

Shahrukhkhan Rahimkhan Pathan vs State Of Gujarat & 9 on 29 September, 2017

Author: Abhilasha Kumari

Bench: Abhilasha Kumari, A.J. Shastri

R/SCR.A/7343/2017

ORDER

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION (HABEAS CORPUS) NO. 7343 of 2017

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SHAHRUHKHAN RAHIMKHAN PATHAN....Applicant(s)

Versus

STATE OF GUJARAT & 9....Respondent(s)

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Appearance:

MR SALIM M SAIYED, ADVOCATE for the Petitioner

MR JK SHAH, ADDL.PUBLIC PROSECUTOR for Respondent(s) No. 1-3

MR RAJESH KANANI, ADVOCATE, for Respondent(s) No. 4 - 9

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CORAM: HONOURABLE SMT. JUSTICE ABHILASHA KUMARI
and
HONOURABLE MR.JUSTICE A.J. SHASTRI

Date : 29/09/2017

ORAL ORDER

(PER : HONOURABLE SMT. JUSTICE ABHILASHA KUMARI)

1. This Habeas Corpus petition under Article 226 of the Constitution of India has been preferred by the petitioner with a prayer to direct respondent No.2, Police Inspector, Special Operation Group ("SOG") at Dabhan, Taluka:

Nadiya, District: Kheda, to produce the corpus of Bijal, whom he proposes to marry and who is also interested in getting married to him.

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2. It is the case of the petitioner that he and the corpus are residing in the same locality of Village Haijarabad and both are major and literate. The petitioner has studied upto B.Com.

and the corpus, who is aged twenty-one years is, at present, studying in the 4th year of the Physiotherapy course at Shree Ghantakaran Mahavir Physiotherapy College and Rehabilitation Center, Vavdi, Godhara. It is stated in the petition that the petitioner and the corpus are in love with each other and have known each other for more than three years. As they belong to different religions, their relationship is being opposed by respondents Nos.4 to 9, who are relatives and neighbours of the corpus. It is further stated that the corpus was kept under house arrest at the instance of respondents Nos.4 to 9. She was harassed to the extent that she even attempted to commit suicide. The family of the petitioner have suffered due to the tense atmosphere that prevailed in the village. It is further the case of the petitioner that in spite of such problems faced by them, they decided to get married to each other. Therefore, on 11.08.2017, they made an application under the Special Marriage Act, 1954, before the Marriage Registrar, Surat. A public notice came to be issued. The marriage was to be registered on 19.09.2017. In the meanwhile, the corpus left the house of her parents. She, in the company of the petitioner, went to undisclosed places in different parts of the country due to the threat to their safety. On 19.09.2017, when the petitioner and the corpus went to the Marriage Registrar's office for the registration of the marriage, Police personnel of the Special Operations Group took the petitioner and the corpus into custody. The petitioner was asked to go home. At that point of time, the corpus opted to go to the Nari Vikas Gruh, Paldi. It is in these circumstances that the present petition came to be filed.

3. Rule was issued in the petition on 25.09.2017, making it returnable on 29.09.2017. Today, when the petition is taken up, Mr.J.K.Shah, learned Additional Public Prosecutor, submits that the corpus is present in the Court.

4. We have spoken to the corpus, Bijal, in Chambers. She is a mature, educated and articulate young lady of twenty-one years. She has stated before us that she would like to go with the petitioner, whom she proposes to marry. have instigated the villagers and a dangerous situation has been created due to which the parents of the petitioner are unable to live in the village. The corpus apprehends that she and the

petitioner may be put to harm by certain elements, at the behest of respondents Nos.4 to

9. She has also stated that she is under a dire apprehension that respondents Nos.4 to 9 would cause the petitioner and her bodily harm which may even cost them their lives. She has informed the Court that the house of the petitioner was vandalised by people of the village and the parents of the petitioner had to flee. They are now living somewhere else and the same situation may reoccur when she goes with the petitioner. The corpus has therefore requested to be granted Police protection.

5. We have also spoken to the petitioner. He has informed us that after he and the corpus took the decision to get married, respondents Nos.4 to 9 instigated the villagers. This resulted in a dire situation in which the house of his parents was damaged, forcing his parents to go away and live somewhere else. The house of his aunt (Masi) was also vandalised. He stated that he was forced to file a petition in this Court for Police protection.

6. We have heard Mr.Salim M.Saiyed, learned advocate for the petitioner and Mr.J.K.Shah, learned Additional Public Prosecutor, for respondents Nos.1 to 3. Mr.Rajesh Kanani, learned advocate, states that he has received instructions to appear on behalf of respondents Nos.4 to 9. He prays for permission to file the Vakalatnama. He may do so.

7. Mr.Salim M.Saiyed, learned advocate for the petitioner, has drawn the attention of the Court to the order dated 14.09.2017, passed in Special Criminal Application No.7030 of 2017, by the learned Single Judge (Coram: A.J.Desai,J.) wherein, it has been stated as below:

"4.The Police Inspector, Nadiyad Rural Police Inspector, District - Kheda is hereby directed to provide police protection to the petitioner for a reasonable period of time as he may think fit and appropriate."

8. It is submitted by learned advocate for the petitioner that even after the passing of the above order for Police protection, the house of the petitioner's aunt (Masi) was vandalised and the household goods burnt by villagers at the instigation of respondents Nos.4 to 9, who are opposing the proposed marriage of the petitioner and the corpus. Attention has also been drawn to the application dated 05.09.2017, given by the brother of the petitioner to the Superintendent of Police, Nadiad, wherein allegations have been levelled against PSI Mr.Panchal of SOG who is stated to have directed two police constables to tie the brother of the petitioner to a "Neem" tree and beat him up. Mr.Salim M.Saiyed, learned advocate for the petitioner, has shown us photographs revealing the marks of brutal beatings on the body of the petitioner's brother. Two such photographs showing the said injuries were also annexed along with

Special Criminal Application No.7030 of 2017. He submits that it is after perusal of the material on record that the order for Police protection was passed, on 14.09.2017.

9. We have heard learned counsel for the respective parties and given thoughtful consideration to the submissions advanced before us.

10. It appears from the material on record that the issue regarding the proposed alliance of the petitioner with the corpus has flared up to such an extent that the situation has become very delicate. It is being given a communal colour by persons who want to disrupt the rule of law. Such persons should not be allowed to succeed in their objectives of disrupting peace and tranquility.

11. The Constitution of India grants protection and HC-NIC Page 7 of 16 Created On Fri Sep 29 23:41:56 IST 2017 R/SCR.A/7343/2017 ORDER guarantees the right to life under Article 21, to all citizens of India, irrespective of the faith they profess. The corpus is an adult capable of taking her own decisions regarding her life and future. She has taken a conscious decision to get married to the petitioner, in spite of the commotion that has taken place and the tension that has brewed due to this decision. She has every right to do so. Her decision to marry the petitioner does not give anybody the right to endanger her life and safety or that of the petitioner and his relatives.

12. It is clear from the record that certain elements such as respondents Nos.4 to 9, are instigating and worsening the situation and creating a communally volatile atmosphere. It is significant to note that the father of the corpus has not been made a party to the petition and respondents Nos.4 to 9, who are relatives and neighbours, have been joined as parties as they are stated to be the ones who are instigating persons and brewing discontent in HC-NIC Page 8 of 16 Created On Fri Sep 29 23:41:56 IST 2017 R/SCR.A/7343/2017 ORDER society.

13. In *Lata Singh v. State of U.P. And Another* - (2006)5 SCC 475, the Supreme Court has discussed at length the right to life under Article 21 of the Constitution of India and the freedom of conscience and expression in the context of the right to marry a person of one's own choice. The observations made by the Supreme Court are relevant in the context of the present petition and, therefore, are being quoted hereinbelow:

"14. This case reveals a shocking state of affairs. There is no dispute that the petitioner is a major and was at all relevant times a major. Hence she is free to marry anyone she likes or live with anyone she likes. There is no bar to an inter-caste marriage under the Hindu Marriage Act or any other law. Hence, we cannot see what offence was committed by the petitioner, her husband or her husband's relatives.

15. We are of the opinion that no offence was committed by any of the accused and the whole criminal case in question is an abuse of the process of the Court as well as of HC-NIC Page 9 of 16 Created On Fri Sep 29 23:41:56 IST 2017 R/SCR.A/7343/2017 ORDER

the administrative machinery at the instance of the petitioner's brothers who were only furious because the petitioner married outside her caste. We are distressed to note that instead of taking action against the petitioner's brothers for their unlawful and high-handed acts (details of which have been set out above) the police has instead proceeded against the petitioner's husband and his relatives.

16. Since several such instances are coming to our knowledge of harassment, threats and violence against young men and women who marry outside their caste, we feel it necessary to make some general comments on the matter. The nation is passing through a crucial transitional period in our history, and this Court cannot remain silent in matters of great public concern, such as the present one.

17. The caste system is a curse on the nation and the sooner it is destroyed the better. In fact, it is dividing the nation at a time when we have to be united to face the challenges before the nation unitedly. Hence, inter-caste marriages are in fact in the national interest as they will result in destroying the caste system. However, disturbing news are coming from several HC-NIC Page 10 of 16 Created On Fri Sep 29 23:41:56 IST 2017 R/SCR.A/7343/2017 ORDER parts of the country that young men and women who undergo inter-caste marriage, are threatened with violence, or violence is actually committed on them. In our opinion, such acts of violence or threats or harassment are wholly illegal and those who commit them must be severely punished. This is a free and democratic country, and once a person becomes a major he or she can marry whosoever he/she likes. If the parents of the boy or girl do not approve of such inter-caste or inter-religious marriage the maximum they can do is that they can cut off social relations with the son or the daughter, but they cannot give threats or commit or instigate acts of violence and cannot harass the person who undergoes such inter-caste or inter-religious marriage. We, therefore, direct that the administration/police authorities throughout the country will see to it that if any boy or girl who is a major undergoes inter-caste or inter-religious marriage with a woman or man who is a major, the couple are not harassed by any one nor subjected to threats or acts of violence, and any one who gives such threats or harasses or commits acts of violence either himself or at his instigation, is taken to task by instituting criminal proceedings by the police against HC-NIC Page 11 of 16 Created On Fri Sep 29 23:41:56 IST 2017 R/SCR.A/7343/2017 ORDER such persons and further stern action is taken against such persons as provided by law.

18. We sometimes hear of 'honour' killings of such persons who undergo inter-caste or inter-religious marriage of their own free will. There is nothing honourable in such killings, and in fact they are nothing but barbaric and shameful acts of murder committed by brutal, feudal minded persons who deserve harsh punishment. Only in this way can we stamp out such acts of barbarism.

19. In the circumstances, the writ petition is allowed. The proceedings in Sessions Trial No. 1201/2001 titled State of U.P. v. Sangita Gupta and Ors. arising out of FIR No.

336/2000 registered at Police Station Sarojini Nagar, Lucknow and pending in the Fast Track Court V, Lucknow are quashed. The warrants against the accused are also quashed. The police at all the concerned places should ensure that neither the petitioner nor her husband nor any relatives of the petitioner's husband are harassed or threatened nor any acts of violence are committed against them. If anybody is found doing so, he should be proceeded against sternly in accordance with law, by the authorities concerned."

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(emphasis supplied)

14. The petitioner and the corpus have a right to marry each other if they so desire as both are adults. Their right to life is guaranteed under Article 21 of the Constitution of India and no person, leave alone, respondents Nos.4 to 9, can take away this right. The persons who create tension and turmoil in society are doing this country a disservice and should be dealt with strongly by the Police force. The Police force cannot succumb to elements who foment tension in society. Rather, they should uphold and preserve the rule of law.

15. We are quite disturbed to read the contents of the complaint dated 05.09.2017, given by the petitioner to the Superintendent of Police, wherein certain Police officers have been named and the manner in which the brother of the petitioner was beaten, has been described. In order to ensure that peace and tranquility prevails and the Police is not blamed for abetting such tension and violence, it would behove the concerned Police authorities to HC-NIC Page 13 of 16 Created On Fri Sep 29 23:41:56 IST 2017 R / S C R . A / 7 3 4 3 / 2 0 1 7 O R D E R seriously look into this matter. Police should act as guardians and protectors, not as predators.

16. In view of the above, we are in full agreement with the corpus and the petitioner that they require Police protection. After perusal of the material on record, we cannot say that respondent No.2 can be trusted to provide Police protection to the corpus and the petitioner. Therefore, we do not consider it appropriate to send the corpus and the petitioner under the escort of respondent No.2.

17. Learned Additional Public Prosecutor has been requested by us to arrange for Police personnel from the Sola Police Station, Ahmedabad, to escort the petitioner and the corpus.

18. The Police personnel from Sola Police Station, Ahmedabad, shall escort the corpus and the petitioner and take them safely to their destination.

19. The Superintendent of Police, Kheda□Nadiad, HC-NIC Page 14 of 16 Created On Fri Sep 29 23:41:56 IST 2017 R/SCR.A/7343/2017 ORDER shall ensure the safety and protection of the lives and property of the corpus, the petitioner and his family members. He shall also ensure that no retaliatory action is taken by respondents Nos.4 to 9 or their ilk, or even the Police personnel of respondent No.2 in view of the complaint, after the passing of this order.

20. Whenever a complaint is made by the petitioner, his family members or the corpus, the Police authorities shall be duty bound to immediately extend protection and help to them. They shall not come under the influence of any persons wielding any kind of power, including executive or political. In order to prevent an untoward situation from occurring, the Superintendent of Police may take all possible preventive measures, in accordance with law.

21. With the above directions, the petition is allowed. The corpus Bijal is at liberty to accompany the petitioner, if she so desires. Rule is made absolute, accordingly.

22. A copy of this order be made available to the HC-NIC Page 15 of 16 Created On Fri Sep 29 23:41:56 IST 2017 R/SCR.A/7343/2017 ORDER learned Additional Public Prosecutor for necessary action.

(SMT. ABHILASHA KUMARI, J.) (A.J. SHASTRI, J.) sunil HC-NIC Page 16 of 16 Created On Fri Sep 29 23:41:56 IST 2017