

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.1674 OF 2016

Hasmukh Jyantilal Soni @ Ghoyal Petitioner
Vs.
State of Maharashtra & Others Respondents

Mr. Manish M. Jain i/by S.M. Jain & Associates for
the Petitioner.

Mrs. M.H. Mhatre, APP, for the Respondent-State.

CORAM: S.C. DHARMADHIKARI &
SMT. BHARATI H. DANGRE, JJ.

DATE : DECEMBER 08, 2017

P.C:

1. By this petition under Article 226 of the Constitution of India, the petitioner seeks a writ styled as a writ of habeas corpus directing respondent Nos.2 to 5 to produce Hital Hasmukh Soni.

2. The petitioner, Hasmukh Jyantilal Soni, has filed this petition alleging that Hital is his daughter. She is mentally unfit. On his own showing, some treatment was continued and

medicines were administered from the age of 11 till the age of 22 years. The details of the treatment as also the educational career of the said Hital are set out in the petition, and then it is alleged that the sixth respondent to this petition was residing in the same building along with his brother-in-law and sister from 2009 till 2015. It is alleged in the petition that his daughter and respondent No.6 became familiar with each other, there was a proposal of marriage and brought by the brother-in-law and the sister of respondent No.6 but the said Hital was minor at that time. Hence, the petitioner refused to carry that relationship any further and culminating it into a marriage. It is said that the petitioner pointed out to the other family that the said Hital is suffering from a mental condition.

3. It is in such circumstances that the petitioner says that he changed the residential premises but when his daughter left for college on 28-1-2016, from that day she has not returned to her parental home. That is how the petitioner launched a search and eventually registered a missing complaint at Virar Police Station.

4. In paragraphs 11 and 12, the petitioner says as under:-

"11. The petitioner further submits that on 04/02/2016 at about 10.00 a.m. police called the petitioner at woodland police station and there victim Hiral Soni along with respondent no.6 were present at police station.

12. The petitioner further submits that the respondent no.6 told the police that he had married with Hital Soni and now she is his legal wedded wife. The petitioner further submits that the petitioner showed all the medical report to the police and stated that she is suffering from mental disease and she is not in the condition to give consent for marriage and the respondent no.6 along with his relatives had done brain wash of victim Hiral Soni for the said marriage."

5. Upon perusal of these paragraphs and the further allegations in the petition, it is evident that the said Hital is now a major and claims to have contracted a marriage with respondent No.6. The petitioner disputes this position and challenges the consent allegedly obtained for the marriage of the said daughter. Then, in desperation, he says that the police must ensure that the daughter visits him at least once and he is able to meet and speak to her.

6. On such a petition, earlier, orders were passed and today Mrs. Mhatre, learned APP, appearing for the concerned police officials, states that the couple indeed came to the police station and stated that they have volunteered to enter into the relationship and fructify it into a marriage and that the daughter does not wish to return to her parents.

7. In such state of affairs, we are unable to agree with the petitioner's counsel that a writ of habeas corpus can be issued and to direct the police officials to produce the major daughter in the Court or at least arrange a visit with the help of the police. Secondly, once the daughter has married and claims to have entered into a legal relationship with respondent No.6, both being majors, it is not possible for this Court to annul or invalidate their marriage on the alleged ground that the consent of the petitioner's daughter was not voluntary but obtained by fraud, undue influence, coercion and stands vitiated as such. To our mind, this is beyond the scope of the writ jurisdiction of High Court. Such inquiries into factual disputes can never be

made in this limited jurisdiction. We are of the firm opinion that the petitioner has other legal remedies available to him and he can seek appropriate declaration and order from a competent Court in the event the petitioner feels he is being illegally prevented from meeting his daughter. Keeping intact all such remedies and the contentions therein, we dispose of this petition.

(SMT. BHARATI H. DANGRE, J.)

(S.C. DHARMADHIKARI, J.)