



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 948 OF 2023

Sudha Chowgule, an adult Indian
inhabitant, having address at Flat No.
30, 26th Floor, Kanchanjunga Building
72, Pedder Road, Mumbai-400 026

Petitioner

Versus

1. Jaya Patel, Bella Vista, Peddar
road, 72, Mumbai 400 026
2. State of Maharashtra

Respondents

WITH
INTERIM APPLICATION NO. 2680 OF 2023
WITH
INTERIM APPLICATION NO. 2681 OF 2023
IN
CRIMINAL WRIT PETITION NO. 948 OF 2023

Indu Paramanand Patel, an adult Indian
inhabitant, aged about 94 years,
occupation – business, residing at Bella
Vista, 72, Pedder Road, Mumbai-400026
and presently residing at C/o. Dr. Nimish
Chandulal Patel, Nimish Bungalow, Behind
Navrangpura Municipal Market,
Navrangpura, Ahmedabad, Gujarat, India,
Pin code - 380009

Applicant

In the matter between

Sudha Chowgule, an adult Indian
inhabitant, having address at Flat No. 30,

26th Floor, Kanchanjunga Building 72,
Pedder Road, Mumbai-400 026

Petitioner

Versus

1. Jaya Patel, Bella Vista, Peddar road,
72, Mumbai 400 026

2. State of Maharashtra

Respondents

Mr. Navroz Seervai, Senior Counsel, Mr. Ashish Kamat, Senior Counsel, Mr. Kunal Mehta a/w. Mr. Abhay Jadeja, Mr. Varun Satiya Ms. Snigdha Mankar and Ms.Aananya Daniel i/b. M/s. Jadeja and Satiya for the Petitioner.

Mr. Jamsheed Master a/w. Ms. Natasha Bhote i/b. Mr. Purazar Fouzdar for Respondent no. 1.

Ms. P. P. Shinde, APP for the State.

Mr. Sunny Shah a/w. Mr. Viral D. Shukla, i/b. M/s. Shukla & Associates for the Intervenor.

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

RESERVED ON : 17th AUGUST 2023

PRONOUNCED ON : 25th AUGUST 2023

ORDER :

1. This petition is filed seeking a writ of habeas corpus for production and immediate release of the petitioner's mother- Mrs.

Induben Patel (“Induben”), who, according to the petitioner, is illegally and wrongfully detained by respondent no. 1-Jaya Patel. The petitioner and respondent no. 1 are Induben’s daughters. Induben is 93 years old and presently is residing at Bella Vista Bungalow (Bella Vista) where even the respondent no. 1, resides.

2. On earlier occasion, we interacted with Induben through video conferencing. We have also interacted with the petitioner and respondent no. 1 in chamber. We were required to pass various orders permitting the petitioner and her family members to meet Induben as respondent no. 1 was not permitting the petitioner to meet Induben. In view of the objections raised by respondent no. 1 certain conditions were imposed while permitting the petitioner and her family members to meet Induben. With an intention to bring about an amicable settlement between the petitioner and respondent no. 1 as regards meeting Induben, various suggestions were made by us to the parties. However, unfortunately, the petitioner and respondent no. 1 could not arrive at any amicable settlement.

3. There are several litigations between the petitioner and respondent no. 1 and their families with respect to property disputes. Both parties have made serious allegations against each other, however, we do not wish to go into the allegations made by the petitioner and respondent no. 1 against each other. Present petition is concerned with the grievance of the petitioner that the respondent no. 1 has confined Induben at Bella Vista and is obstructing the petitioner and her family members from meeting Induben.

4. By earlier two orders dated 21st March 2023 and 12th July 2023, Ms. Manjiri Shah, Advocate, was appointed to meet Induben. Accordingly, Ms. Manjiri Shah met Induben on 25th March 2023 at Bella Vista bungalow in Mumbai and submitted her report dated 27th March 2023 in a sealed envelope. Pursuant to our order dated 12th July 2023, Ms. Shah met Induben on 14th July 2023 at Dr. Nimish Patel's house in Ahmedabad. On 14th July 2023, we interacted with Induben through video conferencing in the presence of Ms. Shah, who had visited Dr Nimish Patel's house to meet Induben.

5. In our order dated 28th June 2023, we have in detail referred to the report dated 27th March 2023 of Ms. Shah as well as her report dated 26th October 2021 submitted in Writ Petition No. 2430 of 2021 filed by respondent no. 1. Considering the peculiar facts of the case and the reports submitted by Ms Shah and having regard to the age of Induben we passed an order dated 28th June 2023. The relevant operative order in paragraph 7 of the said order reads as under:

“I) The Petitioner, her husband-Ashok, their children and grandchildren are permitted to meet Mrs. Induben Patel on every Monday, Wednesday and Friday from 10.00 a.m. to 11.00 a.m., until further orders. Any two family members are permitted to accompany on the said days.

II) The Petitioner her family members shall meet Mrs. Induben Patel in the covered area of the Portico of Bella Vista, 72, Peddar Road, Mumbai-26. We make it clear that no Advocate, Solicitor, or Chartered Accountant is permitted to accompany the Petitioner during any of the visits.

III) Neither the Petitioner/her family or the Respondent No. 1/family to videograph the meeting.

IV) The Nurse looking after Mrs. Induben Patel will be present at a visible but not at an audible distance, during the said meetings.

V) Respondent No. 1 / her family / any staff, shall not remain present during the said meetings/interactions.”

6. We directed that the said order dated 28th June 2023 would come into operation from 30th June 2023. On 5th July 2023 we were informed that our order dated 28th June 2023 was not complied with, as Induben had gone out of town and would return only after two weeks. We were informed that Induben had gone to Ahmedabad to stay with her brother Dr. Nimish Patel.

7. In our order dated 5th July 2023, after referring to the peculiar facts and circumstances under which the petitioner was unable to meet Induben, we recorded a prima facie finding that only with an intention not to permit the petitioner and her family members to meet Induben, respondent no.1 had made all possible efforts to remove Induben from Mumbai to prevent the petitioner and her family members from meeting Induben. We were of the prima facie opinion that respondent

no. 1 had deliberately committed a breach of our order dated 28th June 2023; hence we issued suo moto contempt notice against respondent no. 1 to show cause as to why action under the Contempt of Courts Act 1971 should not be initiated against her for committing a willful and deliberate breach of our order dated 28th June 2023. By the same order, we permitted the petitioner and her family members to meet Induben at Ahmedabad at the residence of Dr. Nimish Patel.

8. On 7th July 2023, we were informed that pursuant to our order, the petitioner had met Induben at Ahmedabad. On 12th July 2023, we were informed that Induben was still staying at the same place at Ahmedabad. Learned Senior Counsel appearing for the petitioner had made a request that the matter be heard in chambers so that we could interact with Induben through video conferencing. Thus on 7th July 2023 after hearing the parties, we passed the following order :

“I. Stand over to 14th July 2023 at 5.00 p.m. through video conferencing in chamber for interacting with Mrs. Mrs. Induben Patel in the presence of Ms. Manjiri Shah.

II. Ms.Shah shall interact with Mrs. Mrs. Induben Patel at the residence of Dr. Nimish Patel in Ahmedabad on 14th July 2023 prior to 5.00 p.m. so that Mrs. Mrs. Induben Patel is comfortable and at ease, before appearing before us on VC.

III. Respective Advocates for the petitioner and respondent no. 1 to accompany Ms. Shah to Ahmedabad, as agreed by the parties.

IV. The petitioner to make necessary arrangements for Ms. Shah's visit to Ahmedabad.

V. During the meeting of Ms. Shah with Mrs. Mrs. Induben Patel, in a separate designated room, and thereafter at 5.00 p.m., nobody else will be permitted to remain present, including Dr. Nimish Patel, his family members or the nurse attending Mrs. Mrs. Induben Patel.

VI. VC link will be provided to all concerned by the Registry on the same day.”

9. On 14th July 2023, we interacted with Induben through video conferencing in presence of the learned APP and Ms. Shah who was present with Induben at Ahmedabad. We adjourned the matter to 19th July 2023. Thereafter, we heard the matter in chambers on 19th July 2023. In view of the observations during our interaction with Induben

through video conferencing on 14th July 2023, we were of the view that the parties should make an attempt to explore the possibility of amicable settlement. Hence, learned counsel for respondent no. 1 had sought time to ponder over our suggestions regarding the possibility of an amicable settlement. It was also agreed between the parties that till the next date, Induben will not be moved out of Ahmedabad. In the meantime, the petitioner was allowed to meet Induben at Ahmedabad as per our order dated 5th July 2023.

10. On 1st August 2023, we heard the matter in chambers. In the meantime, an application was filed for intervention by Induben. We also heard the learned counsel appearing for Induben as an intervenor in the present matter. The interim application filed by Induben indicated that she was not illegally detained as alleged by the petitioner and that she, on her own wish, had gone to Ahmedabad. We therefore orally intimated the respective counsels regarding our observations during our interaction with Induben through video conferencing. We heard the parties at length in the chamber and adjourned the matter to 9th August 2023 for passing orders.

11. On 9th August 2023, the matter was adjourned to the next date i.e 10th August 2023. Thereafter on 10th August 2023, during the course of the hearing, the learned counsel for respondent no. 1 had tendered an affidavit in reply, which was taken on record. Considering the submissions made on behalf of the parties and those made by the learned counsel for Induben, we suggested that respondent no. 1 may consider filing an affidavit stating therein that every one, including the petitioner would have free and unfettered access to meet Induben.

12. Learned counsel appearing for Induben had submitted on instructions of Induben that her only wish was that none of her daughters (petitioner and respondent no. 1) should fight amongst themselves during their interaction. Thus, we adjourned the hearing to 17th August 2023 to enable the parties to file appropriate affidavits.

13. In view of the peculiar facts and circumstances of the case, we find it necessary to refer to the averments made in the two applications filed by Induben. In Interim Application No. 2680 of 2023 filed by Induben, it is prayed that she be included as party respondent in the present petition. A peculiar prayer is made by way of interim relief,

which reads as under :

“b. Pending the hearing and final disposal of the present Interim Application, this Hon’ble Court be pleased to keep the Orders dated 28th June 2023 and 5th July 2023 and or other orders passed in the present Writ Petition in abeyance to ensure that the Applicant is not compelled to meet with anyone, including the Petitioner, Respondent No. 1 and/or and their family members, against her wishes;”

14. It is pertinent to note that by way of aforesaid interim relief, it was prayed that the orders dated 28th June 2023 and 5th July 2023 be kept in abeyance. By order dated 28th June 2023, we permitted the petitioner and her family members to meet Induben at Bella Vista bungalow at Peddar Road, Mumbai. Various other directions were issued for the smooth interaction of the petitioner and her family members with Induben.

15. It is pertinent to note that the said order was not complied with as Induben was urgently moved to Ahmedabad even before the petitioner could meet her as per our order dated 28th June 2023. Hence, by a reasoned order dated 5th July 2023, we issued a suo moto

contempt notice against respondent no. 1 to show cause as to why action under the Contempt of Courts Act should not be initiated against her for committing willful and deliberate breach of our order dated 28th June 2023.

16. In view of the peculiar facts and circumstances of the case, we find it appropriate to reproduce the averment made in Interim Application No. 2680 of 2023 filed by Induben:

“3(b) The Applicant says and submits that dispute of her advance age, she can take her own independent decisions and does not require appointment of any guardian as sought. Regarding allegations of Applicant’s detention and confinement is concerned, the Applicant says and submits that Respondent No. 1 has not and had never detained nor does have Applicant’s custody against her will and wishes. Prior to 29th June 2023, the Applicant was willingly residing at her residence i.e. at Bella Vista, 72, Pedder Road, Mumbai-400 026 (“Bella Vista, Mumbai”) as per her own wishes, was happy and well taken care of. As the Applicant wished to visit her cousin Dr. Nimish Chandulal Patel, a resident at Ahmedabad, she travelled to her residence i.e. Nimish Bungalow, Behind Navrangpura Municipal

Market, Navrangpura, Ahmedabad-380009 (“Nimish Bungalow, Ahmedabad) as per her own will and wish. The Applicant submits that she is extremely happy and is well taken care at Nimish Bungalow, Ahmedabad by Dr. Nimish Patel and his wife and desires to continue staying at Nimish Bungalow, Ahmedbaad till she desires and will come back to her residence at Bella Vista, Mumbai as and when she desires.”

17. With reference to the aforesaid paragraphs, it is extremely pertinent to note and record that during our interaction with Induben through video conferencing, she informed us that she was unaware as to why she was brought to Ahmedabad. In fact, she was made to believe that, pursuant to court orders, she was brought to Ahmedabad. Therefore, it is necessary to record our aforesaid observations, as the aforesaid averment made on behalf of Induben in the application is contrary to what was communicated to us by Induben during our interaction. Interim Application No. 2681 of 2023 is also filed by Induben. The said application filed for interim relief seeks to recall orders dated 28th June 2023 and 5th July 2023. Even in the said

application, the similar contents as that in the paragraphs reproduced are stated in paragraph 3(b).

18. In view of such peculiar facts and circumstances, we had specifically communicated our observations to the learned counsel appearing for Induben during the hearing in chamber. However, learned counsel appearing for Induben and her Attorney had informed us that they both had interacted with Induben through video conferencing and were satisfied that the averments in the applications were made as instructed by her. The learned Attorney appearing for Induben had informed us that both the applications were signed by Induben at Ahmedabad in his presence through video conferencing, and the Attorney had identified Induben through video conferencing and later on he signed the applications, in Mumbai. The manner in which both the said applications were affirmed are far from satisfactory, however, we refrain from going into the same. Suffice to state, that some of the averments made in the said applications were contrary to what was disclosed by Induben to us during our interaction with Induben through video conferencing. Some of the contradictions are disclosed by us in this order.

19. In view of both the applications filed by Induben and the assurance given by her learned Attorney and the learned Counsel regarding the authenticity and genuineness of the contents of the applications, in normal course, nothing would survive in the present petition. However, considering the advanced age of Induben and the manner in which the facts and circumstances of the case have unfolded, we heard the learned counsel for the petitioner and respondent no. 1 as well as learned counsel for Induben. Our endeavour to hear all the parties was to ascertain whether Induben was illegally detained or not and whether Induben was actually taking her own decisions and was living a happy and comfortable life or not. Learned counsel for respondent no. 1 by relying upon the affidavit-in-reply of the respondent no. 1 has supported the contents of both the applications filed by Induben and submitted that the Bella Vista bungalow where Induben was residing is Induben's own bungalow, and she is living there on her own terms and conditions. However, considering the aforesaid facts and circumstances and the apprehensions and doubts expressed on behalf of the petitioner regarding the genuineness of the contents of the applications filed by Induben, during the course of the hearing on

10th August 2023, we suggested that respondent no. 1 may consider filing an affidavit thereby stating that everyone including the petitioner would have free and unfettered access to meet Induben.

20. Considering the submissions made by the learned counsel for Induben, we also suggested that the petitioner and respondent no. 1 file an affidavit that they would not fight amongst themselves during their interaction. To enable both parties to file their respective affidavits, we adjourned the matter to 17th August 2023.

21. Accordingly, on 17th August 2023, the petitioner and respondent no. 1 tendered their respective affidavits, which were taken on record. Before commenting on the contents of the said affidavits, we find it necessary to refer to our prima facie observations recorded in our order dated 5th July 2023 in paragraphs 12 to 16 which reads as under :

“12. Learned counsel for Respondent No. 1 has also placed on record a copy of an E-mail dated 4th July 2023 9:10 hours sent by Dr. Nimish Patel to the learned counsel for Respondent No. 1 thereby informing that Mrs. Induben Patel is staying with him and will return to Mumbai within few days after she

visits the places which she desires. Prima facie, we find all attempts are being made to defy the Court orders, by which Petitioner and her family were permitted to meet Mrs. Induben Patel. We find it necessary to record our displeasure as to the manner in which the Respondent No. 1 has made all possible attempts to see that our order dated 28th June 2023 is not complied with and the Petitioner is not allowed to meet Mrs. Induben Patel.

13. Learned counsel for Respondent No. 1 on instructions has made a statement that Mrs. Induben Patel has travelled to Ahmedabad by road on 28th June 2023. It is pertinent to note that the copy of E-mail dated 29th June 2023 at 20:44 hours sent by learned advocate for Respondent No. 1 to the Petitioner states as under;

“This is to inform you that my client Jaya Patel has just informed me that since she is travelling abroad from tomorrow her mother Mrs. Induben Patel has decided that she would like to stay with her relative Dr. Nimish Patel. Induben will return to Mumbai after 2 weeks once Jaya Patel is back in town which you may please note”.

14. Thus, from the said E-mail it appears that on 29th June 2023 Mrs. Induben Patel was very much in Mumbai and that she had only decided that she would like to stay with her relative Dr. Nimish Patel as Jaya Patel was travelling abroad from 30th June 2023. It is pertinent to note here that we permitted the Petitioner and others to meet Mrs. Induben Patel on 30th June 2023 vide our order dated 28th June 2023. The said order was passed after hearing the learned counsel for Respondent No. 1. The record shows that our order dated 28th June 2023 was uploaded on the very same day. Thus, it is clear that on the date of sending the aforesaid E-mail dated 29th June 2023, Respondent No. 1 was very well aware about our order dated 28th June 2023. Prima facie, we find that, only with an intention to not permit the Petitioner and her family to meet Mrs. Induben Patel, the Respondent No. 1 has made all possible efforts to remove Mrs. Induben Patel, aged 93 years from Mumbai, so as to prevent the Petitioner and her family from meeting Mrs. Induben Patel.

15. In view of the aforesaid facts, we are of the prima facie view that Respondent No. 1 has deliberately committed breach of our order dated 28th June 2023. Hence, we find it appropriate to issue suo moto contempt notice against Respondent No. 1 to

show cause as to why action under the Contempt of Courts Act should not be initiated against Respondent No. 1 for committing deliberate breach of our order dated 28th June 2023.

16. Considering the manner in which the facts of the matter have unfolded, we are also of the prima facie view that Respondent No. 1 has illegally detained Mrs. Induben Patel and is not permitting the Petitioner to meet Mrs. Induben Patel. When we expressed our displeasure, and kept the matter back to enable the learned counsel for Respondent No. 1 to take instructions, learned counsel on instructions of Dr. Nimish Patel submitted that Mrs. Induben Patel is presently staying with him on the address mentioned hereinabove and would be staying with him at least for two weeks and that she will not be shifted from there atleast for a period of one week from today. The said statement is accepted. Learned counsel for the Respondent No. 1 on instructions also submitted that the Respondent No. 1 and/or Dr. Nimish Patel has no objection if the Petitioner meets Mrs. Induben Patel on the address of Dr. Nimish Patel as stated herein above. In view of the said submissions, at this stage, we are not inclined to pass any order directing the police to verify the whereabouts of Mrs. Induben Patel. However, we

permit the Petitioner to meet Mrs. Induben Patel on the address of Dr. Nimish Patel at Ahmedabad.”

22. Perusal of the affidavit filed on behalf of the petitioner shows that the petitioner has undertaken that during her visits to her mother Mrs. Induben Patel, at Bella Vista, she will not fight or create any unseemly or untoward incidents so as to ensure a pleasant and congenial atmosphere for Mrs. Induben Patel.

23. A perusal of the affidavit dated 10th August 2023 filed on behalf of respondent no. 1 shows that respondent no. 1 has made various submissions. She has submitted in paragraph 3 and 4 as under :

“3. It is submitted that the said Induben is a highly educated adult of sound mind and she takes all her decisions by herself as to her day to day needs, wants, scheduling her meetings with friends and relatives, engaging staff to meet her personal needs, visiting places, and prosecuting and defending legal matters, amongst other things. The said Induben is mentally agile and capable of taking her own decisions.

4. I submit that all the decisions taken by the said Induben are of her own freewill and accord and I do

not impose any decisions on her as has been incorrectly sought to be made out in the present petition. I repeat, reiterate, adopt and confirm whatever is stated in my earlier affidavit dated 10th August 2023 as if the same is reproduced herein ‘in seriatim’. This includes but is not restricted to the contentions of maintainability and reiterate that the present petition is liable to be dismissed at the threshold.”

24. Respondent no. 1 has further, in paragraph 5, given an undertaking as under :

“5. I undertake to this Hon’ble Court that I never have and will continue not to impose any decisions on the said Induben or disobey her instructions as may be communicated to me, by her. I will not obstruct any visitor who comes to Bella Vista Bungalow after seeking prior appointment of Induben.”

25. The undertaking given by the respondent no. 1 in the said paragraph no. 5 contradicts the contents in said paragraph nos. 3 and 4, reproduced hereinabove i.e. Induben is highly educated, adult, of sound mind, capable of taking her own decisions and does not require any guardian. Thus, there is no question of the respondent no. 1 giving any

qualified undertaking as given by her in paragraph no. 5 of her said affidavit. Therefore, we accept the undertaking given by respondent no. 1 in the aforesaid paragraph 5 of her affidavit dated 10th August 2023 to the extent that the respondent no. 1 will not impose any decision on Induben and will not obstruct any visitor coming to Bella Vista to meet Induben.

26. Perusal of the report dated 26th October 2021 in Criminal Writ Petition No. 2430 of 2021 filed by Ms. Manjiri Shah and report dated 27th March 2023 of Ms. Shah submitted in a sealed envelope with reference to her visit to Mrs. Induben Patel's residence as per order dated 21st March 2023 passed in the present writ petition, indicates that Mrs. Induben Patel was desirous of meeting the petitioner and her family members as well as other relatives and friends, however, she was unable to meet everyone. Even in the aforesaid applications filed by Induben in the present petition and during our interaction with Induben through video conferencing she was not averse to meeting the petitioner and her family members, relatives and friends.

27. Although Induben in her applications has stated that she is capable of taking her own decisions and she, on her own volition, had gone to Ahmedabad and that respondent no. 1 had never detained nor does have her custody against her will and wishes, the same is contrary to what was disclosed to us by Induben through video conferencing, that she was unaware as to why she was brought to Ahmedabad and that she was made to believe that she was brought to Ahmedabad pursuant to Court orders. Induben had also expressed that she would like to step out of Bella Vista in the evenings for a drive or visit clubs with her family and friends. We may also note that she refrained from making any grievance against anyone including the petitioner and the respondent no. 1. During our interaction, on 14th July 2023 through video conferencing, with Induben during her stay at Ahmedabad, she also expressed that she wishes that both her daughters stop fighting. She had also indicated that the Bella Vista bungalow belongs to her, however, she expressed certain discomforts, which we refrain from spelling out in our order.

28. Perusal of the applications filed by Induben indicates that she takes her own decisions, and she herself decides as to where she wants

to live and who should meet her. Respondent no. 1 does not dispute the averment made by Induben in her applications. Respondent no. 1 has also reiterated the same in her aforesaid affidavit dated 10th August 2023.

29. In view of what is stated by Induben in her aforesaid applications and the affidavit cum undertaking of respondent no. 1 as observed by us in paragraph nos. 23 to 25, we do not see any impediment in anyone, including petitioner (Induben's daughter) and her family members from meeting Induben at Bella Vista or any other place where she is residing or from accompanying Induben step out of Bella Vista for a drive/go out for lunch or dinner or visit a doctor, as well as visit any of her friends and relatives including going to the petitioner's house or for going out for any other purpose.

30. Needless to state, that it is open for Induben to change her staff, including her caretaker, if she so desires.

31. We also accept the undertaking given by the respondent no. 1 as recorded by us in paragraph nos. 23 to 25 above and the undertaking given by the petitioner as recorded in paragraph no. 22 above.

32. Petition is disposed in the above terms.

33. In view of the aforesaid, Intervention Applications also stand disposed of.

All concerned to act on an authenticated copy of this order.

GAURI GODSE, J.

REVATI MOHITE DERE, J.