

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION (HABEAS CORPUS) NO. 5607 of 2015

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE KS JHAVERI

and

HONOURABLE MR.JUSTICE G.B.SHAH

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

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DINESHBHAI BHAGVANBHAI BAMBHANIYA & 1....Applicant(s)

Versus

STATE OF GUJARAT & 6....Respondent(s)

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Appearance:

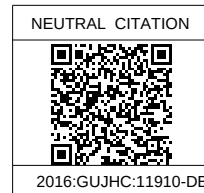
MR BM MANGUKIYA, ADVOCATE for the Applicant(s) No. 1 - 2

MS BELA A PRAJAPATI, ADVOCATE for the Applicant(s) No. 1 - 2

MR ZUBIN F BHARDA, ADVOCATE WITH MR RAFIK LOKHANDWALA, ADVOCATE for the Respondent(s) No. 7

NOTICE SERVED BY DS for the Respondent(s) No. 2 - 6

MR KAMAL TRIVEDI, ADVOCATE GENERAL WITH MR MITESH AMIN, PUBLIC PROSECUTOR WITH MS S.K. VISHEN, ADDL PUBLIC



PROSECUTOR for the Respondent(s) No. 1

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CORAM: **HONOURABLE MR.JUSTICE KS JHAVERI**
and
HONOURABLE MR.JUSTICE G.B.SHAH

Date : 01/04/2016

ORAL JUDGMENT

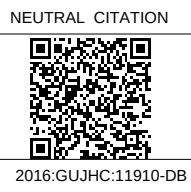
(PER : HONOURABLE MR.JUSTICE KS JHAVERI)

1. The petitioners herein have prayed for issuance of appropriate writ in the nature of habeas corpus and to direct the respondents more particularly respondents no. 4 & 5 to produce the corpus – Mr. Hardik Patel before this Court and direct the respondents to set him free.

2. The facts leading to the filing of the present petition are enunciated in brief hereunder:

2.1 The corpus – Mr. Hardik Patel had initiated a movement against the suppression of Patidar community in the State of Gujarat which had been widely supported by the community. In most of the events relating to the said movement, the petitioners remained present alongwith the corpus. On 25.08.2015, a gathering of the Patidar community was organized at GMDC ground, Ahmedabad wherein large number of persons were present. The police had to resort to lathicharge to disperse the crowd after 08.00 pm on the said day.

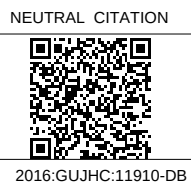
2.2 On 22.09.2015, a meeting was arranged at Tenpur village, Taluka - Bayad, District - Aravalli which was attended



by the corpus. The meeting was arranged in a private place and police all of a sudden arrived at the place of meeting and tried to arrest the corpus. The public present there did not allow the police to arrest the corpus from the stage. The villagers feared that the police would cover the main road and therefore another route was suggested by the villagers. The petitioners and the corpus started from the place of meeting in different cars.

2.3 After about 3 to 4 kms in the car the police again cordoned and arrested the corpus who was travelling in a white Xylo car which was being driven by a local boy. The Xylo car was being followed by a Swift Car which was being driven by one Mr. Hemendra and three to four persons were seated in the said car. A third car followed the Swift car which was being driven by petitioner no. 1 and petitioner no. 2 was a passenger in the said car.

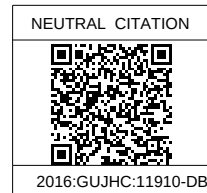
2.4 The petitioners who were a part of the people travelling in around 25 to 30 vehicles were intercepted by the police. They asked for the corpus as the corpus was not found in the car of the petitioners. The police tried to search in other cars as well but could not find the corpus. Thereafter, when the police came to know that the corpus was travelling in the Xylo car they started searching the said car. It is the case of the petitioners that the mobile phone of the corpus all the time remained with petitioner no. 1 and on that day also it was with petitioner no. 1. The corpus was without a mobile phone and that they had no information about any person travelling with the corpus having mobile.



2.5 When the petitioners reached Ahmedabad in the evening, they did not have any message from the corpus on his mobile phone which was with petitioner no. 1. The petitioners, however, received message that the police did not claim arrest of the corpus and that the corpus himself had left the place. It is the averment of the petitioners in the petition that the corpus was cordoned and surrounded by the police before the eyes of the petitioners and as such police has abducted the corpus and therefore there would not have been any scope for the corpus to leave the said place.

2.6 Therefore, apprehending the serious threat to the life of Mr. Hardik Patel – corpus, the petitioners had filed this habeas corpus petition so as to direct the respondents to produce the corpus who is claimed to be unlawfully detained by the police before the eyes of the petitioners and who had claimed not to have arrested him.

3. Before proceeding with recording of the submissions made by learned advocates for both the sides, we would also like to jot down the events which happened after the filing of the present petition. It shall be pertinent to note that after the corpus went missing at around 06.00 pm on 22.09.2015 (Tuesday) which was followed by news reports wherein the police claimed to have not arrested him and the petitioners claiming to have seen him being arrested by the police, this writ petition was moved by the learned advocate for the petitioner on the very same day itself or if appropriately put on the very same night itself. The learned advocate for the petitioners showed serious urgency in the matter and after taking permission from the then Hon'ble the Acting Chief



Justice, the matter was heard by a bench of this Court (Coram : M.R. Shah and K.J. Thaker, JJ) at the residence at 02.00 am on 23.09.2015. This Court passed the following order:

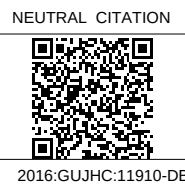
“Looking to the urgency shown and after the permission was granted by the Honble the Acting Chief Justice, we have taken the matter at residence at 2.00 a.m. i.e. today.

Heard Shri B.M. Mangukiya, learned advocate for the petitioners and Shri Mitesh Amin, learned Public Prosecutor for the respondent State on advance copy being served.

Leave to join Police Inspector of Ambaliyar Police Station, Tal: Bayad, Dist. Arvalli as respondent no.6.

On advance copy being served, Shri Mitesh Amin, learned Public Prosecutor has appeared on behalf of the State of Gujarat. He has stated that as the copy of petition has been served upon him at 1.30 a.m. and time being very short, he could not get any full instruction from the concerned respondent authority. However, he has stated that on the basis of limited instruction which he has received none of the police authorities have arrested the corpus Hardik Patel and / or even detained and therefore, there is no question of any illegal confinement of corpus as alleged in the petition. He has stated at the bar that to the best of his information some 8 to 9 persons have been arrested from Tenpur and some 3 to 4 persons have been arrested from Ahmedabad who initially earlier attended the meeting alongwith corpus at Tenpur and who subsequently ran away to Ahmedabad in connection with FIR filed in Ambaliyar Police Station. He has requested to give some reasonable time to the respondents to get further instructions in the matter and to file detail affidavit in reply.

Notice returnable on 24.09.2015. Shri Mitesh Amin, learned Public Prosecutor waives service of notice of admission on behalf of respondent



authorities. Affidavit in reply, if any, to be filed on or before returnable date with a copy to learned advocate for the petitioners.”

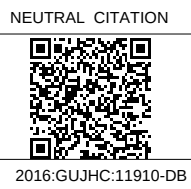
3.1 It remains to be seen that the corpus himself remained present on the next day i.e. 24.09.2015 (Thursday) along with learned advocate for the petitioners. This court was constrained to pass the following order:

“1.00. Mr.Mangukiya, learned advocate appearing on behalf of the petitioners has stated at the bar that the corpus Mr. Hardik Patel is personally present in the Court.

2.00. To ascertain from the corpus Mr. Hardik Patel with respect to the allegations made in the petition about his alleged illegal confinement, the corpus Mr. Hardik Patel stated sequence and events taken place after approximately 2.30 PM on 22/9/2015. We have thought it fit to take statement of the corpus Mr. Hardik Patel in his own handwriting and that is why we have told the corpus Mr. Hardik Patel to write his statement in the Court and give his statement in writing in his own handwriting in vernacular language.

3.00. Consequently, the corpus Mr. Hardik Patel has given his statement in his own handwriting and in vernacular language. The statement of corpus Mr. Hardik Patel given by him in his own handwriting is directed to be taken on record, however, directed to be kept in sealed cover. The corpus Mr.Hardik Patel has stated at the bar that except what is stated by him in his statement given by him in his own handwriting, given today before this Court, he does not want to say anything further.

4.00. Mr.Kamal Trivedi, learned Advocate General appearing on behalf of the State has tendered Affidavit-in- reply on behalf of the respondent State authorities,whcih is directed to be taken on record. Mr.Kamal Trivedi, learned Advocate General



appearing on behalf of the State and the police authorities, has also placed before us two sealed covers for the perusal of the Court only. According to him the same are required to be considered by this Court while considering the allegations made by the petitioners in the present petition with respect to the allegations of abduction of the corpus Mr. Hardik Patel by the concerned police authorities of the State, made in the present petition.

We have perused the aforesaid papers submitted by Mr.Kamal Trivedi, learned Advocate General for perusal of the Court only. However, the aforesaid is not required to be disclosed at this stage looking to the sensitivity and seriousness of the matter.

5.00. After considering the statement of the corpus Mr. Hardik Patel as well as submissions of Mr.Mangukiya, learned advocate appearing on behalf of the petitioners and sequence of events narrated by corpus Mr. Hardik Patel, which he has stated in his statement and which is directed to be kept in sealed cover, we are prima facie of the opinion that the petitioners herein are required to substantiate the allegations made in the present petition, which led the Court to believe for initiation of the Habeas Corpus proceedings immediately i.e. at 1.30 AM on 23/9/2015 and as such considering the same, prima faice we are not satisfied at all with respect to the allegations made by the petitioners in the present petition. However, a further opportunity is required to be given to the petitioners and/or their advocate, to substantiate the allegations made in the petition. It is for the reason that if anybody has tried to mislead the Court and/or made false statements and has taken the court proceedings lightly, the same cannot be permitted and/or tolerated. Nobody, whoever he/she may be, can be permitted to take the court proceedings lightly and/or cannot be permitted to take the court or the court proceedings for ride. Even petition is not on affidavit and hence both the petitioners to affirm the present petition during the course of the day today itself.

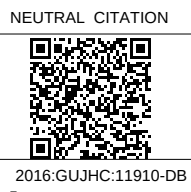


5.00. We have ascertained the wish of the corpus Mr. Hardik Patel and asked him where he wants to go, stay and reside. The corpus Mr. Hardik Patel has stated at the bar and desired to go, stay and reside at his residence at Gandhinagar. The corpus Mr. Hardik Patel is permitted to go, stay and reside at his residence at Gandhinagar, as desired by him.

5.00. At the request of Mr.Mangukiya, learned advocate appearing on behalf of the petitioners, S.O. to 29/9/2015. The corpus Mr. Hardik Patel has stated at the bar and assured this Court that he shall personally remain present before this Court on the next date. Even Mr.Mangukiya, learned advocate appearing on behalf of the petitioners has also assured the Court that the corpus Mr.Hardik Patel shall personally remain present before this Court on the next date of hearing i.e. 29/9/2015 at 11.00 AM. Hence, the matter is adjourned to 29/9/2015, the date which is convenience to the learned advocate for the petitioners. However, while adjourning the matter to 29/9/2015, it is observed and made clear that at present we have not expressed any opinion at all as to whether the corpus Mr. Hardik Patel was in illegal detention and/or illegal confinement of any of the respondents and/or any police authority of the State. It is also made clear that if there is any other FIR and/or complaint against the corpus Mr. Hardik Patel, in any Police Station, the same may be proceeded in accordance with law and let the law take its own course. However, in any of the circumstances, the corpus Mr.Hardik Patel shall personally remain present before this Court and/or he shall be produced before this Court on the next date i.e. 29/9/2015 at 11.00 AM, as observed hereinabove. “

[Emphasis Supplied]

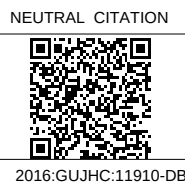
3.2 This Court on 24.09.2015, after considering the statement of the corpus Mr. Hardik Patel as well as submissions of Mr. Mangukiya, learned advocate appearing



on behalf of the petitioners and sequence of events narrated by corpus directed the petitioners to substantiate the allegations made in the present petition, which led them to initiate Habeas Corpus proceedings immediately i.e. at 1.30 AM on 23/9/2015. The petitioners were therefore directed to file appropriate affidavit in order to substantiate the allegations made in the petition and the matter was accordingly adjourned to 29.09.2015. No affidavit was filed on 29.09.2015 and the matter was adjourned to 08.10.2015.

3.3 On 08.10.2015, an affidavit though was filed by petitioner no. 1, the same was not found satisfactory by this Court and therefore the matter was adjourned to 21.10.2015 for filing appropriate affidavit. However, no affidavits were filed either on 21.10.2015 or on the next date i.e. 27.10.2015. On 04.11.2015, the matter was adjourned on the ground that the petitioners had approached the Hon'ble Supreme Court against the order passed by this Court dated 27.10.2015. No affidavit substantiating the allegations made in the petition was filed even on 06.11.2015. Finally the affidavit in rejoinder was filed by the petitioners on 23.11.2015 before another bench (Coram : K.S. Jhaveri & R.P. Dholaria, JJ) and the matter was thereafter adjourned from time to time.

3.4 On 09.12.2015, Mr. Mangukiya, learned advocate appearing for the petitioners stated that as the corpus had been traced, the matter became infructuous. However, Mr. Kamal Trivedi, learned Advocate General appearing for the respondent State submitted that looking to the facts and circumstances of the case, this court may frame questions which could serve as guidelines for a writ petition in Habeas



Corpus. This Court thereafter admitted the matter on 09.12.2015 and joined the corpus as party respondent no. 7 and framed the following questions which arose for determination before this Court which should serve as guidelines for a writ petition on Habeas Corpus:

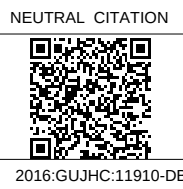
“1. Whether this Hon'ble Court upon being satisfied, should declare that the petitioners herein have approached this Hon'ble Court with unclean hands by filing false and perfunctory affidavits and should therefore, dismiss the captioned writ petition with exemplary and punitive cost, for misusing judicial process?

2. Whether this Hon'ble Court upon being satisfied as referred to above, should issue appropriate directions for the prosecution of the petitioner as per the provisions of Sections 191 to 193, 196 and other applicable provisions of Indian Penal Code, for giving false evidence?

3. Whether this Hon'ble court should allow the wasting of judicial time and public money at the behest of the petitioners, who have initiated the captioned proceedings to perpetrate their malicious and ill-intended design to create unnecessary sensation and shock in the society for creating disturbance and law and order situation, by concocting the story of abduction and illegal confinement of Mr. Hardik Pate by the Police Authorities?

4. Whether the litigants like the petitioners should be allowed to pollute the stream of justice for personal gains by having tarnished the image and reputation of the Police Authorities by indulging in immoral acts like perjury, prevarication and motivated falsehood by putting in motion, the habeas corpus proceedings against the State, and then to allow to go scot-free by simply withdrawing the petition?

5. Whether the Advocate for the petitioners who filed the above writ petition for habeas corpus, is not obliged to act as an officer of this Hon'ble Court for assisting the Hon'ble Court consistent



with his duty imposed under the Advocates Act, 1961 read with Bar Council Rules?"

3.5 On 05.02.2016, when the matter was taken up for hearing, Mr. Zubin Bharda, learned advocate appeared for the corpus – respondent no. 7 and sought time to file reply. The matter was accordingly adjourned to 09.02.2016. It also needs a special mention here that Mr. Bharda, learned advocate for the corpus and other persons such as Mr. Pragnesh Patel, Mr. Jayendra Patel and Mr. Vipul Patel were allowed to meet the corpus in jail. However, no reply was filed till 23.03.2016 on which date, Mr. Bharda stated that he did not intend to file further reply and finally the matter was fixed for final hearing today.

4. The aforesaid questions for consideration were framed at the behest of Mr. Kamal Trivedi, learned Advocate General for the State Government. We have therefore heard Mr. Trivedi, learned Advocate General for the respondent State first.

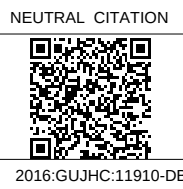
5. Mr. Kamal Trivedi, learned Advocate General appearing with Mr. Mitesh Amin, learned Public Prosecutor with Ms. Sangeeta Vishen, learned Additional Public Prosecutor has strongly condemned the act and conduct of the present petitioners. He submitted that the entire case of alleged abduction and illegal confinement of the corpus – Mr. Hardik Patel by the police authorities was made to create an atmosphere against law and order machinery and with an aim to create sensation and disturbance in the State of Gujarat. He submitted that the enormity of such case as set up in the petition of illegal detention had a demoralising effect upon the

law and order machinery, though the record unequivocally shows that at no point of time, police had abducted or illegally confined Mr. Hardik Patel.

5.1 Mr. Trivedi submitted that wide publicity of the present habeas corpus petition was made by the petitioners on the same night itself in the electronic media, social media and in the print media which clearly establishes the well planned design of the petitioners to abuse the process of this Court in order to achieve their own personal cause. He submitted that the conduct of the petitioners in making certain allegations on oath in the present petition is objectionable and requires detailed scrutiny and investigation. He submitted that after filing the petition this Court had given the petitioners more than sufficient chances to substantiate the allegations made in the petition which the petitioners have failed to do. He submitted that on the contrary, the petitioners approached the Hon'ble Supreme Court of India against the orders of this Court wrongfully alleging against the police authorities.

5.2 Mr. Trivedi submitted that even respondent No. 7 i.e. Shri Hardik Patel has tuned similar music with lot of variations, in his hand-written statement dated 24.9.2015 in vernacular language, which was initially directed to be kept in sealed cover, but later on given to the parties. Under the aforesaid circumstances, this Court in its order passed on 24.9.2015, desired the petitioners to substantiate the allegations made in the petition, while observing as under:

"... .. It is for the reason that if anybody has tried to mislead the Court and/or

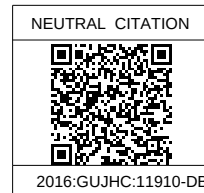


made false statement and has taken the court proceedings lightly, the same **cannot be permitted and/or tolerated.** Nobody, whoever he/she may be, can be permitted to take the court proceedings lightly and/or cannot be permitted to take the court proceedings for ride...." [Emphasis supplied]

5.3 Mr. Trivedi submitted that in response to the orders passed by this Court from time to time granting sufficient time to substantiate the allegations made in the petition, ultimately, the wife of petitioner No. 1 i.e. Pintuben Dineshbhai Bhambhanian filed an Affidavit-In-Rejoinder dated 23.11.2015 (Pgs.39 to 92), for substantiating the allegations. Along with this, another Affidavit-in-rejoinder, dated 29.9.2015 of petitioner No.2 Shri Ketanbhai Lalitbhai Patel (Pg.93), came to be filed on 23.11.2015, *inter-alia* containing affidavits of 10 persons (i.e. Annexure R-4 to R-13). In fact, this Affidavit-in-Rejoinder of petitioner No.2 was previously submitted on 29.9.2015 and was thereafter withdrawn on that day itself, but the same was produced again, along with affidavit in rejoinder dated 23.11.2015 of the wife of petitioner No.1, i.e. Pintuben Dineshbhai Bhambhanian wherein it was *inter alia* stated as under:

'... ... In this background, the apprehension apprehended by my husband about missing of Mr. Hardik Patel was not based on any hypothesis, assumption or presumption conduct of the Gujarat Police is such that every Patidar of Gujarat State are still shivering of police force.... ' (pg. 49)

5.4 Mr. Trivedi drawing the attention of this Court to the affidavit filed by petitioner No.2 Shri Ketanbhai, submitted that petitioner no. 2 has stated in his aforesaid affidavit as



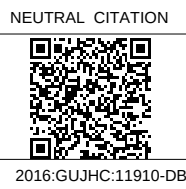
under:

'9. The petitioners have seen that car of Hardik was also stopped by the police and therefore, the petitioners have stated in the memo of petition, that the petitioners have seen that the car of Hardik was intercepted by the police and he was arrested.However, the petitioners have now learnt from the inquiry of the said villagers who have also stated on oath that driver of Hardik was also able to turn away the car and he was arrested after he was chased for sometime nearby at village Bhundasan. The car was driven by one Shri Kamlesh Patel of village Tenpur.' (pgs. 99-100).

5.5 Mr. Trivedi further submitted that as against the above, out of 10 persons as mentioned above, one Shri Kamleshbhai Ishwarbhai Patel vide his affidavit dated 26.9.2015 produced at Annexure R-4 (pg. 125) to the affidavit in rejoinder dated 29.9.2015 of the petitioner No.2 - Ketanbhai Lalitbhai Patel, has stated on oath to the following effect, as translated from vernacular.

'10. at about **5:00 P.M.**, public meeting was over and thereafter, villagers had dropped Hardikbhai in the agricultural field, since they were knowing that the police had cordoned the main roads'

11. I along with three other persons had gone to leave Hardikbhai in my car Xylo. But when we had reached near Ganeshpura Deriya Chowkdi, which is about 7 to 8 kms. away from village Tenpur, six police vehicles were stationed there cordoning the road. Police people were checking other cars over there. But before police could check my car I turned it back and left that place. **I had dropped Hardik from my car in the field near Bhundasan.** Therefrom I went back to Tenpur. Thereafter what had happened there and who had



taken away Hardikbhai and in what manner etc. are not within my knowledge.' (pgs. 127-128)

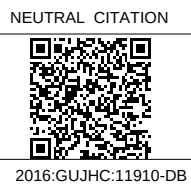
5.6 Mr. Trivedi submitted that similarly, and in furtherance of the aforesaid version of Shri Kamleshbhai Ishwarbhai Patel, one Shri Rushibhai Shanabhai Patel in his affidavit dated 26.9.2015 produced at Annexure R-9 (pg.160), has also stated on oath to the following effect, as translated from vernacular.

'10. at about 5:00 PM, public meeting was over and thereafter, villagers had dropped Hardikbhai in the agricultural field, since they were knowing that the police had cordoned the main roads'

11. Cars of Shri Dineshbhai and Kamleshbhai had moved away from the place. First of all Dineshbhai's car had left the place. Hardik's car was driven by Shri Kamlesh. Police could not identify Hardik in the car and hence, despite the said car having been stopped to find out whether Hardik is there or not, Kamleshbhai had driven away the car along with Hardikbhai.' (pgs. 162-163)

5.7 Mr. Trivedi submitted that similar version is discernible from the affidavits of various persons filed at Annexure-R-6 to R-12 (pgs-132 to 186), more particularly as regards the timing of completion of public meeting at village Tenpur at about 5:00 P.M. on 22.9.2015. Whereas, Shri Bharatbhai Narsinhbhai Patel in his affidavit dated 27.9.2015 at Annexure R-13 (pg.187), has stated on oath as under:

"4. I say that on September 22, 2015, when I learnt through T.V. media that my son is missing, I called



companion of my son Shri Dineshbhai Bambhaniya from my mobile No.9898857459 on Shri Bambhaniya's mobile No.9998025444. I was much worried about the safety of my son. In fact, as I was informed on telephone numbers were being tapped, I was informed that I may not call my son on his mobile. He also was not calling me on my mobile. I used to contact with my son on the mobile of his companions. I used to call on mobile of Shri Chirag Patel, Shri Hardik Kiritbhai Patel and Shri Dinesh Bhambhaniya." (pg.188).

" In fact Shri Hardik Kiritbhai Patel called from mobile of Police Officer, however, I do not remember exact time, it must be about 8.00 to 9.00 p.m. On that day Shri Hardik Kiritbhai Patel told me that my son is not arrested by police and he did not know where he was." (pg.189)

"7. I say that when I had called 3 to 4 times to Shri Dinesh Bambhaniya, Shri Bambhaniya informed that I should not worry about anything. He was taking all steps and that he told me that he cannot call every time since telephone number of Shri Dinesh Bhambhaniya are possibly under surveillance and State Intelligence Bureau and possibly are being tapped also." (pg.190)

5.8 Mr. Trivedi submitted that however, if one reads the hand-written statement dated 24.9.2015 of respondent No.7 – Mr. Hardik Patel, the relevant excerpts whereof in English translated version are set out hereunder, it becomes clear that there are various contradictions in the versions, leading to the conclusion that the whole story of abduction of Shri Hardik Patel by police was cooked up for creating sensation and earning misplaced sympathy.

"... .. During this time, a Swift car and police car came behind our car. I left my car near Dhansura village and was running away. At that

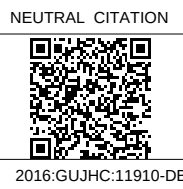


time, three persons caught hold off me and took away in Swift car at around 4.20 hours and was taken away to a lonely field. During that time I was extended threat and was told that I should give up the agitation or else you will be faced with consequences during the meeting in the rural area. After making the said assertion, I was taken to the rural area and during that time, I noticed that the person sitting in the front seat besides the driver, was having a cover of revolver at his waist”

“... .. I was taken through Baucharaji Modhera’s Road to Patadi’s Road and then to Malia Highway on the next day and was left there around 11.30... ..”

“When we were entering the rural area, during that time, a strict police checking was going on. Thereafter, our car was taken to Patdi and immediately I called a Dineshbhai and told him to come to Patdi, if it is possible for him to reach and that I will be reaching there. There were many police men present. I was told that we are to travel in the car of the Advocate so you don’t worry. Thereafter, I reached Patdi and waited there 30 minutes and after which, Dineshbhai and other companions reached there and then I was taken to Ahmedabad... ..”

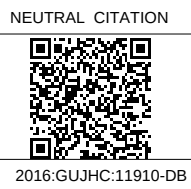
5.9 Mr. Trivedi submitted that thus, as per one version, public meeting at village Tenpur was over around 5.00 p.m. on 22.9.2015 and thereafter, the above named one Shri Kamlesh Ishwarbhai Patel had dropped Shri Hardik Patel at village Budasan, which is around 4 kms. away from village Tenpur. Whereas, according to Mr. Hardik Patel, he left his car at about 4.20 p.m. on 22.9.2015 near village Dhansura, which is around 34 kms. away from village Tenpur in opposite direction where he was caught hold off by three persons and was taken away to a lonely field in Swift car. This apart, if



Police had really intended to take Mr. Hardik Patel in custody, the same would have been so done, when Xylo car driven by Shri Kamlesh Ishwarbhai Patel along with Mr. Hardik Patel was stopped by the Police by pointing the revolver at the car, when Mr. Hardik Patel was running away after the completion of public condolence meeting, as stated by Mr. Hardik Patel in his aforesaid hand-written statement dated 24.9.2015. Thus, there is contradiction in terms in the said two versions, which has remained unexplained and the same, in turn, leads to an inevitable conclusion that whole theory of abduction of Mr. Hardik Patel by the police authorities has been cooked up, as discussed hereinabove.

5.10 Mr. Trivedi submitted that despite the aforesaid version of respondent No.7 Mr. Hardik Patel given on 24.9.2015, referring to the name of Shri Dineshbhai Bambhania and Shri Ketanbhai Patel i.e. petitioner Nos.1 and 2 herein, the same has not been corroborated by Shri Dineshbhai Bambhania in his affidavit dated 21.10.2015 (pgs 36 to 38) and by Shri Ketanbhai Patel in his affidavit dated 29.9.2015 (pgs 93 to 116).

5.11 Mr. Trivedi contended that as against the aforesaid contradictory versions, the hard realities were the other way round. Respondent no. 7 – Mr. Hardik Patel had himself disappeared within the knowledge of the petitioners herein as mentioned in two affidavits (pgs.16 and 30) filed on behalf of the respondent State and that he was in close and constant contact with the petitioners all throughout the night of 22.9.2015 till next day, i.e. 23.9.2015.



5.12 Mr. Trivedi submitted that in support of the aforesaid submission, he seeks to rely upon the Additional Affidavit dated 4.1.2016 (pg.200) of the Respondent No.4 herein, producing the transcription of the intercepted talks/exchanges, which took place between Shri Hardik Patel on one hand and the petitioners etc., on the other, from 5.00 a.m. of 22.9.2015 to around 12.00 p.m. of 23.9.2015 from Call Data Record (CDR) (pgs. 202 to 217) as well as details of locations (pg.218), which could be made available from the said Call Data Record. He submitted that from mere perusal of interceptions available from Call Data Record referred to above, it becomes crystal clear that the petitioners' allegations of kidnapping by police authorities of the State were absolutely false, frivolous, baseless and have been made only with a view to create a hoax and to deceive and mislead this Hon'ble Court, by disturbing the equilibrium in the society and thereby, attempting to create unnecessary sensation and shock in the minds of the people, which had the tendency to create disturbance, commotion and anarchy.

5.13 Mr. Trivedi contended that the recorded data of the above referred interceptions with reference to Mr. Hardik Patel have also been got tested and as per the FSL Report dated 21.11.2015 (pgs. 219 to 230), which is now available with the respondent State, recorded voices were in fact of Mr. Hardik Patel and the petitioners. It is submitted that both the aforesaid documents, i.e. recorded interceptions and the FSL Report are going to be the part of the charge-sheet which is required to be issued to him for various offences under the Indian Penal Code, pursuant to FIR being C.R. No. I-90/15, dated 21.10.2015 filed with D.C.B. Police Station, Ahmedabad



City (Pgs.54 to 84).

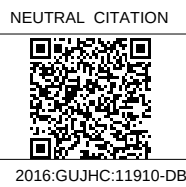
5.14 Mr. Trivedi submitted that despite what is mentioned above, the wife of petitioner No.1, i.e. Pintuben Dineshbhai Bambhaniya has an audacity to doubt the authenticity of the aforesaid transcription by disowning the mobile number of her husband i.e. 9998025444 in her affidavit in rejoinder dated 28.1.2016 (pg.233), though the above named Shri Bharatbhai Narsinhbhai Patel has admitted about the said mobile number in his affidavit (pg.188), which was in fact filed by this very Pintuben i.e. wife of petitioner No.1 along with her affidavit dated 23.11.2015 (pgs.39 to 42)

5.15 Mr. Trivedi, in support of what is stated hereinabove, seeks reliance on the following two authorities:

(a) **Amar Singh vs. Union of India and Others reported in (2011) 7 SCC 69** wherein paras 50 to 65 read as under:

50. This Court wants to make it clear that an action at law is not a game of chess. A litigant who comes to Court and invokes its writ jurisdiction must come with clean hands. He cannot prevaricate and take inconsistent positions.

51. Apart from the aforesaid, in the writ petition which was filed on 21st January, 2006, there is no mention of the fact that the petitioner gave a statement under section 161, Code of Criminal Procedure in connection with the investigation arising out of FIR lodged on 30-12-2005. From the records of the case it appears the petitioner gave 161 statement on 13-1-2006. In the writ petition there is a complete suppression of the aforesaid fact. A statement under Section 161 is certainly a material fact in a police investigation in



connection with an FIR. The investigation is to find out the genuineness of those very documents on the basis of which the writ petition was moved. In that factual context, total suppression in the writ petition of the fact that the petitioner gave a 161 statement in that investigation is, in our judgment, suppression of a very material fact.

52. It is, therefore, clear that writ petition is frivolous and is speculative in character. This Court is of the opinion that the so called legal questions on tapping of telephone cannot be gone into on the basis of a petition which is so weak in its foundation.

53. Courts have, over the centuries, frowned upon litigants who, with intent to deceive and mislead the courts, initiated proceedings without full disclosure of facts. Courts held that such litigants have come with "unclean hands" and are not entitled to be heard on the merits of their case.

54. In *Dalglish v. Jarvie* {2 Mac. & G. 231,238}, the Court, speaking through Lord Langdale and Rolfe B., laid down:

"It is the duty of a party asking for an injunction to bring under the notice of the Court all facts material to the determination of his right to that injunction; and it is no excuse for him to say that he was not aware of the importance of any fact which he has omitted to bring forward."

55. In *Castelli v. Cook* {1849 (7) Hare, 89,94}, Vice Chancellor Wigram, formulated the same principles as follows:

"A plaintiff applying ex parte comes under a contract with the Court that he will state the whole case fully and fairly to the Court. If he fails to do that, and the Court finds, when the other party applies to dissolve the injunction, that any material fact has been suppressed or not properly brought forward, the plaintiff is told that the Court will not decide on the merits, and that, as has broken faith with

the Court, the injunction must go."

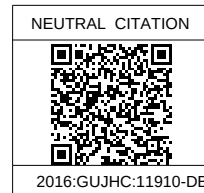
56. In the case of Republic of Peru v. Dreyfus Brothers & Company {55 L.T. 802,803}, Justice Kay reminded us of the same position by holding:

"...If there is an important misstatement, speaking for myself, I have never hesitated, and never shall hesitate until the rule is altered, to discharge the order at once, so as to impress upon all persons who are suitors in this Court the importance of dealing in good faith with the Court when ex parte applications are made."

57. In one of the most celebrated cases upholding this principle, in the Court of Appeal in R. v. Kensington Income Tax Commissioner, ex p Princess de Polignac K.B. Scrutton, L.J. formulated as under:

"... and it has been for many years the rule of the Court, and one which it is of the greatest importance to maintain, that when an applicant comes to the Court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts- facts, now law. He must not misstate the law if he can help it the court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts, and the penalty by which the Court enforces that obligation is that if it finds out that the facts have been fully and fairly stated to it, the Court will set aside any action which it has taken on the faith of the imperfect statement."

58. It is one of the fundamental principles of jurisprudence that litigants must observe total clarity and candour in their pleadings and especially when it contains a prayer for injunction. A prayer for injunction, which is an equitable remedy, must be governed by principles of



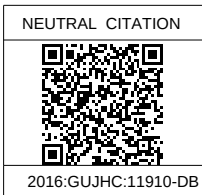
`uberrima fides'.

59. The aforesaid requirement of coming to Court with clean hands has been repeatedly reiterated by this Court in a large number of cases. Some of which may be noted, they are: Hari Narain v. Badri Das, Welcome Hotel v. State of A.P., G. Narayanaswamy Reddy v. Govt. of Karnataka, S.P. Chengalvaraya Naidu v. Jagannath, A.V. Papayya Sastry v. Govt. of Karnataka, Prestige Lights Ltd. v. SBI, Sunil Poddar v. Union Bank of India, K.D. Sharma v. SAIL, G. Jayashree v. Bhagwandas S. Patel and Dalip Singh v. State of U.P.

60. In the last noted case of Dalip Singh (supra), this Court has given this concept a new dimension which has a far reaching effect. We, therefore, repeat those principles here again:

"1. For many centuries Indian society cherished two basic values of life i.e. "satya"(truth) and "ahimsa (non-violence), Mahavir, Gautam Budha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of the justice-delivery system which was in vogue in the pre- independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-Independence period has seen drastic changes in our value system. The materialism has overshadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings.

2. In the last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort



to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final."

However, this Court is constrained to observe that those principles are honoured more in breach than in their observance.

61. Following these principles, this Court has no hesitation in holding that the instant writ petition is an attempt by the petitioner to mislead the Court on the basis of frivolous allegations and by suppression of material facts as pointed out and discussed above. In view of such incorrect presentation of facts, this court had issued notice and also subsequently passed the injunction order which is still continuing.

62. This Court, therefore, dismisses the writ petition and vacates the interim order and is not called upon to decide the merits, if any, of the petitioner's case. No case of tapping of telephone has been made out against the statutory authorities in view of the criminal case which is going on and especially in view of the petitioner's stand that he is satisfied with the investigation in that case.

63. The petitioner has withdrawn its case against the respondent No.7. In that view of the matter this Court makes it clear that the petitioner, if so advised, may proceed against the service provider, respondent No.8, before the appropriate forum, in accordance with law. This Court, however, makes it clear that it does not make any observation on the merits of the case in the event the petitioner initiates any proceeding against respondent No.8.



64. This court wants to make one thing clear i.e. perfunctory and slipshod affidavits which are not consistent either with Order XIX Rule 3 of the CPC or with Order XI Rules 5 and 13 of the Supreme Court Rules should not be entertained by this Court. In fact three Constitution Bench judgments of this Court in Purushottam Jog Naik (supra), Barium Chemicals Ltd. (supra) and A.K.K. Nambiar (supra) and in several other judgments pointed out the importance of filing affidavits following the discipline of the provision in the Code and the said rules.

65. These rules, reiterated by this Court time and again, are aimed at protecting the Court against frivolous litigation must not be diluted or ignored. However, in practice they are frequently flouted by the litigants and often ignored by the Registry of this Court. The instant petition is an illustration of the same. If the rules for affirming affidavit according to Supreme Court were followed, it would have been difficult for the petitioner to file this petition and so much of judicial time would have been saved. This case is not isolated instance. There are innumerable cases which have been filed with affidavits affirmed in a slipshod manner.”

(b) **Kishore Samrite vs. State of Uttar Pradesh and Others reported in (2013) 2 SCC 398** wherein paras 30 to 42 and 60 to 62 read as under:

“30. In the present case there is no dispute to the fact that no order was passed by the Chief Justice of Allahabad High Court or even the senior-most Judge, administratively Incharge of the Lucknow Bench, transferring Writ Petition No. 111/2011 for hearing from a Single Judge before which it was pending, to the Division Bench of that Court. On basis of the allegations made in the Writ Petition No. 111/2011, that matter had been listed before



the Single Judge. If this writ petition was improperly instituted before the Single Judge of the High Court then it was for the Registry of that Court or any of the contesting parties to that petition, to raise an objection in that behalf. The objection could relate to the maintainability and/or jurisdiction on the facts pleaded. If the Writ Petition No. 125 of 2011 was filed with a prayer for transfer of Writ Petition No. 111/2011 on the ground stated in the petition, this power fell within the exclusive domain of the Chief Justice or the Senior Judge Incharge for that purpose. It does not appear to be apt exercise of jurisdiction by the Division Bench to suo moto direct transfer of Writ Petition No. 111/2011 without leave of the Chief Justice of that Court as such action would ex facie amount to dealing with matters relating to constitution and roster of Benches. We have already cited various judgments of this Court where matters relating to the roster and constitution of the Benches fall within the exclusive domain of the Chief Justice of the concerned High Courts. Transfer of a petition may not necessarily result in lack of inherent jurisdiction. It may be an administrative lapse but normally would not render the Division Bench or Court of competent jurisdiction as lacking inherent jurisdiction and its orders being invalid ab initio. Such an order may necessarily not be vitiated in law, particularly when the parties participate in the proceedings without any objection and protest. This, however, always will depend on the facts and circumstances of a given case. In the present case, suffices it to note that transfer of Writ Petition No. 111/2011 by the Division Bench to its own Board was an order lacking administrative judicial propriety and from the record it also appears that adequate hearing had not been provided to the writ petitioners before dismissal of the Writ Petition No. 111 of 2011 by the Division Bench.

Abuse of the process of Court :

31. Now, we shall deal with the question whether both or any of the petitioners in Civil Writ Petition Nos. 111/2011 and 125/2011 are guilty of suppression of material facts, not approaching the



Court with clean hands, and thereby abusing the process of the Court. Before we dwell upon the facts and circumstances of the case in hand, let us refer to some case laws which would help us in dealing with the present situation with greater precision.

32. The cases of abuse of the process of court and such allied matters have been arising before the Courts consistently. This Court has had many occasions where it dealt with the cases of this kind and it has clearly stated the principles that would govern the obligations of a litigant while approaching the court for redressal of any grievance and the consequences of abuse of the process of court. We may recapitulate and state some of the principles. It is difficult to state such principles exhaustively and with such accuracy that would uniformly apply to a variety of cases. These are:

32.1 Courts have, over the centuries, frowned upon litigants who, with intent to deceive and mislead the Courts, initiated proceedings without full disclosure of facts and came to the courts with 'unclean hands'. Courts have held that such litigants are neither entitled to be heard on the merits of the case nor entitled to any relief.

32.2 The people, who approach the Court for relief on an ex parte statement, are under a contract with the court that they would state the whole case fully and fairly to the court and where the litigant has broken such faith, the discretion of the court cannot be exercised in favour of such a litigant.

32.3 The obligation to approach the Court with clean hands is an absolute obligation and has repeatedly been reiterated by this Court.

32.4 Quests for personal gains have become so intense that those involved in litigation do not hesitate to take shelter of falsehood and misrepresent and suppress facts in the court proceedings. Materialism, opportunism and malicious intent have over-shadowed the old ethos of litigative values for small gains.

32.5 A litigant who attempts to pollute the stream



of justice or who touches the pure fountain of justice with tainted hands is not entitled to any relief, interim or final.

32.6 The Court must ensure that its process is not abused and in order to prevent abuse of the process the court, it would be justified even in insisting on furnishing of security and in cases of serious abuse, the Court would be duty bound to impose heavy costs.

32.7 Wherever a public interest is invoked, the Court must examine the petition carefully to ensure that there is genuine public interest involved. The stream of justice should not be allowed to be polluted by unscrupulous litigants.

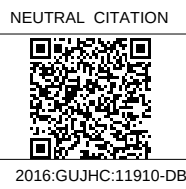
32.8 The Court, especially the Supreme Court, has to maintain strictest vigilance over the abuse of the process of court and ordinarily meddlesome bystanders should not be granted “visa”. Many societal pollutants create new problems of unredressed grievances and the Court should endure to take cases where the justice of the lis well-justifies it.

[Refer : Dalip Singh v. State of U.P, Amar Singh v. Union of India & Ors. and State of Uttaranchal v Balwant Singh Chaufal].

33. Access jurisprudence requires Courts to deal with the legitimate litigation whatever be its form but decline to exercise jurisdiction, if such litigation is an abuse of the process of the Court. In P.S.R. Sadhanantham v. Arunachalam & Anr. (1980) 3 SCC 141, the Court held:

“15. The crucial significance of access jurisprudence has been best expressed by Cappelletti:

“The right of effective access to justice has emerged with the new social rights. Indeed, it is of paramount importance among these new rights since, clearly, the enjoyment of traditional as well as new social rights presupposes mechanisms for their effective



protection. Such protection, moreover, is best assured be a workable remedy within the framework of the judicial system. Effective access to justice can thus be seen as the most basic requirement the most basic 'human-right' of a system which purports to guarantee legal rights."

16. We are thus satisfied that the bogey of busybodies blackmailing adversaries through frivolous invocation of Article 136 is chimerical. Access to justice to every bona fide seeker is a democratic dimension of remedial jurisprudence even as public interest litigation, class action, pro bono proceedings, are. We cannot dwell in the home of processual obsolescence when our Constitution highlights social justice as a goal. We hold that there is no merit in the contentions of the writ petitioner and dismiss the petition."

34. It has been consistently stated by this Court that the entire journey of a Judge is to discern the truth from the pleadings, documents and arguments of the parties, as truth is the basis of the Justice Delivery System.

35. With the passage of time, it has been realised that people used to feel proud to tell the truth in the Courts, irrespective of the consequences but that practice no longer proves true, in all cases. The Court does not sit simply as an umpire in a contest between two parties and declare at the end of the combat as to who has won and who has lost but it has a legal duty of its own, independent of parties, to take active role in the proceedings and reach at the truth, which is the foundation of administration of justice. Therefore, the truth should become the ideal to inspire the courts to pursue. This can be achieved by statutorily mandating the Courts to become active seekers of truth. To enable the courts to ward off unjustified



interference in their working, those who indulge in immoral acts like perjury, prevarication and motivated falsehood, must be appropriately dealt with. The parties must state forthwith sufficient factual details to the extent that it reduces the ability to put forward false and exaggerated claims and a litigant must approach the Court with clean hands. It is the bounden duty of the Court to ensure that dishonesty and any attempt to surpass the legal process must be effectively curbed and the Court must ensure that there is no wrongful, unauthorised or unjust gain to anyone as a result of abuse of the process of the Court. One way to curb this tendency is to impose realistic or punitive costs.

36. The party not approaching the Court with clean hands would be liable to be non-suited and such party, who has also succeeded in polluting the stream of justice by making patently false statements, cannot claim relief, especially under Article 136 of the Constitution. While approaching the court, a litigant must state correct facts and come with clean hands. Where such statement of facts is based on some information, the source of such information must also be disclosed. Totally misconceived petition amounts to abuse of the process of the court and such a litigant is not required to be dealt with lightly, as a petition containing misleading and inaccurate statement, if filed, to achieve an ulterior purpose amounts to abuse of the process of the court. A litigant is bound to make “full and true disclosure of facts”.

37. The person seeking equity must do equity. It is not just the clean hands, but also clean mind, clean heart and clean objective that are the equi-fundamentals of judicious litigation. The legal maxim *jure naturae aequum est neminem cum alterius detrimento et injuria fieri locupletiolem*, which means that it is a law of nature that one should not be enriched by the loss or injury to another, is the percept for Courts. Wide jurisdiction of the court should not become a source of abuse of the process of law by the disgruntled litigant. Careful exercise is also necessary to ensure that the litigation is genuine, not motivated by



extraneous considerations and imposes an obligation upon the litigant to disclose the true facts and approach the court with clean hands.

38. No litigant can play 'hide and seek' with the courts or adopt 'pick and choose'. True facts ought to be disclosed as the Court knows law, but not facts. One, who does not come with candid facts and clean breast cannot hold a writ of the court with soiled hands. Suppression or concealment of material facts is impermissible to a litigant or even as a technique of advocacy. In such cases, the Court is duty bound to discharge rule nisi and such applicant is required to be dealt with for contempt of court for abusing the process of the court.

39. Another settled canon of administration of justice is that no litigant should be permitted to misuse the judicial process by filing frivolous petitions. No litigant has a right to unlimited drought upon the court time and public money in order to get his affairs settled in the manner as he wishes. Easy access to justice should not be used as a licence to file misconceived and frivolous petitions.

40. In light of these settled principles, if we examine the facts of the present case, next friends in both the petitions are guilty of suppressing material facts, approaching the court with unclean hands, filing petitions with ulterior motive and finally for abusing the process of the court.

41. In this regard, first of all we may deal with the case of the appellant, Kishore Samrite:

41.1 Firstly, he filed Writ Petition No. 111/2011 on vague, uncertain and incomplete averments. In fact, he withheld the fact that the earlier Writ Petition No. 3719/2009 had been dismissed by a Division Bench of the Allahabad High Court as back as on 17th April, 2009, while he instituted Writ Petition No. 111/2011 in the year 2011. The excuse put forward by the appellant was that he did not know about the dismissal of that case. This flimsy excuse is hardly available to the appellant as he claims to be a public person (ex-MLA), had allegedly verified the facts and incidents before instituting the petition and made the desired



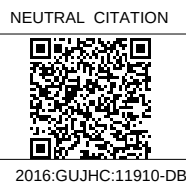
prayers therein. It is obvious that subject matter of Writ Petition No. 3719/2009 must have received great publicity before and at the time of the dismissal of the writ petition.

41.2 Secondly, without verification of any facts, the appellant made an irresponsible statement that the petitioners Sukanya Devi, Sh. Balram Singh and Smt. Sumitra Devi were in the illegal detention of Respondent no.6. The averments made in the writ petition were supported by an affidavit filed in the High Court stating that contents of paragraphs 1 and 3 to 15 were true, partly true to knowledge and partly based on record while paragraphs 2 and 16 were believed to be correct as per legal advice received. This stood falsified from the fact that the appellant did not even know the three petitioners, their correct addresses and identity.

41.3 Thirdly, in the Writ Petition in paragraph 10, it is stated that the petitioners were last seen on 4th January, 2007 in Amethi and the appellant had not seen them thereafter. The appellant also claims in the same paragraph that the facts came to his knowledge when he, in order to personally verify the facts, visited Amethi a couple of times and also as late as in December, 2010. From this, the inference is that the petition was based upon the facts which the petitioner learnt and believed during these visits. On the contrary, when he filed an affidavit in this Court on 25th July, 2012, in paragraph 6 of the affidavit, he stated as under:

“....The Petitioner has been the Member of Ruling Party in the State of M.P. and because of his standing in the Society, in 2007 he was called for by the Samajwadi Party Leadership, to contest Legislative Assembly Election from Constituency Lanji, Dist. Balaghat, Madhya Pradesh, he won the Bye-election and remained MLA, during 03.11.2007 to 08.12.2008. True Copy of the Identity Card is annexed herewith and marked as ANNEXURE P-

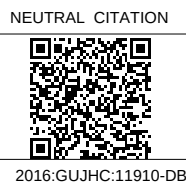
That the Petitioner, from a young age since 1986 he has been involved in Social



Activities, in State of Madhya Pradesh being a Social Activist, he has filed several Writ Petitions before Various High Courts, raising serious public and Social issues, and the issues concerning Corruption and Crime in Politics, and the courts have been pleased to entertain his writ petitions and grant reliefs in the several such writ Petitions filed by him. This List of Writ Petitions filed by the Petitioner is annexed herewith and marked as ANNEXURE P-9.

That taking into account his standing and antecedent at behest of the leader of his political party the Petitioner was called to C-1/135, Pandara Park, New Delhi in 2010 to meet the other Senior Leaders, who were in Delhi as the Parliament was in Session, where he was appraised about the facts of the serious incident that had been reported from a village in U.P. and in view of the fact that he had taken up several public causes in the past he was requested to file a Writ Petition in the nature of a public interest litigation in the High Court of Judicature at Allahabad Lucknow Bench at Lucknow and thus the Writ Petition came to be filed. Notice was issued in the said Writ Petition.”

42. Thus, there is definite contradiction and falsehood in the stand taken by the petitioner in the writ petition and in the affidavit filed before this court, as afore-noticed. This clearly indicates the falsehood in the averments made and the intention of the appellant to misguide the courts by filing such frivolous petitions. No details, whatsoever, have been furnished to state as to how he verified the alleged website news of the incident of 3rd December, 2006 and from whom. Strangely, he did not even know the petitioners and could not even identify them. The prayer in the writ petition was for issuance of a direction in the nature of habeas corpus to respondent no.6 to produce the petitioners. And lastly, the writ petition is full of



irresponsible allegations which, as now appears, were not true to the knowledge of the petitioner, as he claimed to have acted as next friend of the petitioners while he was no relation, friend or even a person known to the petitioners. His acting as the next friend of the petitioners smacks of malice, ulterior motive and misuse of judicial process.

43. The alleged website provides that the girl was missing. It was not reported there that she and her parents were in illegal detention of the respondent no.6. So by no means, it could not be a case of habeas corpus.

44. Now, we would deal with Writ Petition No.125 of 2011 instituted by Sh. Gajender Pal Singh, respondent No.8 in this appeal, being next friend of petitioners Sukanya Devi, Sh. Balram Singh and Sh. Sumitra Devi. The glaring factors showing abuse of process of Court and attempt to circumvent the prescribed procedure can be highlighted, inter alia, but primarily from the following :

44.1 Sh. Gajender Pal Singh also had no relationship, friendship or had not even known the three petitioners.

44.2 In face of the statements made by the three petitioners before the Police and the CBI, stating that they had never approached, asked or even expected respondent No.8 to act as next friend, he had no authority to act as their next friend before the Court and pray for such relief.

44.3 In the garb of petition for habeas corpus, he filed a petition asking for transfer of Writ Petition No.111 of 2011, to which he was neither a party nor had any interest.

44.4 Respondent No.8 intentionally did not appear in writ petition No.111 of 2011 raising the question of jurisdiction or any other question but circumvented the process of Court by filing Writ Petition No.125 of 2011 with the prayers including investigation by an authority against the petitioner in writ petition No.111 of 2011. Respondent No.8, despite being a resident of that very area and town,



Amethi, did not even care to mention about the dismissal of Writ Petition No.3719 of 2009.

44.5 In the writ petition, he claimed to be a neighbour of the three petitioners but did not even know this much that the petitioners had, quite some time back, shifted to Village Hardoia in district Faizabad. He also stated in paragraph 5 of the writ petition that he was neighbour of the petitioners and having not seen them, had sought to lodge a police report, which the authorities refused to take on the ground that the petitioners were in custody of the police as they had committed some wrong. This averment, to the knowledge of the petitioner, was false inasmuch as the Director General of Police, U.P. had stated in his affidavit that they were never detained or called to the police station. In fact, they had shifted their house to the aforestated Village. Respondent No.8 has, thus, for obvious and with ulterior motive abused the process of the court and filed a petition based on falsehood, came to the Court with unclean hands and even attempted to circumvent the process of law by making motivated and untenable prayers. This petitioner (respondent No.8) also made irresponsible allegations stating that Kishore Samrite, petitioner in Writ Petition No.111 of 2011, was a mentally challenged person.

45. From the above specific averments made in the writ petitions, it is clear that both these petitioners have approached the Court with falsehood, unclean hands and have misled the courts by showing urgency and exigencies in relation to an incident of 3rd December, 2006 which, in fact, according to the three petitioners and the police was false, have thus abused the process of the court and misused the judicial process. They maliciously and with ulterior motives encroached upon the valuable time of the Court and wasted public money.

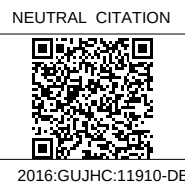
46. It is a settled canon that no litigant has a right to unlimited drought upon the court time and public money in order to get his affairs settled in the manner as he wishes. The privilege of easy access to justice has been abused by these



petitioners by filing frivolous and misconceived petitions. On the basis of incorrect and incomplete allegations, they had created urgency for expeditious hearing of the petitions, which never existed. Even this Court had to spend days to reach at the truth. Prima facie it is clear that both these petitioners have mis-stated facts, withheld true facts and even given false and incorrect affidavits. They well knew that Courts are going to rely upon their pleadings and affidavits while passing appropriate orders. The Director General of Police, U.P., was required to file an affidavit and CBI directed to conduct investigation. Truth being the basis of justice delivery system, it was important for this Court to reach at the truth, which we were able to reach at with the able assistance of all the counsel and have no hesitation in holding that the case of both the petitioners suffered from falsehood, was misconceived and was a patent misuse of judicial process. Abuse of the process of the Court and not approaching the Court with complete facts and clean hands, has compelled this Court to impose heavy and penal costs on the persons acting as next friends in the writ petitions before the High Court. This Court cannot permit the judicial process to become an instrument of oppression or abuse or to subvert justice by unscrupulous litigants like the petitioners in the present case.

61.1 Writ petition No. 111/2011 was based upon falsehood, was abuse of the process of court and was driven by malice and political vendetta. Thus, while dismissing this petition, we impose exemplary costs of Rs. 5 lacs upon the next friend, costs being payable to respondent no.6.

61.2 The next friend in Writ Petition No. 125/2011 had approached the court with unclean hands, without disclosing complete facts and misusing the judicial process. In fact, he filed the petition without any proper authority, in fact and in law. Thus, this petition is also dismissed with exemplary costs of Rs. 5 lakhs for abuse of the process of the court and/or for such other offences that they are found to have committed, which shall be payable to



the three petitioners produced before the High Court, i.e. Ms. Kirti Singh, Dr. Balram Singh and Ms. Sushila @ Mohini Devi.

61.3 On the basis of the affidavit filed by the Director General of Police, U.P., statement of the three petitioners in the Writ Petition, CBI's stand before the Court, its report and the contradictory stand taken by the next friend in Writ Petition No.111/2011, we, prima facie, are of the view that the allegations against the respondent no.6 in regard to the alleged incident of rape on 3rd December, 2006 and the alleged detention of the petitioners, are without substance and there is not even an iota of evidence before the Court to validly form an opinion to the contrary. In fact, as per the petitioners (allegedly detained persons), they were never detained by any person at any point of time."

5.16 Mr. Trivedi contended that following relevant Bar Council Of India Rules framed in exercise of the powers conferred under Section 49 (1) (c) of the Advocates Act, 1961 and contained in Chapter-II of Part-VI, clearly suggest as to how should, at all times, an Advocate comport himself in a matter like the present one, in a manner befitting his status as an Officer of this Hon'ble Court.

" Section I – Duty to the Court

1.... ...

2. An Advocate shall maintain towards the Courts a respectful attitude, bearing in mind that the dignity of the Judicial Office is essential for the survival of a free community.

3. An Advocate shall not influence the decision of a Court by any illegal or improper means. Private communications with a Judge relating to a pending case are forbidden.



4. An Advocate shall use his best efforts to restrain and prevent his client from resorting to sharp or unfair practices or from doing anything in relation to the Court, opposing Counsel or parties which the advocates himself ought not to do. An Advocate shall refuse to represent the client who persists in such improper conduct. He shall not consider himself a mere mouth-piece of the client, and shall exercise his own judgment in the use of restrained language in correspondence, avoiding scurrilous attacks in pleadings, and using intemperate language during arguments in Court.

Section II – Duty to the Client

... ..

13. An Advocate should not accept a brief or appear in a case in which he has reason to believe that he will be a witness, and if being engaged in a case, it becomes apparent that he is a witness on a material question of fact, he should not continue to appear as an Advocate if he can retire without jeopardizing his client's interests.

... ..

18. An Advocate shall not, at any time, be a party to fomenting of litigation.

... ..

24. An Advocate shall not do anything whereby he abuses or takes advantage of the confidence reposed in him by his client."

5.17 In furtherance of what is stated above, he submitted that the following observations of the Full Bench of the Hon'ble Madras High Court in case of **1st Grade Pleader, reported in AIR 1923 Mad. 485**, are worth referring to:



“There can be no justification at all for not speaking the truth. The fact that a man is going to be injured professionally if he does speak the truth is no valid excuse for telling a lie; but, it is an attitude which is not uncommon and which is not of the most serious character. It is very different from the case of a professional man telling a lie fraudulently in the sense of wishing to assist his client in deceiving the Court or even wishing to assist his client in a claim that he is making against another. It was done recklessly, foolishly and wrongly, apparently partly from fear and partly in his own interest.”

5.18 Mr. Trivedi submitted that similarly, the following observations of the Hon'ble Patna High Court in case of **Emperor vs. Guru Prasad Mukhtar**, reported in **AIR 1934 Patna 142**, are very apt to be taken note of -

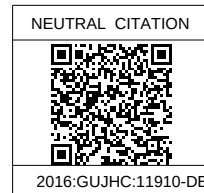
“Now the mukhtar had every opportunity had he so wished of giving evidence and denying the truth of these statements. He however did not take that course and having regard to the penalty for giving false evidence I think he was wise, but he filed a petition and in that he made a most ambiguous and disingenuous statement. He alleged that

“the statement which he had made before the Court was absolutely true and based on instructions and the duty of a lawyer is to speak to the Court on behalf of a client only on the instructions given to him. I therefore submit that my conduct before your honour was in consonance to the etiquette of the profession to which I have the honour to belong.”

It is hardly necessary to say that it is not part of the etiquette of members of the profession to tell lies in Court or to give perjured evidence on behalf of their clients. It will be noted that the mukhtar apparently intended to make his statement in such a form that he could fall back upon the so-called instructions of his clients, but he is unable to escape from the palpable fact that his earlier statements to the Magistrate were made as based on his own knowledge. An attempt has been made on his behalf to suggest that he had obtained his acquaintance of his client's illness through the medium of a medical certificate which the client ten days before had filed in the criminal case. But such an attempt is not worthy of serious consideration. We have stated in other cases in which mukhtars are concerned that it is the duty of this Court not only to protect the members of the public against disreputable members of the profession, but it is also our duty to protect the profession itself against the loss of reputation brought upon it by the conduct of such members."

5.19 Mr. Trivedi submitted that in view of what is stated hereinabove, this Hon'ble Court may decide all the questions raised vide order dated 9.12.2015, in the affirmative.

6. Mr. B.M. Mangukiya, learned advocate appearing with Mr. Bela Prajapati, learned advocate for the petitioners has taken us to the averments made in the petition and contended that it was the surcharged atmosphere which prevailed at the relevant time that terrified the petitioners who moved by this Court by way of this petition. He has drawn the attention of this Court to the affidavit-in-reply filed by the respondents as well as the petitioner by way of affidavit-in-rejoinder and some

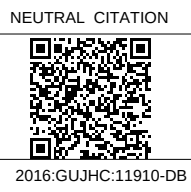


of the affidavits of supporting persons in vernacular language being R-4 to R-12 to the affidavit-in-rejoinder filed by petitioner no. 2 at page 93 to the petition.

6.1 Mr. Mangukiya submitted that the car of the corpus was stopped by Police Officers when he was returning from the condolence meet at village Tenpur, the petitioners had seen the car of the corpus being stopped by the police and therefore the petitioners stated in the memo of the petition. He submitted that there was no room for any other inference to be drawn other than the fact that the corpus was arrested by the police. He submitted that petitioners' cars were searched and they left in spur of moment but the corpus' car was there and thereafter they could not contact the corpus.

6.2 Mr. Mangukiya further submitted that out of 22 arrested persons, 9 persons have filed their affidavits in the matter including Mr. Kamleshbhai Patel who had accompanied the corpus on the fateful day. He has drawn the attention of this Court to Annexure R-4 filed by Mr. Kamlesh Patel, Annexure R-5 filed by Mr. Sanabhai Patel, Annexure R-6 filed by Mr. Maheshbhai Patel, Annexure R-7 filed by Mr. Kantibhai Patel, Annexure R-8 filed by Mr. Dineshbhai Patel, Annexure R-9 filed by Mr. Rushibhai Patel, Annexure R-10 filed by Dipakbhai Patel, Annexure R-11 filed by Rajeshbhai Patel and Annexure R-12 filed by Dharmendra Patel.

6.3 Mr. Mangukiya contended that the questions which are framed by this Court for determination are required to be answered in the negative. He submitted that there is no malicious intention in filing the present petition. He



submitted that it was a bonafide mistake on the part of the petitioners. He has drawn the attention of the affidavit in rejoinder filed on behalf of petitioner no. 1 wherein it is mentioned that the petitioners would not like to press for the averments in relation to the allegations made in the petition. He submitted that the petition was moved by the petitioners in unprecedented atmosphere of a situation where any delay in moving the petition would have again created an atmosphere of apprehension not in the mind of the petitioners alone but in the minds of several persons of Patidar community also.

6.4 Mr. Mangukiya further submitted that the petitioners were also aware of the fact that a message of arrest of corpus on 25.08.2015 resulted into public tranquility and therefore in such a situation messages were being spread like anything with regard to arrest of the corpus. He submitted that on 22.09.2015, media started giving messages that corpus is missing and therefore the petitioners were panicky more also because they were not in a position to contact the corpus.

6.5 Mr. Mangukiya further submitted that had the petitioners not taken steps to give solace to the patidar community by showing that the petitioners were taking all necessary steps to see that safety of the corpus was not at stake, the situation in all probabilities would have worsened and the degree of disturbance of the public tranquility would have been more than what has occurred on 25.08.2015. He submitted that the atmosphere of panic and fear with apprehension did not inhibit in the mind of petitioners alone but it was common perception and concept of the entire



Patidar community in the State of Gujarat which consists of about 20% of the total population of the State. He submitted that therefore the petitioners approached this Court by way of this petition.

7. Mr. Zubin Bharda, learned advocate appearing for the corpus has taken this Court to the affidavit-in-reply filed by the corpus more particularly paras 3 to 5 which read as under:

“3. I state that I was also not aware nor informed by the learned advocate of the petitioners that I will be called upon to write a statement about the facts and circumstances within my knowledge which led to the filing of the present petition. I was also not aware of the facts averred in the petition and all that I was made aware was that the petition was filed to ensure my safety and to further ensure safety to my life and limb which was in grave danger. Therefore under such circumstances when the learned advocate for the petitioners offered to provide me the assistance in the court room, I agreed to give the statement in writing although I am now informed that this was an unusual procedure adopted by the Hon’ble Court of making a corpus write his statement in the court room during the course of hearing of the petition. However as I had no reasons to doubt the intentions of the learned advocate for the petitioners, I penned the statement with assistance of the learned advocate who helped me in the dictation. I state and reiterate that I had written the statement before the Hon’ble Gujarat High Court upon the guidance provided to me by the learned Advocate for the petitioners.

4. I state and submit that since the statement was written by me with the assistance of the learned advocate for the petitioners at the stage and time when I was under tremendous pressure and had not even slept for the past many days as I



was living constantly in fear of being done away by vested interests who did not want the agitation to continue. I further state that since considerable time has lapsed I am today not in a position to file any affidavit on merit of the petition or in respect to the issues framed by this Hon'ble Court vide order dated 9/12/2015. I also state that since thereafter I came to be arrested and lodged in jail, I have had no access of the outside world and further taking into consideration the fact that the statement which I was made to write is also not available with me nor is a part of the documents supplied to me in jail, I do not consider it proper to make any further submissions without the copy of the statement. I therefore humbly request this Hon'ble Court to serve me my written statement in jail in the absolute interest of justice so that after perusing the same and thereafter seeking legal assistance I can file a further affidavit and assist this Hon'ble Court.

5. I say and submit that the copy of the application of habeas corpus was served upon me in jail, but since the issues framed vide order dated 9.12.2015 by this Hon'ble Court wherein none of the issue was framed which would require a reply from me I therefore did not file the reply to the present application at that stage."

8. We have heard Mr. B.M. Mangukiya, learned advocate appearing with Ms. Bela Prajapati, learned advocate for the petitioners, Mr. Kamal Trivedi, learned Advocate General appearing with Mr. Mitesh Amin, learned Public Prosecutor with Ms. S.K. Vishen, learned Additional Public Prosecutor appearing for respondent – State and Mr. Zubin Bharda, learned advocate appearing with Mr. Rafik Lokhandwala, learned advocate for respondent no. 7.

9. Having heard learned advocates for the parties and having gone through the entire records of the case, the fact



that is borne out is that the entire petition of the petitioners centers around the story to the effect that respondent no. 7 was abducted by the police at around 05.00 pm on 22.09.2015 from Village : Tenpur, Taluka Bayad, District : Aravalli in front of the eyes of the petitioners and was kept in illegal custody till he was released around 12.00 pm on the next day i.e. on 23.09.2015. For this purpose, this habeas corpus petition was initiated in the mid night of 22.09.2015 and early morning of 23.09.2015 at the residence of the Honble Judges wherein the Court (Coram : M.R. Shah & K.J. Thaker, JJ) passed an order issuing notice and making it returnable on 24.09.2015 on which day advocate appearing for the petitioners stated at Bar that the corpus -respondent no. 7 is personally present in the court.

9.1 It may be noted that though ample opportunity was given to the petitioners they have not explained the averments made in the petition as noted by the earlier bench. Thereafter, corpus was joined as party - respondent no. 7 and except corpus no others have filed appropriate reply. Though the petitioners filed reply, the same was not found to be satisfactory and substantiating the averments made in the petition. The petitioners in other words have not availed the opportunities granted to them to substantiate the allegations made by them in the petition. Though there are serious contradictions in the versions of the petitioners they have not attempted to explain the version given in the petition.

9.2 This Court while passing order dated 24.09.2015, had specifically observed as under:

“5.00. After considering the statement of the



corpus Mr. Hardik Patel as well as submissions of Mr. Mangukhiya, learned advocate appearing on behalf of the petitioners and sequence of events narrated by corpus Mr. Hardik Patel, which he has stated in his statement and which is directed to be kept in sealed cover, we are prima facie of the opinion that the petitioners herein are required to substantiate the allegations made in the present petition, which led the Court to believe for initiation of the Habeas Corpus proceedings immediately i.e. at 1.30 AM on 23/9/2015 and as such considering the same, prima faice we are not satisfied at all with respect to the allegations made by the petitioners in the present petition. However, a further opportunity is required to be given to the petitioners and/or their advocate, to substantiate the allegations made in the petition. It is for the reason that if anybody has tried to mislead the Court and/or made false statements and has taken the court proceedings lightly, the same cannot be permitted and/or tolerated. Nobody, whoever he/she may be, can be permitted to take the court proceedings lightly and/or cannot be permitted to take the court or the court proceedings for ride. Even petition is not on affidavit and hence both the petitioners to affirm the present petition during the course of the day today itself."

[Emphasis Supplied]

9.3 Similarly, vide order dated 06.11.2015, this Court again gave ample opportunity to the petitioners to substantiate the allegations and file appropriate affidavit for the same:

"... 3. At this stage, Ms. Prajapati, learned advocate appearing on behalf of the petitioners has disputed the above and has stated that while adjourning the matter to 05/11/2015 the Honble Supreme Court has passed an order that the High Court may, if it wants to proceed further with the hearing of the *habeas corpus* petition, proceed further. She has stated that she is making the



above statement, under instructions from Shri B.M. Mangukiya, one of the learned advocate appearing on behalf of the petitioners. She has reiterated her request to adjourn the matter. Even today also neither there is any application seeking adjournment and / or no application has been filed by the learned advocate appearing on behalf of the petitioners to extend the time to file further affidavit. While making the request for adjournment even Ms. Prajapati, learned advocate appearing on behalf of the petitioner is not making it clear that on or before the next date of hearing (in case the Court is inclined to adjourn the matter) further affidavit shall be filed by the petitioners or not. From the aforesaid and though sufficient time has been granted and opportunities have been given to the petitioners time and again to file affidavit as ordered earlier, on one ground or the other, the petitioners are not filing further affidavit as required to be filed pursuant to our earlier orders and it prima facie appears that there is a deliberate attempt on the part of the petitioners to avoid filing further affidavit substantiating the allegations made in the petition. As such Shri Trivedi, learned Advocate General is justified in submitting that if the petitioners can file other proceedings before this Court and can even file SLP before the Honble Supreme Court (which cannot be without instructions from the petitioners) there is no reason for the petitioners not to file further affidavit and / or not to give any further instructions to the advocates. Under the circumstances, we would have proceeded further with the hearing of the present petition. However, considering the seriousness of the matter, we still give one additional opportunity to the petitioners and / or their advocates to file further affidavit, if they so choose and wish to substantiate the allegations made in the petition relying upon which we took the matter very seriously and took up the matter at midnight at our residence as it was seriously apprehended by the State that the allegations of kidnapping by the police authorities of the State were absolute frivolous and baseless and were only with a view to create a hoax and, therefore, we adjourn the matter to 23/11/2015 so



as to enable them to give one additional opportunity to the petitioners to file further affidavit if they are required to file as per our earlier orders. If any request is made by the learned advocates appearing on behalf of the petitioners to meet the petitioners, who are at present in judicial custody in some other cases, and so as to enable them to get further instructions in the matter and for filing further affidavit and / or affirming the same by any of the petitioners they may approach the concerned authorities as mentioned in our earlier order dated 27/10/2015 as sufficient opportunities are already given to the petitioner and / or their advocates and as observed hereinabove there seems to be deliberate attempts on the part of the petitioners and / or their advocates to prolong the matter unnecessarily, while adjourning the matter to 23/11/2015, it is observed that if no further affidavit is filed, which is required to be filed as per our earlier orders on or before 23/11/2015, necessary consequences may follow including and may be adverse inference can be drawn.

[Emphasis Supplied]

9.4 In fact considering the averments made in the petition and considering the seriousness of the case shown at the behest of the petitioners and their counsel, this Court as custodian of the citizen's fundamental rights guaranteed under the Constitution of India had allowed court proceedings of the captioned petition to take place at midnight on 22/23.09.2015 with the sole object of seeing that the corpus Hardik Patel is not subjected to any illegal confinement or illegal detention or abduction.

9.5 Even after considerable adjournments and more than sufficient time granted by this Court, the petitioners could not substantiate the allegations made in the petition. In fact the



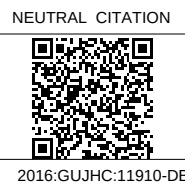
versions stated by the petitioners in the petition and the subsequent affidavits filed by the supporting persons also run contrary.

10. It goes without saying that the petitioners vide their affidavit in rejoinder had stated that they would not like to press for the averments in relation to the allegations made in the petition. However, this Court did not allow the petitioners to withdraw the petition in view of the fact that vide order dated 09.12.2015, this Court raised the following questions for determination which were required to be decided and answered accordingly.

10.1 Question No. 1 framed by this Court reads as under:

“1. Whether this Hon'ble Court upon being satisfied, should declare that the petitioners herein have approached this Hon'ble Court with unclean hands by filing false and perfunctory affidavits and should therefore, dismiss the captioned writ petition with exemplary and punitive cost, for misusing judicial process?”

10.1.1 On going through the averments made in the petition and the subsequent affidavits filed by the petitioners we are of the opinion that the petitioners have not come with accurate facts and even ample opportunities were given but still the said allegations are not properly explained by the petitioners. The so called '*Surcharged atmosphere*' as claimed by Mr. Mangukiya, learned advocate for the petitioners whether already existed or whether it was created by the petitioners and their accomplices is a matter of doubt. Considering the overall facts and circumstances of the case, we have come to the conclusion that the petitioners acted in



haste and without collecting ample information about the whereabouts of respondent no. 7 on 22.09.2015. We do not see any reason or logic in the petitioners creating such a panic when there was no emergent situation. The petitioners definitely could have waited for the court to function next day instead of rushing with this petition at 01.30 to 02.00 am on 23.09.2015. It is no doubt true that the doors of the Court are open for each and every litigant but the same should not be in the case of frivolous or luxury litigations or publicity stunt litigations.

10.2 Question No. 2 framed by this Court reads as under:

“2. Whether this Hon'ble Court upon being satisfied as referred to above, should issue appropriate directions for the prosecution of the petitioner as per the provisions of Sections 191 to 193, 196 and other applicable provisions of Indian Penal Code, for giving false evidence?”

10.2.1 So far as question no. 2 is concerned, we are of the opinion that instead of directing prosecution of the petitioners as per the provisions of Sections 191 to 193, 196 and other applicable provisions of Indian Penal Code for giving false evidence it shall be open to any party to apply for certified copy of the proceedings and file appropriate proceedings before the appropriate court if they think so. It shall not be proper for this court to give any findings at this stage as the same may prejudice the case of the parties pending before the different trial court/s.

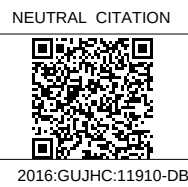
10.3 Similarly, question no. 3 framed by this Court reads as under:

“3. Whether this Hon'ble court should allow the wasting of judicial time and public money at the behest of the petitioners, who have initiated the captioned proceedings to perpetrate their malicious and ill-intended design to create unnecessary sensation and shock in the society for creating disturbance and law and order situation, by concocting the story of abduction and illegal confinement of Mr. Hardik Patel by the Police Authorities?”

10.3.1 So far as question no. 3 is concerned, we do not intend to state that the proceedings were malicious but at the best it could be stated to be not well intended or well founded. The alleged story of abduction of the corpus by the police was not proper inasmuch as even if the say of the petitioners is accepted, the corpus did not have any mobile at the relevant time when the police cordoned the car in which he was travelling. Merely because they were unable to contact the corpus, considering the tense surcharged situation prevailing at the relevant time, the petitioners without giving a second thought rushed with this petition. In fact it can be said that their conclusion of the corpus having been abducted by the police authorities was erroneous and as the assumption was wrong, they delved on the wrong path by filing this petition unnecessarily without verifying the correct facts. It may be noted that the entire chaos happened because of an imaginary situation created by the petitioners as per their convenience and suitability.

10.4 So far as question no. 4 is concerned, the same reads as under:

“4. Whether the litigants like the petitioners should



be allowed to pollute the stream of justice for personal gains by having tarnished the image and reputation of the Police Authorities by indulging in immoral acts like perjury, prevarication and motivated falsehood by putting in motion, the habeas corpus proceedings against the State, and then to allow to go scot-free by simply withdrawing the petition?"

10.4.1 We are of the view that the same is connected with question no. 2. The answer to the said question is a matter of evidence. In that view of the matter, it shall not be appropriate for this court to give any finding regarding perjury, prevarication and motivated falsehood by putting in motion the habeas corpus proceedings against the State at this stage as the same shall effect the proceedings pending before the trial court. We are not giving any finding for question no. 4 since it may prejudice the case. We however make it clear that we are not giving a clean chit to the actions of the petitioners or corpus and/or we are not giving any finding about the petitioners' conduct either positively or negatively in order not to prejudice the case pending before the trial court.

10.5 Finally, question no. 5 is reproduced hereunder:

"5. Whether the Advocate for the petitioners who filed the above writ petition for habeas corpus, is not obliged to act as an officer of this Hon'ble Court for assisting the Hon'ble Court consistent with his duty imposed under the Advocates Act, 1961 read with Bar Council Rules?"

10.5.1 As regards question no. 5 which has been rightly pointed out by learned Advocate General, we would like to mention on a general note that the advocates for the

parties are obliged to act officers of the Court for assisting the court consistent with their duties imposed under the Advocates Act, 1961 read with Bar Council Rules. We feel that the Madras High Court Full Bench decision in the case of **1st Grade Pleader** and the decision of Patna High Court in the case of **Guru Prasad Mukhtar (supra)** are justifiably applicable on the facts and circumstances of the case. It is very true that lawyers are duty bound towards the court as well as the client and they should balance the same. Advocacy being a noble profession should be used for the benefit of the litigants and the public at large. It is worth reiterating that it is not part of the etiquette of members of the profession to misguide the court or to act hastily without verifying proper facts. Advocates being officers of the court should keep in mind that the Institution comes first than anything else.

11. Before concluding we would also like to clarify that in cases where the matters are moved after office/court hours or during holidays, the Registry hereinafter shall not move any matter unless the same is typed and affirmed in accordance with the Rules. The concerned department in any case shall see that the petition/application is in consonance with the Rules and only then the matter shall be moved for taking appropriate permission from the Hon'ble the Chief Justice to list before the court concerned. The Registry shall see to it that before approaching the Hon'ble the Chief Justice and/or the Court/Judge concerned, the matter in question is in proper format as prescribed under the Rules.

12. We make it clear that neither Mr. Kamal Trivedi, learned



Advocate General, Mr. B.M. Mangukiya, learned advocate for the petitioners nor Mr. Zubin Bharda, learned advocate for respondent no. 7 were allowed to go through and make submissions on the documents which are part of the criminal proceedings. We have solely relied upon the documents which are not part of the proceedings before any other court. We have mainly gone through the petition and the affidavits and documents and annexures which are not part of the the charge sheet before the trial court. With a view to see that no prejudice is caused to the parties before the trial court where various proceedings are pending, we have thought it fit not to delve into any other document other than the ones which are on the record of this petition as observed above.

13. In view of the above directions, we dismiss the writ petition and impose Rs. 5000/- cost upon the petitioners. The sealed cover at Flag 'D' containing the covers tendered by Advocate General and the statement of Mr. Hardik Patel has been taken on record of the case. Rule is discharged.

(K.S.JHAVERI, J.)

(G.B.SHAH, J.)

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