



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1473 OF 2023

Mrs. Lalita W/o Rajesh Makode
@ d/o. Shri. Ramchandra Kisanrao
Uike

...Petitioner

Versus

The State of Maharashtra and others

...Respondents

Mr. Vaibhav Ugle a/w Mr. Vikas Somawanshi a/w Mr. Roshan
Chavan a/w Mr. Shubham Vasekar for the petitioner
Ms. S. S. Kaushik, APP for the State
Ms. Jaymala V. API, Kasarwadavali Police Station, Thane

**CORAM : REVATI MOHITE DERE &
GAURI GODSE, JJ.**

DATE : 9th AUGUST 2023

P.C. :

1. This petition is filed seeking a writ of Habeas Corpus to produce the petitioner's minor son – Harshvardhan, aged 3 years and 11 months. Respondent no. 3 is the petitioner's husband and

father of Harshvardhan. It is the case of the petitioner, that the respondent no. 3 had taken away Harshvardhan on 27th December 2022 and thereafter, his whereabouts were not known. Hence, by an order dated 4th May 2023, we issued notice to the respondents and respondent no. 2 was directed to ensure that the petitioner's son was produced before us on the next date.

2. On 16th June 2023, learned APP had requested for further time to produce the minor child on the next date. On 23rd June 2023, learned APP had made a statement that the police were trying to trace the respondent no. 3, however, he was not traceable. Hence, further time was granted as requested by the learned APP. On 14th July 2023, it was submitted by learned APP that respondent no. 3 was missing with the minor child from 24th May 2023, and that his mobile number was also found to be switched off. Learned APP also submitted that the police were taking steps to trace the minor child. On 14th July 2023, respondent no. 3 was present in person before us, hence, we directed him to produce the child on 17th July 2023 in the chamber at 2.00 p.m.

3. On 17th July 2023, neither the respondent no. 3 nor his advocate remained present. The concerned police officer informed us that she was unable to contact respondent no. 3 and that his whereabouts were not known. Hence, she requested some more time to produce the child. Accordingly, the matter was adjourned to 24th July 2023 and the police was directed to produce the child on the next date.

4. On 24th July 2023, we were informed by the learned APP that respondent no. 3 had taken away the child and his whereabouts were not known and all steps were being taken to trace the child. Hence, further time was requested by the police. We adjourned the matter to 7th August 2023, and liberty was granted to mention if the child was traced before the next date. On 7th August 2023, the matter was adjourned to 10th August 2023. On 9th August 2023, the matter was mentioned before us, and we were informed that respondent no. 3 had been traced by the police and the custody of the minor child had been taken by the police from the respondent no. 3, and was handed over to the petitioner-mother. The petitioner,

as well as the child, were present in the Court, and hence, we kept the matter in the chamber.

5. Learned counsel for the petitioner placed on record a short affidavit dated 9th August 2023 thereby stating that he had received a threatening call from the respondent no. 3 on his mobile. The said affidavit is taken on record. Learned APP tendered a list of the phone calls received by the learned counsel for the petitioner, thereby showing that the learned counsel for the petitioner had received calls on his number as stated in the affidavit. The said list produced by the learned APP is also taken on record. Learned APP is directed to forward the said affidavit of the learned counsel for the petitioner to the concerned police station for appropriate action in accordance with the law.

6. So far as the prayers in the petition are concerned, no further directions are necessary in view of the handing over of the minor child to the petitioner.

7. In the facts, we find it necessary to acknowledge and

appreciate the prompt and immediate action and efforts taken by Ms. Jaymala V. API, Kasarwadavali Police Station, Thane in tracing out the respondent no. 3 and producing the minor child before us. We request the learned APP to forward a copy of this order to the concerned Assistant Commissioner of Police for intimating our appreciation for the prompt and immediate action and efforts taken by Ms. Jaymala V., API along with her team.

8. Writ petition stands disposed of.

9. As recorded aforesaid, respondent no. 3 who was present in the Court on 14th July 2023 was directed to produce the child on 17th July 2023 at 2.00 p.m. in the chamber. However, respondent no. 3 committed a breach of the said order and went missing along with the child. Hence, we are inclined to issue suo-moto contempt notice against the respondent no. 3 for committing breach of our order dated 14th July 2023.

10. Office is directed to issue notice to respondent no. 3 to show cause as to why the action should not be taken against him for

committing breach of our order dated 14th July 2023. It is clarified that the notice is not to be treated as a notice prescribed under the Contempt of Courts Act. Notice is made returnable on 6th September 2023.

GAURI GODSE, J.

REVATI MOHITE DERE, J.