Ahmedabad. In the pre-lunch session, we had interacted with corpus-Divyaben, the learned advocates appearing for the parties as well as petitioner and mother – Nishaben w/o. petitioner and mother of corpus-Divyaben. The matter was kept after due deliberation with corpus at 02:30 p.m. today. Corpus – Divyaben is again produced before us through video conferencing from the chamber of Mr. Hiren Vasavada, Secretary, DLSA, Ahmedabad (Rural) at Mirzapur, Ahmedabad. It deserves to be noted that by an order dated 01.07.2021, in the facts of this case, we had passed the following order:

“In response to the notice issued by this Court, corpus Divyaben is produced before us from the chamber of Mr. Hiren Vasavada, learned Secretary, DLSA, Ahmedabad Rural. Corpus Divyaben is 18 years and 3 months old. We have interacted with the corpus Divyaben. She has informed that she has left the parental house and she stays at Jekda with grand father of Hasmukhbhai.

In peculiar facts and circumstances, we feel that corpus is not giving independent and correct statement before this Court. In such circumstances, we deem it fit to admit corpus Divyaben in Vikas Gruh, Paldi. Mr. Ronak Raval, learned APP shall make all arrangements to admit the corpus Divyaben to Vikas Gruh, Paldi. The authorities of Vikas Gruh, Paldi shall not permit the petitioner or mother of corpus Divyaben or any other relative to meet the corpus. Similarly, the authorities of Vikas Gruh, Paldi shall also not permit anyone, except police authorities, including respondent no.3 to meet the corpus. Corpus Divyaben shall be produced again before this Court through video conferencing from the same Court, i.e., District and Sessions Court, Ahmedabad Rural. S.O. to 08.07.2021.”

3. Corpus-Divyaben has expressed apprehension about her future life before us. Corpus - Divyaben has declared before us that she has developed liking for respondent no.3 – Hasmukhbhai Jagdishbhai Maheriya, who is aged about 19 years. Corpus has also declared before us that she wants to marry with respondent no.3 –

Hasmukhbhai Jagdishbhai Maheriya, as and when he attends the age of marriage, as per the Hindu Marriage Act. Corpus has also stated before us today as well as on earlier occasion that, she (corpus) and respondent no.3 has developed relations with each other as friends and she wants to maintain the same. Initially, some apprehensions were ventilated by corpus, which in the respectful submission of this Court were not ill-founded. However, considering the future of corpus, who is hardly aged about 18 years and 3 months, as on today, we thought it fit to deliberate further with corpus. Corpus after giving immense thought over the same has expressed her desire to go with the parents. However, corpus has expressed her desire to maintain relationship with the respondent no.3 - Hasmukhbhai Jagdishbhai Maheriya. Corpus has expressed her desire to see that her parents including the petitioner and Nishaben (mother of the corpus-Divyaben and wife of the petitioner -Vijaykumar Panchal) permit her to talk with respondent no.3 - Hasmukhbhai Jagdishbhai Maheriya on phone and to keep the relationship with him. Corpus has also expressed her desire that the petitioner and Nishaben, as parents, would readily see that corpus enters into wedlock and live their happy married life with respondent no.3 - Hasmukhbhai Jagdishbhai Maheriya. Mr. Ansari, learned advocate appearing for the petitioner has assured this Court that parents of corpus, i.e. Vijaykumar Rameshkumar Panchal-petitioner as well as Nishaben Vijaykumar Panchal, mother of corpus and wife of petitioner, shall permit corpus - Divyaben to talk with the respondent no.3 - Hasmukhbhai Jagdishbhai Maheriya, without any hindrance, as per her wish and shall also permit Divyaben to maintain her personal relationship with respondent no.3 - Hasmukhbhai Jagdishbhai Maheriya, over the phone. The petitioner - Vijaykumar Rameshkumar Panchal as well as Nishaben Vijaykumar Panchal (mother of corpus) have also stated

before us that, they will permit corpus – Divyaben to talk with respondent no.3 - Hasmukh Jagdishbhai Maheriya over the phone, to attend the college and maintain a healthy relationship with respondent no.3 – Hasmukhbhai and as and when, respondent No. 3-Hasmukhbhai attends the age of 21 years, shall get them married if corpus so desires. The petitioner as a father as well as Nishaben as a mother of corpus, shall not harass corpus – Divyaben, in any manner whatsoever. The petitioner, as well as mother of corpus, shall file an individual undertaking on oath to the said effect in this proceeding latest by 12.07.2021.

4. The police authorities are hereby directed to drop corpus – Divyaben, at the house of the petitioner situated at Bavla, Dist.: Ahmedabad, as per the address given in the petition and shall file a report to that effect in this proceeding to the effect that Divyaben has reached the house of the petitioner, safely.

5. We appreciate the decision taken by corpus- Divyaben, though she is hardly 18 years and 3 months old, which in the opinion of this Court, is a mature decision. We hope and trust that the petitioner and Nishaben, as parents, would respect the feelings of corpus – Divyaben and permit her to live her own life, as per her wish. We appreciate the efforts made by Mr. Ansari, learned advocate appearing for the petitioner as well as Mr. Kadri, learned advocate appearing for the respondent no.3, which has enable this Court to resolve this issue and in a way protect and save the lives of two innocent children. We also appreciate the efforts made by Mr. Hiren Vasavada, Secretary, District Legal Service Authority, Ahmedabad (Rural) at Mirzapur, Ahmedabad, whose able assistance has enable this Court to come to this conclusion. We also appreciate the efforts made by Mr. Ronak Raval, learned APP and

Ms. Jyoti Bhatt, learned AGP, who at the instance of this Court has assist this Court.

6. The lady officer from the office of the Social Welfare Department of Ahmedabad District shall visit the house of the petitioner and meet corpus – Divyaben and file a report of her well-being, before this Court, in this proceeding, at least for a period of one year. Mr. Ronak Raval, learned APP shall inform the concerned department / officer about this order.

7. The petition is disposed of accordingly. Notice is discharged. No order as to costs.

(R.M.CHHAYA, J)

(NIRZAR S. DESAI,J)

Pradyuman

