

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 4579 OF 2017

Smt. Alka Rajendra Makwana

... Petitioner

Vs.

The State of Maharashtra

... Respondent

.....

Mr. Satish S. Mande for the Petitioner.

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

Ms. Uma B. Gawade, Investigating Officer, PSI, Srinagar Police Station, Thane, present.

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

DATE : NOVEMBER 28, 2017.

P.C. :

1. The petitioner is the mother of Kumari Rusika Rajendra Makwana. The said Rusika was born on 2nd August, 2000.

2. The petitioner has been residing with her husband Rajendra Makwana and son Meehir as also Rusika at the address mentioned in the cause title. The said Rusika has yet to complete 18 years of age. On 18th September, 2017, the said Rusika, who would return home ordinarily by 7:00 p.m., did not turn up. On inquiries being made, the petitioner registered a complaint. The petitioner suspected that one Kumar Vinay Mangesh Kamble may have kidnapped her daughter and this must be a repeat act which was committed by him in the month of December, 2016 for which

already an F.I.R. has been registered. Later on, the petitioner complained to the Police that said Vinay Mangesh Kamble has kidnapped her daughter and is not releasing her from custody.

3. The petitioner therefore complained that on the third occasion as well, it must be the said Vinay Mangesh Kamble who is responsible for the disappearance of the minor daughter from home. Therefore, F.I.R. No. 372 of 2017 was registered.

4. On such a Petition, we passed an order granting time to the learned APP to take instructions. On 27th November, 2017, we passed the following order:

1. The petitioner has filed this petition seeking a writ of habeas corpus so as to direct the Mulund Police Station, Mumbai, to produce her daughter Rusika Rajendra Makwana in this Court.

2. After perusing this petition and the Annexures, so also hearing the counsel, it is evident that the said Rusika has now met the petitioner-mother, but presently she is admitted to the Thane Civil Hospital by the Srinagar Police Station, Thane. In the morning session, we inquired from Mrs. Mhatre, learned APP, as to whether this statement made by the petitioner's advocate is true and correct.

3. On instructions taken on telephone, she states that the Investigating Officer will attend the Court tomorrow with all papers, including the medical records in the event the petitioner's daughter is still under medical care and attention as an indoor patient.

4. We post this matter tomorrow at 3.00 p.m.”

5. The matter was placed today. Today, when the matter is called out, the lady Police official attached to Srinagar Police Station, Thane is present in Court. She has attended the Court with the original medical records pertaining to the petitioner's daughter. It is stated on instructions that the daughter still continues to be under the care and attention of a Doctor/Medical Officer attached to the Thane Civil Hospital. She is an indoor patient. She has been administered some treatment and which continues even today. The daughter has not been discharged. This fact is known to the petitioner-mother. She has attended the hospital, met her daughter and even given her statement to the Police admitting the above facts.

6. To our mind, the only apprehension of the petitioner is that the daughter continues to have some affair with the said Vinay and repeatedly she leaves the house to be with him. Today also, the medical records indicate that the daughter is carrying, in the sense, she is pregnant and the foetus is stated to be 14 weeks old. It is on account of her frail condition that she is being administered treatment. The petitioner apprehends that after discharge from the hospital, the daughter may not come home.

7. The petitioner's counsel submits that this *habeas corpus* Petition can be pressed by him even after the above developments as the Police must ensure that the daughter returns home with the parents post discharge.

8. We do not think that we should continue with the proceedings and when the facts are as stated above. The petitioner-mother knows the medical condition, the admission to the hospital of her daughter and as an indoor patient. She has yet not been discharged by the hospital. However, the petitioner-mother and her husband, her son, the other relatives are free to meet the daughter at the hospital and have indeed met her. In the circumstances, we do not think that the daughter has been detained illegally or is in the custody of the Police. If the daughter does not return home post discharge, then the petitioner is free to adopt such proceedings as are permissible in law, including, request the Police to trace out the daughter. Equally, she can name the suspect Vinay as an accused for the crime and we have no doubt in our mind that Police machinery will duly assist her. Presently, we cannot direct contrary to the medical advice that the petitioner's daughter be allowed to be taken away by the petitioner or that her custody be handed over to her. It is advisable that she continues to obtain treatment and medical advice for her ailment/condition.

9. By clarifying as above, we dispose of this Petition.

(SMT. BHARATI H. DANGRE, J.)

(S. C. DHARMADHIKARI, J.)