

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 1772 OF 2015

Abbas Ali Akbar Rasekhinejed. ..Petitioner.
Versus
State of Maharashtra & Others. ..Respondents.

Mrs. Racheeta Dhruv for the Petitioner.
Mrs. M. M. Deshmukh, APP for the State.
Mr. M. K. Kocharekar, Amicus Curie.

Coram : RANJIT MORE &
SARANG V. KOTWAL, JJ.
Date : **June 28, 2017.**

P. C. :

1. Heard Mrs. Dhuru, learned Counsel appearing for the Petitioner, Mrs. Deshmukh, learned APP for the State and Mr. Kocharekar, learned *Amicus Curiae*. We have also interacted with the Petitioner and the Respondent No. 4.

2. The petition is filed invoking the jurisdiction of this Court under Article 226 of the Constitution of India and section 482 of the Code of Criminal Procedure, 1973 claiming the writ of habeas corpus, directing the Respondents to produce the minor child Sakineh before this Court.

3. The Petitioner and the Respondent No. 4 are the husband

and wife. It is the case of the Petitioner that Respondent No.4 was unable to conceive and therefore he and Respondent No. 4 decided to give birth to a child through in-vitro fertilisation IVF procedure. It is further case of the Petitioner that by the said procedure, on 25th January 2013 Respondent No. 4 gave birth to a baby girl – Sakineh. It is also case of the Petitioner that Respondent No. 4 started ill-treating the newly born child and in the year 2014 left the matrimonial home with minor child Sakineh. The Petitioner was not aware about the whereabouts of Respondent No.4 as well as minor child Sakineh. In the meanwhile, the Petitioner had also approached the Family Court at Thane by filing petition bearing No.D-17 of 2013 and obtained order for the custody of said minor child Sakineh. The Petitioner also registered an FIR bearing CR No. 491 of 2016 against Respondent No.4 with Mumbra Police Station for the offence punishable under section 363 of the Indian Penal Code, 1860.

4. This petition was placed before this Court time and again. By various orders, this Court directed Mumbra Police Station to make efforts to trace Respondent No.4 as well as minor child Sakineh. Mumbra police in turn sought help of Crime Branch, Unit-I, Thane. Respondent No. 4 with minor child Sakineh was traced by the Crime

Branch Thane at place Mahuwa in Gujarat and they were brought before this Court on 27th April 2017. On that day, we had interacted with the Petitioner as well as Respondent No. 4. Interaction revealed that there were allegations and counter allegations by the parties against each other. The Petitioner heavily relied upon the custody order passed by the Family Court, Thane. Respondent No. 4, on the contrary, submitted that it is in the interests of the minor child – Sakineh that child resided with her. In the light of these circumstances, we deferred hearing of the petition. In the meanwhile Respondent No. 4 along with minor child Sakineh was directed to be placed in Shanti Sadan Mahila Vastigruha, Ulhasnagar.

. Petition was again placed before this Court on 3rd May 2017. After perusing the report dated 3rd May 2017 made by the Police Inspector of the Crime Branch, Mumbra Police Station as well as the report made by the Superintendent of Shanti Sadan Vastigruha and after having interaction with the Petitioner as well as Respondent No. 4, we were of the prima facie opinion that considering the background of the case as well as allegations and counter allegations made by the parties against each other, it would be in the interest of the child Sakineh to admit her in good in-house school or institution where all her needs would be taken care of and where both the parents could

have right to visit the child. Accordingly, we directed learned APP to furnish the names of such good boarding schools / institutions where the said child Sakineh can be housed / educated and the matter was adjourned to 16th June 2017. The Petitioner was given right to visit minor child Sakineh at Shanti Sadan Mahila Vastigruha. On 16th June 2017, at the request of the Petitioner, who was appearing in-person the matter was adjourned to 21st June 2017. On 21st June 2017, we appointed Advocate Mr. M. K. Kocharekar, as amicus curiae to assist the Court and adjourned the matter to 28th June 2017, i.e., today.

5. Today, we have heard Mrs. Dhuru, Mrs. Deshmukh and Mr. Kocharekar. We have also perused the report dated 3rd May 2017 made by the Assistant Police Inspector, Crime Branch, Unit-I, Thane and the report dated 28th June 2017 made by the Probation Officer of Shanti Sadan Mahila Vastigruha. We have again interacted with the Petitioner and Respondent No. 4. Both the Petitioner and Respondent No. 4 are not willing to keep child Sakineh in any in-house school or institution. The Petitioner insisted that custody may be given to him. Respondent No. 4, on the other hand, insisted that it is in the interest of the child that she should be allowed to reside with her.

6. The Report dated 3rd May 2017 made by the Police Inspector, Crime Branch, Unit-I, Thane discloses that Respondent No. 4 was traced at Mahuwa, Gujarat. It was found that Respondent No. 4 was residing with minor child Sakineh. The report further discloses that on enquiry it was revealed that Respondent No. 4 is taking proper care of her minor daughter Sakineh; Respondent No. 4 by doing household works, is able to support minor child Sakineh. The report further discloses that Respondent No. 4 has admitted Sakineh in Saint Thomas School at Mahuwa. The report of the Probation officer of Shanti Sadan Mahila Vastigruha discloses that child Sakineh is attached to Respondent No.4. This report also discloses that child Sakineh is not ready to go with the Petitioner. The conclusion is arrived at by the probation officer that Respondent No. 4 will take proper care of child Sakineh. It was submitted by Respondent No. 4 that she has made fixed deposit receipt of Rs.50,000/- in the name of child – Sakineh.

7. In above circumstances, we are not inclined to give custody of minor child-Sakineh to the Petitioner. Since Respondent No. 4 along with child Sakineh was produced before this Court, the instant writ petition for habeas corpus is worked out. Respondent No.

4 is at liberty to go back to Mahuwa with child – Sakineh. Needless to state that the Petitioner is at liberty to approach the appropriate forum/ Court/ authority for appropriate reliefs. Writ petition is disposed of.

8. In view of the disposal of main writ petition, application if any, taken out in this writ petition, does not survive and the same is accordingly disposed of.

9. Before parting with the matter, we would like to place on record our appreciation for the assistance rendered in the matter by amicus curiae Mr. Kocharekar.

[SARANG V. KOTWAL, J.]

[RANJIT MORE, J.]