

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CRIMINAL APPLICATION NO. 1615 of 2022**

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VASAYA YUNUSALI ALARAKHABHAI

Versus

STATE OF GUJARAT

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Appearance:

MS LAKSHA K BHAVNANI(11339) for the Applicant(s) No. 1

MS SETU P JOSHI(10849) for the Applicant(s) No. 1

for the Respondent(s) No. 2

MS JIRGA JHAVERI, ADDL.PUBLIC PROSECUTOR for the Respondent(s)
No. 1

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CORAM: **HONOURABLE MS. JUSTICE SONIA GOKANI**

and

HONOURABLE MRS. JUSTICE MAUNA M. BHATT

Date : 05/05/2022

ORAL ORDER

(PER : HONOURABLE MS. JUSTICE SONIA GOKANI)

1. This Court on 08.02.2022 in this petition under Article 226 of the Constitution of India issued the notice by passing the following order:

“1. The petitioner is a father of one of the persons (corpus) who is alleged to have been illegally detained by the respondent no.2. The prayers sought for in this petition is as follows: -

“(A) Your Lordships may kindly be pleased to admit and allow the present petition;

(B) Your Lordships may kindly be pleased to issue a writ of habeas Corpus and / or any other appropriate writ, order or direction directing the Respondent No. 2

to produce the Corpuses namely 'Vasaya Nadeem Yunusali' and girl namely Kukreja Jayaben Hareshkumar' before this Honorable Court, the custody of the Corpuses be handed over to the Petitioner in the interest of her parental home and moreover, it was an absolutely illegal act on the part of the respondent no.2.

(C) Pending admission, hearing and final disposal of this Petition, Your Lordships may kindly be pleased to direct the Respondent No. 2 to produce Corpus namely 'Vasaya Nadeem Yunusali' and girl namely Kukreja Jayaben Hareshkumar' before this Honorable Court in the interest of justice;

(D) Your Lordship may kindly be pleased to grant such other and further relief(s) as may seem just and proper in the facts and circumstances of the case.”

2. It appears that both, the son of the petitioner and the girl – Jaya had intended to marry each other. This being interreligious/interfaith marriage, the notice of intended marriage was issued under Section 5 addressed to the marriage officer for Bhavnagar District on 14.12.2021. Before the same could be actually performed, on completion of 30 days period, it is alleged that they both were illegally taken away by the respondent no.2. Some of the family members had been beaten up badly. The photographs of which are

forming part of the petition. The medical report dated 18.12.2021 also reflects the names of those persons who have allegedly beaten up the family members.

3. Learned advocate Ms. Laksha Bhavnani appearing with learned advocate Ms. Setu Joshi for the petitioner has urged that once the respondent came to know of this petition of habeas corpus, they have chosen to release both the corpora. However, the marriage has not taken place as the girl is sent at her parental home and moreover, it was an absolutely illegal act on the part of the respondent no.2.

4. Issue Notice returnable on 11.02.2022. Learned Additional Public Prosecutor waives service of notice for and on behalf of the respondent authorities.

5. Learned APP shall gather the details and shall file an affidavit of the respondent no.2 which shall be also vetted by the Superintendent of Police, Bhavnagar.

6. The girl has been allegedly forcibly sent to her residence. The Superintendent of Police, Bhavnagar shall ensure her production before this Court through video conference from the District Legal Services Authority, Bhavnagar in presence of the Chair Person, District Legal Services Authority, Bhavnagar at 1:30 p.m. on 11.02.2022. The Superintendent of Police, Bhavnagar also shall remain present on that day.”

2. Thereafter, on 11.02.2022 the corpus was presented before this Court and the following order came to be passed:

“1. By a detailed order, this Court on 08.02.2022 had made a request to the Chair Person, District Legal Services Authority, Bhavnagar to remain present before us.

2. Considering the seriousness of the issue, according to learned APP, there are certain revelations which she would not like to make as there are parallel inquiries going on where the Superintendent of Police Bhavnagar is directed by the trial Court to inquire/ investigate in this matter. Again, the applicant has filed revision application against the order of the Additional Chief Judicial Magistrate before the Court of learned Additional Sessions Judge.

3. Mr. Jaypalsingh Rathore, Superintendent of Police, Bhavnagar is also present through video conference who has ensured conducting of inquiry in the best possible manner efficiently and expeditiously. He also further has confided that other such incidents since have come to his notice, he has undertaken the inquiry with requisite seriousness as also dispassionately.

4. Considering the version of the corpus who is present today before this Court through video conference along with the Chair Person, District Legal Services Authority, Bhavnagar and

the Principal District Judge, Bhavnagar and the Superintendent of Police, Bhavnagar, she has no force from any quarter and she, out of her own volition, has chosen to join her parents. Noticing the prayers of this petition, the petition no longer would survive as the corpus is not in illegal custody, hence, no indulgence of this Court is warranted.

5. However, as the matter is pending before the Court of learned Additional District Judge, Bhavnagar, let the report be sent to this Court. For that limited purpose, the matter is kept on 08.03.2022.

6. We acknowledge and appreciate the presence of the Chair Person, District Legal Services Authority and that of Superintendent of Police, Bhavnagar in a short span with all necessary details.”

3. The report of Superintendent of Police, Bhavnagar dated 05.03.2022 is produced on the record which is addressed to the learned 5th Additional Sessions Judge, Bhavnagar and in our order dated 16.03.2022 Superintendent of Police, Bhavnagar was required to remain present before this

Court in absence of any report produced before this Court.

4. This Court deemed it appropriate to examine the guidelines issued by the Home Department in relation to the preservation of CCTV camera footage as also the internal guidelines issued when there are complaints against the police officials and accordingly the following order came to be passed on 25.03.2022:

“1. Pursuant to our direction dated 16.3.2022, today, Mr. Jaypalsinh Rathod, Superintendent of Police, Bhavnagar is before us. We had couple of queries which he has answered and we could gather that the first time he could come to know about the incident on 25.1.2022, the time when the summons was served upon him and onus by the Sessions Court in relation to the requirement of CCTV footage in the inquiry. According to him, none of his officers at any stage had intimated him of the serious allegations which had been made against some of the police officers. He emphasized that

he has not been kept in loop by others who had been also summoned by the Court at an earlier stage.

2. With regard to the CCTV footage, according to him, by the time he received the summons on 25.1.2022, the period of 30 days was over as the preservation of CCTV footage is only for a limited period of 30 days and beyond that period, overwriting is automatically done. He has further submitted that the inquiry in this relation is being going on, the report which was needed to be submitted at his end has been made now, it is pending before the Court of learned 5th Additional District Judge.

3. We have since noticed certain lapses in this matter, we need to also examine the guidelines issued by the Home Department in relation to the preservation of the CCTV footage and also their internal guidelines which may have been issued when there are complaints against the police officials. It is also a serious concern that such serious complaint for more than four weeks is not brought to the notice of the head of the District of Police force.

4. Learned APP ensures to share the copies of these with the Court on 29.3.2022.

5. Learned advocate Ms. Laksha Bhavnani for the petitioner has submitted to this Court that the girl since has disclosed her mind, there is nothing further at her end to submit in this matter. We also have been ensured by Mr. Jaypalsinh Rathod, Superintendent of Police, Bhavnagar, that henceforth there shall be a specific directions which he shall be issuing and he shall also have the detailed internal mechanism for the purpose of such eventualities as he realized that the most powerful, vital and neutral evidence is allowed to be lost deliberately or because of the limitation of the system.”

5. Learned APP, Ms.Jhaveri has produced the guidelines of 09.07.2018 issued by the Home Department for maintaining Standard Operating Procedure ('the SOP' hereinafter) for Remote Monitoring System ('the RMS' hereinafter). These, according to the learned advocate, Ms.Bhavani assisted by

learned advocate, Ms.Setu Joshi are the guidelines which are not in accordance with what has been directed by the Apex Court.

6. We have noticed that Secretary, Home Department, Ms.Nipuna Torawane has in her affidavit stated that the large number of information complaints are received at the police stations, which includes complaints regarding cognizable offences, non cognizable offences, information regarding missing persons, unnatural deaths and miscellaneous complaints and as the Station House Officer ('the SHO' hereinafter) deals with such information and takes necessary actions as per the procedure prescribed, the Police Manual, Part-III, Section 46 provides thus:

“46. Special Reports of Important Events.

(1) (a) All matters of the kind specified below should be

immediately reported to Government in Home Department by “Priority” signal or telegram:

(i) Riots which involves a serious breach of the public peace.(In reporting, instructions issued in the preceding Rule should be closely followed).

(ii) All collisions between foreigners of all Classes and Indians, including shooting accidents but excluding alleged assault of any kind regarding which there is no confirmation and assaults of a positively insignificant character.

(iii) Outrages which have a political aspect, including any act of violence or attempted violence directed against person in authority or connected in any way with factious associations or class agitation.

(iv) Every serious encounter with dacoits in which the police or other persons in authority are wounded or killed, even though the case is being dealt with by the ordinary Police Force and does not indicated any likelihood of any dangerous outbreak of crime.

(v) All other events which have a political or administrative importance, such as strikes.

(b) All wireless messages or telegrams about any agitation, riots, communal disturbances, Police firings, cane charges, Gheraos, students’ unrest, etc.”

6.1 She also pointed out the Circular dated 18.06.2014 issued by the Director General of Police is with regard to informing the Home Department by the Superintendent of Police in respect of incidence of crime occurred which directly affects the law and order situation of the place/District.

6.2 In 2020, the Director General of Police also issued the direction for informing the Home Department by the District Police Head about the incident of offence/crime affecting law and order.

6.3 Noticing that the earlier issued directions had not been complied with, once again on 17.12.2021 the Circular had been issued mandating the compliance of these directions.

6.4 On 13.08.2021 these directions have been reiterated at the end of the Director General of Police and the Office of Inspector General (law and order). Copies of all these circulars for intimating the incident of crime immediately to the Government dated 17.09.2021, 27.12.2021, 07.01.2022 and 01.02.2022 are forming the part of this affidavit. The Special Report is sent in case of murder, attempt to murder, dacoity and robbery. The other matters are dealt with by SHO locally and supervised by Sub Divisional Police Officer ('the SDPO' hereinafter) in Districts and Assistant Commissioner of Police in Police Commissionerate area. The Superintendent of Police and the Deputy Commissioner of Police periodically review the work done by the SHO.

6.5 It is admitted that the issue relating to the missing girls and the allegations of harassment by the police when are dealt with, the complaints regarding the missing persons have not been reported by a Special Report, however, the harassment by local police officers if comes to the knowledge of the Senior Officer and if it is escalated by complaint or it is brought to the knowledge of higher authority by the supervisory officer or SHO, the complainant can approach the Range Head or the Police Head i.e. the Director General and Inspector General of Police, Home Department, District Level Police Complaint Authority. The grievances are addressed at various level, there is no

specific guidelines issued to intimate the District Police Head when there are complaints regarding the police harassment.

7. The guidelines of 09.07.2018 issued from the Office of Director General and Inspector General of Police gives the detailed modality of working of the RMS as in all police stations the CCTV camera system are installed for preventing the incident of custodial violence, non registration of First Information Report as also the violation of human rights etc. following the decision of the Apex Court rendered in case of ***D.K.Basu vs. State of West Bengal & others***, reported in ***(2015) 8 SCC 744*** and thereafter reiterated in Criminal Miscellaneous Petition No.16086 of 1997 r/w Criminal Miscellaneous Petition

No. 19694 of 2010 on 02.09.2015. For enhancing the quality of services rendered by the police and for the use of technology these guidelines have been formulated.

7.1 It mandates maintaining of Dead Stock Register in all offices of Superintendent of Police with the District level. The Superintendent of Police or the Police Commissioner is expected to monitor at least once in a week through the RMS, the CCTV Camera System and the video footage. All the gadgets of their RMS shall need to be maintained by a Wireless Sub Inspector after giving him the training in this respect. It also mandates the preservation of the video footage of CCTV camera for 30 days' period. There are many complaints for the use and maintenance of

this CCTV Camera System and it has been mandated that the strictest actions be taken if some police personnel or the officers continue do the objectionable activities.

7.2 The detailed guidelines further says as to in what manner the misbehavior or the unpalatable actions with the citizens should be checked.

8. This very clearly gives the indications as to how for the Gujarat Police office of DG & IG has been vigilantly directing every police station to follow the use and maintenance of the CCTV footage. It has also further detailed the manner in which the Head of the District to monitor the CCTV footage every week at least in one

case and thereafter, to take necessary actions as directed in the very guidelines. However, from the affidavit which has been filed by the Secretary, Home Department, it is quite clear that there are various levels of redressing the different kind of grievances for the complaints, but there is no specific guideline issued to intimate the District Police Head when there are complaints regarding the police harassment in the District. There is no specific direction for the senior police officer or the Superintendent of Police to be intimated of such harassment. Every police station is equipped with this technology and the advancement of this technology is for the succor of the citizen.

9. We need to also make a reference of the

decision of the Apex Court rendered in case of **PARAMVIR SINGH SAINI VS. BALJIT SINGH AND OTHERS**, reported in **(2021) 1 SCC 184** where the question was of installation of CCTV cameras in police stations and credible recording of evidence and safeguarding the human rights inside the police stations. The Apex Court vide its order dated 03.04.2018 directed that the Central Oversight Body (referred to as COB) to be set up by the Ministry of Home Affairs to implement the plan of action with respect to the use of videograph in the crime scene during the investigation.

9.1 The Apex Court also referred to the decision issued in case of **D.K.Basu (supra)** to hold that there was a need for further directions that in every State an

oversight mechanism be created whereby the independent committee can study the CCTV camera footage and periodically publish a report of its observations thereon. The COB also may issue the appropriate direction from time to time so as to ensure that use of videography becomes a reality in a phased manner. It had also given the constitution of the District Level Oversight Committee and eventually enlisted the duties and the responsibilities for working maintenance and recording of CCTV.

9.2 Apt would be to refer to the guidelines and the mandate given by the Apex Court in this regard.

“14. The duty and responsibility for the working, maintenance and recording of CCTVs shall be that of the SHO of the police station concerned. It shall be the duty and obligation of the SHO to 7 immediately report to the DLOC any fault with the equipment or malfunctioning of

CCTVs. If the CCTVs are not functioning in a particular police station, the concerned SHO shall inform the DLOC of the arrest / interrogations carried out in that police station during the said period and forward the said record to the DLOC. If the concerned SHO has reported malfunctioning or non-functioning of CCTVs of a particular Police Station, the DLOC shall immediately request the SLOC for repair and purchase of the equipment, which shall be done immediately.

15. The Director General/Inspector General of Police of each State and Union Territory should issue directions to the person in charge of a Police Station to entrust the SHO of the concerned Police Station with the responsibility of assessing the working condition of the CCTV cameras installed in the police station and also to take corrective action to restore the functioning of all non-functional CCTV cameras. The SHO should also be made responsible for CCTV data maintenance, backup of data, fault rectification etc.

16. The State and Union Territory Governments should ensure that CCTV cameras are installed in each and every Police Station functioning in the respective State and/or Union Territory. Further, in order to ensure that no part of a Police Station is left uncovered, it is imperative to ensure that CCTV cameras are installed at all entry and exit points; 8 main gate of the police station; all lock-ups;

all corridors; lobby/the reception area; all verandas/outhouses, Inspector's room; SubInspector's room; areas outside the lock-up room; station hall; in front of the police station compound; outside (not inside) washrooms/toilets; Duty Officer's room; back part of the police station etc.

17. *CCTV systems that have to be installed must be equipped with night vision and must necessarily consist of audio as well as video footage. In areas in which there is either no electricity and/or internet, it shall be the duty of the States/Union Territories to provide the same as expeditiously as possible using any mode of providing electricity, including solar/wind power. The internet systems that are provided must also be systems which provide clear image resolutions and audio. Most important of all is the storage of CCTV camera footage which can be done in digital video recorders and/or network video recorders. CCTV cameras must then be installed with such recording systems so that the data that is stored thereon shall be preserved for a period of 18 months. If the recording equipment, available in the market today, does not have the capacity to keep the recording for 18 months but for a lesser period of time, it shall be mandatory for all States, Union Territories and the Central Government to purchase one which allows storage for the maximum period possible, and, in any case, not below 1 year. It is also made clear that this will be reviewed by all the States*

so as to purchase equipment which is able to store the data for 18 months as soon as it is commercially available in the market. The affidavit of compliance to be filed by all States and Union Territories and Central Government shall clearly indicate that the best equipment available as of date has been purchased.

18. Whenever there is information of force being used at police stations resulting in serious injury and/or custodial deaths, it is necessary that persons be free to complain for a redressal of the same. Such complaints may not only be made to the State Human Rights Commission, which is then to utilise its powers, more particularly under Sections 17 and 18 of the Protection of Human Rights Act, 1993, for redressal of such complaints, but also to Human Rights Courts, which must then be set up in each District of every State/Union Territory under Section 30 of the aforesaid Act. The Commission/Court can then immediately summon CCTV camera footage in relation to the incident for its safe keeping, which may then be made available to an investigation agency in order to further process the complaint made to it.

19. The Union of India is also to file an affidavit in which it will update this Court on the constitution and workings of the Central Oversight Body, giving full particulars thereof. In addition, the Union of India is also 10 directed to install CCTV cameras and recording equipment in the

offices of:

(i) Central Bureau of Investigation (CBI)

(ii) National Investigation Agency (NIA)

(iii) Enforcement Directorate (ED)

(iv) Narcotics Control Bureau (NCB)

(v) Department of Revenue Intelligence (DRI)

(vi) Serious Fraud Investigation Office (SFIO)

(vii) Any other agency which carries out interrogations and has the power of arrest.

As most of these agencies carry out interrogation in their office(s), CCTVs shall be compulsorily installed in all offices where such interrogation and holding of accused takes place in the same manner as it would in a police station. The COB shall perform the same function as the SLOC for the offices of investigative/enforcement agencies mentioned above both in Delhi and outside Delhi wherever they be located.

20. The SLOC and the COB (where applicable) shall give directions to all Police Stations, investigative/enforcement agencies to prominently display at the entrance and inside the police stations/ offices of investigative/enforcement

agencies about the coverage of the concerned premises by CCTV. This shall be done by large posters in English, Hindi and vernacular language. In addition to the above, it shall be clearly mentioned therein that a person has a right to complain about human rights violations to the National/State Human Rights Commission, Human Rights Court or the Superintendent of Police or any other authority empowered to take cognizance of an offence. It shall further mention that CCTV footage is preserved for a certain minimum time period, which shall not be less than six months, and the victim has a right to have the same secured in the event of violation of his human rights.

21. Since these directions are in furtherance of the fundamental rights of each citizen of India guaranteed under Article 21 of the Constitution of India, and since nothing substantial has been done in this regard for a period of over 2½ years since our first Order dated 03.04.2018, the Executive/Administrative/ police authorities are to implement this Order both in letter and in spirit as soon as possible. Affidavits will be filed by the Principal Secretary /Cabinet Secretary/Home Secretary of each State/ Union Territory giving this Court a firm action plan with exact timelines for compliance with today's Order. This is to be done within a period of six weeks from today.

22. We record our gratitude to Shri Siddhartha Dave, learned Amicus Curiae, for rendering his services to this

Court.”

9.3 This dictum insists on the CCTV system to be installed with night vision and to consist of audio and video footage both. The Apex Court has also asked for the requirement of the CCTV footage to be preserved for a period of six months and a firm action plan to be submitted within six weeks.

10. This in addition to what has been already directed by way of guidelines in the year 2018 by the office of Director General and Inspector General of Police will take care of the maintenance of the CCTV cameras.

11. According to the learned APP, Ms.Jhaveri, for fulfilling the directions

of the Apex Court, the mechanism is already underway. She has taken the instructions to ensure this Court that pursuant to this mandate and the guidelines issued by the Apex Court, the process is on and it is soon to be completed. Therefore, no further directions in respect of this will be additionally needed till the new system is purchased and installed.

12. Let the other guidelines which have been directed by the Apex Court, if are not otherwise presently hampered by the technological limitations be followed. All police stations should be intimated the guidelines issued in case of **PARAMVIR SINGH SAINI (supra)**.

13. According to us, any incident of the alleged atrocities or involvement of the police officers in violation of mandatory

guidelines shall at least be intimated to the Head of the District, i.e. to the Superintendent of Police or the Police Commissioner, as the case may be. Let a specific guidelines in that respect also be initiated. It is one thing for the Superintendent of Police himself to find out from the CCTV camera footage the misbehavior or the misconduct and it is another thing when he, as the District Head, is made aware of such complaints and registered. Let that be worked out by the Home Department.

14. We have noticed that, in the instant case, the matter is pending before the District Court and therefore, we chose not to presently intervene. After once the District Court finalise the matter, it

will be for the petitioner to also take an appropriate remedy in respect of his personal complaint. None of these observations or the limitation of the technology will in any manner hamper his right to approach the appropriate authorities.

15. We expect the State to complete the task of installing the new gadgets and also follow the directions of the Apex Court as earliest possible.

16. Present petition stands disposed of accordingly.

(SONIA GOKANI, J)

(MAUNA M. BHATT,J)

M.M.MIRZA