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

CRIMINAL WRIT PETITION NO. 708 OF 2022

Kirtikumar Mulji Thakkar

... Petitioner

V/s.

The State of Maharashtra and Ors.

... Respondents

Mr. Manish M. Rathod for the Petitioner

Mr. Sukand Kulkarni i/b. Mr. Vivekkumar N. Singh for the
Respondent No. 7 to 9

Mr. K.V. Saste, APP for the Respondent - State

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***CORAM : NITIN JAMDAR &
N.R. BORKAR, JJ.***

DATE : 25 AUGUST 2022

P.C. :-

Heard the learned Counsel for the parties.

2. This Petition is filed for habeas corpus directing the Respondent Nos. 1 to 9 to procure the custody of the Petitioner's brother - the corpus Deepak Mulji Vadwai @ Thakkar.

3. The Petition was filed on 27 January 2022 and orders have been passed from time to time. Reply affidavit is filed on behalf

of Respondent Nos. 7, 8 and 9. The reply is also filed on behalf of the Investigating Officer.

4. The learned Counsel for Respondent Nos. 7,8 and 9 states that the Respondent No.7 is the sister of the corpus and because of the old age her brother - Deepak was admitted to the hospital. Thereafter, the complaints were lodged by the Petitioner. When Deepak was called to the police station, he had volunteered that due to the disputes he wished to go to the old age house. The Petitioner has gone to the old age house and raised disputes and the authorities of old age house asked Respondent No.7, the sister to take Deepak back home. Deepak was brought back to the house of the Respondent Nos. 7, 8 and 9 from the old age house. It is placed on affidavit by Respondent Nos. 7, 8 and 9 that Deepak is with them, that is in the sister's house. This affidavit is filed by the Respondent Nos. 7, 8 and 9 on 11 July 2022. The learned APP, on instructions, has submitted that the position narrated by Respondent Nos.7 to 9 is correct.

5. Today, the learned Counsel for the Petitioner sought to contend that when the Petitioner went to meet Deepak he was not found in the house of Respondent Nos. 7, 8 and 9. This is merely an oral assertion. There is no reason to disbelieve to the statement made on oath by Respondent No.7. The Respondent No.7 is the real sister of the corpus, as the Petitioner is the brother. It is not

disputed that Deepak was living with the sister- Respondent No.7 before he went to old age house and therefore, the assertion that now he is staying again with her cannot be considered as fanciful. Furthermore, the learned Counsel for the Respondent Nos. 7, 8 and 9 states that there is no impediment whatsoever for the Petitioner to visit Deepak in their house, provided the Petitioner maintains a cordial atmosphere. What is argued before us is a dispute between the brother and sister in respect of custody of their other brother. These issues and the rights of the parties will have to be examined by assessing evidence by the ordinary Courts and it is not possible to do so in the writ jurisdiction. We cannot hold that Deepak is illegally detained considering the relationship between the parties and the age of the corpus.

6. With these observations, the Petition is disposed of.

N.R. BORKAR, J.

NITIN JAMDAR, J.