

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

WRIT PETITION NO.6484 OF 2021

Abdul Rehman Amin Jiledar Khan	]	.. Petitioner
Vs.		
1. The State of Maharashtra,	]	
Through Vikhroli Police Station, Mumbai	]	
2. Farida Khatoon	]	.. Respondents

Mr. Amit Dubey, i/by Mr. Ashok M. Saraogi, for the Petitioner.

Mr. A.R. Kapadnis, APP for Respondent No.1–State.

Mr. Omar Khaiyam Shaikh for Respondent No.2.

PSI Vijay Mohite, PSI, Vikhroli Park Site Police Station, Mumbai is present.

Ms. Farida Khatoon – Respondent No.2 is present.

Mrs. Khairunnisa Amin Khan, Mother of the Petitioner, is present.

CORAM : SUNIL B. SHUKRE & ABHAY S. WAGHWASE, JJ

DATE : 21ST MARCH, 2023.

[IN CHAMBER]

P.C. :

1. The mother of the petitioner and respondent no.2 has been produced before us by respondent no.2, with whom she is presently residing. Her name is Mrs. Khairunnisa Amin Khan. We have made enquiry with her; initially, the interaction with her alone, in the absence of the petitioner or the respondent no.2 and their respective counsel, but, later-on, the interaction was held by this court with Mrs. Khairunnisa Amin Khan in the presence of learned counsel for the petitioner, respondent no.2 and her learned counsel. Of-course, at that time, learned APP for respondent no.1–State was present.

2. Petitioner is absent as he was in difficulty to come to Mumbai today on account of rains in Pune. When we enquired with Mrs. Khairunnisa Amin Khan, in the absence of the parties, she stated that she was happily residing with respondent no.2 and she desires to continue to reside with respondent no.2 – her daughter. She further stated that she was not willing to reside with the petitioner – her son, as she says that the petitioner does not treat her well and even deprives her of basic needs of life. She also stated that she was happy and she would be happy if she was allowed to reside with respondent no.2.

3. When Mrs. Khairunnisa Amin Khan gave all these answers to the queries made by us, nowhere it appeared that she was under any stress or was speaking so under the tutelage of respondent no.2. In fact, we found her to be an old lady having her own convictions and opinions and we have also found her to be a lady who is physically and mentally fit to understand the queries made by this court and give rational answers to the questions posed by this court. That being the state of physiq and mind of Mrs. Khairunnisa Amin Khan, we do not think that the wish expressed by her during her initial enquiry should be disrespected by us.

4. Later-on, we made the same enquiry and posed similar questions to Mrs. Khairunnisa Amin Khan in the presence of learned counsel for the petitioner, learned counsel for respondent no.2, respondent no.2 and learned APP for respondent no.1–State. Even at that time, the answers given by Mrs. Khairunnisa Amin Khan were the same as in the earlier enquiry and even

now she is firm in her opinion and wish that she is happy residing with respondent no.2 – her daughter and she does not want to join the residence and the company of her son i.e. the petitioner.

5. Considering the mental and physical fitness of Mrs. Khairunnisa Amin Khan, we have no hesitation to accept the wish expressed by her. Consequently, we find that this is not a case of any illegal detention or detention beyond law on the part of respondent no.2. Rather, this is a case where Mrs. Khairunnisa Amin Khan is residing of her volition and accord and happily with respondent no.2 – her own daughter. There is no merit in the petition. The petition stands dismissed.

6. We direct that henceforth the petitioner shall not make any attempt to disturb his mother – Mrs. Khairunnisa Amin Khan in any way, unless help of the petitioner is voluntarily sought by Mrs. Khairunnisa Amin Khan – his mother.

[ABHAY S. WAGHWASE, J.]

[SUNIL B. SHUKRE, J.]