

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.4491 OF 2019

Rekha Shrirang Surve and another Petitioners
Versus
Anjani Prabhakar Kakade and others Respondents

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Ms. Shivani Paranjpe, Advocate i/b. Dileep Paranjpe, for Petitioners.
Mr. Abhijeet Joshi, Advocate a/w.Varsha Sawant, for Respondent No.1.
Mr.K.V. Saste, APP for the Respondent-State.

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**CORAM : NITIN JAMDAR AND
SARANG V. KOTWAL, JJ.**

DATE : 15 NOVEMBER 2021

P.C.

. Heard the learned counsel for the parties.

2. The Petitioners, who are parents of one Amol Shrirang Surve aged 34 years, have filed this Writ Petition seeking writ of *habeas corpus* to produce the Petitioners' son Amol before the Court. Respondent No.1 is the wife of Amol Shrirang Surve.

3. Amol got married to Respondent No.1 on 12 May 2013. At that time, Amol had completed the course in Hardware Engineering and was working as a Senior Counselor in a governmental organisation. According to the Petitioners the matrimonial relationships between Amol and Respondent No.1 were not good

which fact is also accepted by Respondent No.1. It is also stated that Amol and Respondent No.1 were living separately. The Petitioners lodged complaints on 13 December 2017, 20 December 2017 with Kolsewadi police station, Kalyan, a complaint on 23 December 2017 with Assistant Police Commissioner, Kalyan and a further complaint on 10 August 2018 with Police Commissioner, Crime Branch, Thane complaining that Amol had got missing without any trace. With this factual position, Writ Petition was filed on 27 August 2019.

4. Respondent No.1 has appeared and has filed affidavit-in-reply. Respondent No.1 has stated that the relationship between Respondent No.1 and Amol was not cordial, they were staying separately, however, later both were trying to reconcile their differences. Respondent No.1 has annexed the printouts of exchange of communications between them. The case of Respondent No.1 is that Respondent No.1 is also not aware as to the whereabouts of Amol and is equally concerned about his absence. Respondent No.1 has also filed a Missing Person complaint and has coordinated with the police authorities.

5. This Petition is pending since the year 2019. An order was passed by this Court on 21 January 2020 wherein the learned APP had submitted the progress report. Affidavit is also filed by Shri S.B. Salve, Senior Inspector of Police, Kolsewadi police station, Kalyan on 19 March 2020, wherein the Inspector has stated as under :

“11. I say that pursuant to oral direction of this

Hon'ble Court on 4.3.2020 Special Investigation Team was formed by Commissioner of Police, Thane City under the supervision of Additional CP (Crime), Additional CP, East Region, Kalyan, DCP Zone III, Kalyan, ACP. Kalyan who will be monitoring the said missing complaint No. 160 of 2017. The said SIT consists of Senior Inspector of Police Kolsewadi Police Station, Assistant Police Inspector Palde and their staff, attached to Anti Robbery Cell, Zone-III, Kalyan, Women Police Sub Inspector Smt. Kokate and her staff attached to Khadakpada Police Station, Kalyan. I say that after SIT was formed following investigation has been carried out which is as under:-

- (I) Letters have been given to all nearby police stations & adjoining Police Stations near the creek whether any ADR has been registered since 12/12/2017, having similar data matching the missing person. Officers from SIT have also physically visited these police stations and verified, but nothing positive has revealed.*
- (II) Enquiries were made with the banks in which the missing person was having his Account so also with Income Tax Department whether missing person has used his PAN Card for last three years. Outcome of enquiry to be added but it is revealed from IT Department that no new account is opened and NO ITR has been filed since he went missing using his PAN Card.*
- (III) Again a letter has been given to different mobile companies whether there is purchase of new SIM card on the basis of Aadhar Card No.496287833725 of missing person; Outcome of enquiry to be added but it is revealed that no SIM card was purchased since he went missing*
- (IV) A letter has been forwarded to Cyber Cell to verify whether any WhatsApp messages have been exchanged on the mobile number of missing person since*

December 2017. Information is awaited.

- (V) *During enquiry, it was revealed that the missing person's Facebook Account was visited on 14.04.2018 on the account of Aapla Sinnar Group, Nashik. A letter has been forwarded to Cyber Cell, Crime Branch, Thane for providing information about Facebook Account of missing person. Detail Enquiry is going on regarding who has used that account. A person who is group admin of Aapla Sinnar i.e. Mr. Satish Madhav Sanap residing at Post Chincholi, Tal. Sinnar, Dist. Nashik has been enquired but nothing much has been revealed.*
- (VI) *Statement of one Usha Kakade, aunt of Respondent No.1 was recorded and she has disclosed that there were strained relations between Respondent No.1 and missing person.*
- (VII) *Again fresh enquiries were made with All 9 friends and relatives of missing Amol Survey.*
- (VIII) *A letter was also submitted to Additional Director General of Police, State CID, Pune for seeking information about un-identified dead bodies in state with similar description but nothing has been revealed.*
- (IX) *Enquiries were also made with Life Insurance Company whether there was any claim for insurance of missing person Amol Survey.*
- (X) *Enquiries were also made with Jail Authorities within the jurisdiction of Mumbai, Thane and Navi Mumbai about missing person Amol Survey.”*

6. Having heard the learned counsel for the parties and perusing the record, the moot question is whether the present fact situation can warrant issuance of writ of *habeas corpus*, which is founded on the premise that the corpus is illegally detained. The case of the Petitioners and Respondent No.1 itself indicates that the corpus is not illegally detained but has gone missing. The request is thus

making an effort to trace out Amol, who has gone missing. To issue a direction in the nature of writ of *mandamus* to the State authorities to investigate this case, it has to be established that there is total failure on the part of the investigating agency in their duty. The facts narrated above and the reply of the Senior Inspector of Police show that there is no such failure on the part of the investigating agency in its efforts and in fact special efforts are taken in this matter to form a Special Investigation Team [SIT]. Thus neither case is made out for issuance of writ of habeas corpus nor a writ of *mandamus*. The Petition cannot be just kept pending. However, since the Commissioner of Police, Thane City has taken efforts in forming SIT, we expect that the same efforts are continued. We direct the Additional Commissioner of Police (Crime), Thane City who is heading the SIT, to submit reports regarding the investigation every three months to the Commissioner of Police, Thane City, who will examine the same and take further steps as he deems it necessary. If the Petitioners and Respondent No.1 seek copies of the reports so submitted, they may be furnished with the same, unless the Commissioner is of the opinion that it will prejudice the investigation itself.

7. With these observations, the Writ Petition is disposed of.

(SARANG V. KOTWAL, J.)

(NITIN JAMDAR, J.)

Deshmane (PS)

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PRADIPKUMAR
PRAKASHRAO
DESHMANE
Date: 2021.11.18
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