

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 1963 OF 2016

Kavita Ramdhiraj Tiwari ... Petitioner

V/s.

State of Maharashtra & ors. ... Respondents

Mr. Manoj M. Badgujar for the petitioner.

Mrs. S.D. Shinde, APP for the State.

Advocate Bharat V. Bhatia for respondents 3 and 4.

**CORAM : NARESH H. PATIL AND
PRAKASH D. NAIK, JJ.**

1st July, 2016.

P.C.

Heard learned Counsel for the parties.

2. It is the case of the petitioner that on 21st June, 2013 respondent no.2 misguided her to accompany him. The petitioner was persuaded to leave custody of her parents. The petitioner was a minor sixteen years old. The father of the petitioner filed a FIR No. 195/2013 which was

registered against respondent no.2 for the offences punishable under Section 363, 392, 325, 324, 504 and 506 IPC. She was residing with respondent no.2 for about two years. In the year 2015 she was 17 years. She became pregnant after having physical relations with respondent no.2. On 28th April, 2015 petitioner gave birth to a baby child at Bhagwandas Hospital, Ulhasnagar who was named 'Manas'. On 29th April, 2016 FIR came to be registered against respondent no.2 for various offences under Sections 307, 341, 143, 147, 188, 149 IPC.

3. It is alleged that on 26th May, 2016 petitioner was driven away from the said house by respondent no.4 and her 14 months old baby was snatched from her by respondent no.4. On 29th May, 2016, petitioner went to Central police station. They informed her to visit Hill Lines Police station. She went to Hill Lines police station to file complaint and get help to get back her baby. Respondent no.2 was arrested on 30th April, 2016. Since the day of snatching of child i.e. on 26th May, 2016 the child is with respondent no.4, mother of respondent no.2.

4. Learned Counsel appearing for the petitioner submits that child requires continuous attention of mother. A 14 months old child has to be with mother. The petitioner is staying with her father now who is a fruit

vendor. Both father and daughter are present in Court. Learned Counsel submits that custody of child be handed over to the petitioner.

5. Learned Counsel appearing for respondent filed affidavit refuting the allegations made by the petitioner. It is submitted that on her own the petitioner left the house. She is having extra marital affair with somebody. Probably she is married with that person. The deponent has made serious allegations in paragraph 15 of the affidavit that the petition is being filed purposely to snatch the child from the legal custody and to kill the child as petitioner does not want child to be a hindrance in her future plan. Learned Counsel submits that child is being taken care of by respondent no.4 and there is no need to give custody of the child in present proceedings.

5. After perusing the record and considering the submissions advanced, we find that several issues raised by the parties cannot be decided in the present proceedings. The parties may take recourse to appropriate alternate forum in respect of other issues.

6. The issue is whether the 14 months child should be with the mother or with the respondent no.4. In the facts, we find that till the parties

secure an appropriate order in respect of custody from judicial forum, the custody of the child shall be retained with the mother i.e. petitioner.

7. We direct the Senior Police Inspector, Central Police Station, Ulhasnagar to call the parties (petitioner, her child, respondent no.4 and father of petitioner) in the police station. The petitioner and her father shall submit a written undertaking with the police that they will take appropriate care of the child. On giving such undertaking the custody of the child be handed over to the petitioner in the presence of Senior Police Inspector.

8. The parties to remain present in the concerned police station on 5th July, 2016 at 11.00 a.m.

9. With aforesaid observations and directions, petition is disposed of. Learned APP to communicate the order to concerned authorities.

10. All concerned to act on an authenticated copy of the order.

(PRAKASH D. NAIK, J.)

(NARESH H. PATIL, J.)