

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

**WRIT PETITION NO. 2711 OF 2021**

|                                 |               |                |
|---------------------------------|---------------|----------------|
| A and B                         | <b>Versus</b> | ...Petitioners |
| The State of Maharashtra & ors. |               | ...Respondents |

Mr. Darius Khambatta, Senior Counsel, a/w Mr. Ammar Faizullahoy, Mr. Mohan Jayakar, Mr. Archit Jayakar, Mr. Ashwin Shete, Mr. Zeeshan Sayed, Ms. Dhawani Parekh i/b M/s Jayakar & Partners, for the Petitioners.  
Smt. A. S. Pai, PP for the State/Respondent no.1.  
Mr. Jatin Pore, a/w Ms. Ankita Agrawal, i/b DSK Legal, for Respondent nos.2 to 13.

**CORAM: S. S. SHINDE &  
N. J. JAMADAR, JJ  
DATED: 25<sup>th</sup> AUGUST, 2021**

**PC:**

1. The petitioners (identity protected), who are the parents of a 25 year old son, a USA citizen, have preferred this petition under Article 226 of the Constitution of India and the Mental Healthcare Act, 2017 ("the Healthcare Act, 2017"), for *writ of habeas corpus* to produce the son (hereinafter referred to as, 'S') so as to enable an assessment of his mental state and examination by an expert in mental health, and for appropriate directions for safeguarding interest of 'S' and his mental health.
2. The substance of the petition is that 'S' came to India from

United States of America to pursue a course on Vedanta in the month of November, 2019. Since then 'S' has been at the academy run by respondent no.2 in Malavli. Since latter half of the year 2020, there has been a sudden, alarming and disturbing personality change accompanied by irrational anger and increasingly volatile behaviour with threats of bodily harm and life to himself and others, on the part of the 'S'. From the conduct and communications, the petitioners apprehend that 'S' is suffering from mental illness and has been showing signs of psychosis/depression. Being gravely concerned and alarmed, the petitioners have invoked the writ jurisdiction of this Court as the efforts made by the petitioners to persuade the concerned officers of respondent no.1, and 2 to 8 turned futile.

3. In the backdrop of the nature of the petition, on the very day the petition was moved before the Court, we thought it appropriate to interact with 'S', who was reported to be present in the precinct of the Court by the learned Counsel for respondent no.2.

4. We had interaction with 'S' for a fair length of time, in Chamber. Upon interaction, we were of the, *prima facie*, view that there was an element of bridging the distance between the petitioners and 'S', which primarily appeared to be on account of

trust deficit, by mediation. To explore the possibility and workout the modalities, if parties agree for mediation, we posted the matter on 6<sup>th</sup> August, 2021.

5. During interaction, through Video Conferencing, on 6<sup>th</sup> August, 2021, 'S' declined to give consent to mediation and refused to participate in the mediation process. We thus passed the following order:

“2. During our interaction with ....('S'), he declined to give consent for mediation or to participate in the mediation process.

3. Learned Counsel appearing for Respondent Nos.2 to 13 submits that respondent Nos.2 to 13 have nothing to do with the contentions of the petitioners or the suggestion of Dr. Saraf for mediation. He submits that since ....('S') is not agreeable for such mediation, the question of keeping this petition pending does not arise. Therefore, he prays that the petition may be disposed off.

4. Dr. Saraf prays for one week's time by way of last opportunity so as to communicate today's order to the petitioners.”

6. Today, Mr. Khambatta, the learned Senior Counsel for the petitioners, submitted that despite the disinclination of 'S' to have resolution of the differences with the petitioners, the latter are genuinely concerned for the health and well being of 'S'. A submission was sought to be canvassed on behalf of the petitioners that the material on record, *prima facie*, warrants a direction for examination of 'S' by a mental health professional. The petitioners, according to Mr. Khambatta, at this stage, thus restrict the prayer to such a direction for evaluation of 'S'. To

draw home the point, Mr. Khambatta invited our attention to the text, tenor and context of the communications which 'S' had with the petitioners. The type utterances and choice of the words, according to Mr. Khambatta, betray a deep problem, which 'S' appears to be grappling with. Our attention was also invited to a certificate issued by a Neuro Psychiatrist and Deaddiction Specialist, (on the basis of the conduct of and communications from 'S', reported to him, by the petitioners) that 'S' may be provisionally diagnosed with "thought/mood/behavioural disorder most likely resembling/linked to underlying Psychosis with Depressive Features."

7. We have carefully considered the material on record and given our anxious consideration to the submissions canvassed on behalf of the petitioners. First and foremost, the petition to the extent it sought a *writ of habeas corpus* served its purpose, on the day of motion itself, as 'S', a 25 year old boy, appeared before the Court, on his own, obviously having been apprised of the institution of the petition. Secondly, in our interaction with 'S' we found that 'S' was physically fit, mentally alert and fully alive to the developments unfolding around him. When we drew his attention to the communications, which are unquestionably offensive and alarming, the response of 'S' ranged from regret to explanation of the circumstances in which he was allegedly

constrained to exhibit such conduct and interact in such manner. We refrain from detailing the facts and views shared by 'S'.

8. In the context of limited prayer, we, however, must record that we found 'S' fully conscious and aware of the circumstances in which he found himself. He took full responsibility for the actions he pursued. We also found that 'S' has a strong sense of individuality and zealously guarded his right to live by himself on his own terms. He desired to pursue the course unhindered and uninterrupted by the petitioners. It seems the relentless efforts on the part of the petitioners to wean him away from the said course and surroundings have alienated 'S' from them, further and farther.

9. Mr. Khambatta, the learned Senior Counsel, would urge that evaluation of the mental health is a matter which must be left to the mental health professionals. Mr. Khambata invited our attention to the expansive definition of mental illness contained in Clause (s) of Section 2 of the Healthcare Act, 2017. Emphasis was laid on Section 100 of the Healthcare Act, 2017, which casts a duty on every officer in-charge of a police station to take under protection any person whom he has reason to believe to be suffering from mental illness. It was further urged that the fundamental right of a person, who appears to be

suffering from mental illness, cannot be placed on a higher pedestal so as to preclude the examination of such person by a health professional on the sole premise that such person does not consent for evaluation. To this end, reliance was sought to be placed on the judgment of the Supreme Court in the case of *Sharda vs. Dharmpal*<sup>1</sup> and a judgment of this Court in the case of *Mrs. Gulshan Rohington Irani vs. Raymond Rohington Irani & ors.*<sup>2</sup>.

10. We are afraid to accede to the submission of Mr. Khambatta. In the peculiar facts of the case, as indicated above, we do not find any justifiable material which makes out a strong *prima facie* case that 'S' requires such evaluation. In the case of *Sharda* (supra), the Supreme Court had expounded the circumstances in which an order for medical examination can be passed against the wish of a party. Paragraphs 77 and 78 read as under:

"77. If for arriving at the satisfaction of the Court and to protect the right of a party to the lis who may otherwise be found to be incapable of protecting his own interest, the Court passes an appropriate order, the question of such action being violative of Article 21 of the Constitution of India would not arise. The Court having regard to Article 21 of the Constitution of India must also see to it that the right of a person to defend himself must be adequately protected.

78. It is, however, axiomatic that a Court shall not order a roving inquiry. It must have sufficient materials before it to enable it to exercise its discretion. Exercise of such

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**1**(2003) 4 Supreme Court Cases 493.

**2**(2018) 3 AIR Bom R 654.

discretion would be subjected to the supervisory jurisdiction of the High Court in terms of Section 115 of the Code of Civil Procedure and/or Article 227 of the Constitution of India. Abuse of the discretionary power at the hands of a Court is not expected. The Court must arrive at a finding that the applicant has established a strong prima facie case before passing such an order.”

(emphasis supplied)

11. In the case of *Mrs. Gulshan Rohington Irani* (supra), the legal position was culled out in paragraph no.39 as under:

“39. Thus, the conspectus of legal position which emerges from the above discussion is that the Court has not only the power but also the duty to hold the inquiry and in that inquiry, to order such medical examination of the person alleged to be of unsound mind or mentally infirm. As a matter of fact, learned counsel for the petitioner is also not disputing this legal position. As per the legal premise, it is for the Court to decide how such enquiry should be conducted. The Court can call party himself for questioning and interviewing for the purpose of enquiry or/and if the Court deems it necessary, may order the medical examination of such person. In view of the ratio laid down by the Division Bench of this Court in *Somnath v. Tipanna* (supra), even if there is “doubt” about mental condition of the party, then Court should not hesitate to exercise such power of enquiry. The Courts can also do it suo motu, depending upon the facts and circumstances of the case.”

12. Reverting to the facts of the case, considering the age of ‘S’, his state of mind, intellect and orientation as gathered from the manner in which ‘S’ had interacted with the Court on 3<sup>rd</sup> August, 2021, in-person, and on 6<sup>th</sup> August, 2021, through video conferencing, and the attended circumstances, we are afraid to draw an inference that ‘S’ requires evaluation. It is unfortunate that ‘S’ chose not to interact with or accessible to the petitioners. And communicated in a manner which is not commendable. We

appreciate the concern of the petitioners. However, we are not persuaded to accede to the submissions on behalf of the petitioners to compel 'S' to get himself evaluated in the absence of material which would justify such course of action.

13. For the foregoing reasons, we are constrained to dismiss the petition.

14. Resultantly, the petition stands dismissed.

[N. J. JAMADAR, J.]

[S. S. SHINDE, J.]