

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**R/SPECIAL CRIMINAL APPLICATION (HABEAS CORPUS) NO. 12581 of
2025**

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Versus

STATE OF GUJARAT & ORS.

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Appearance:

MS. SHIVANI J. LAD(17505) for the Applicant(s) No. 1

MR JAY MEHTA, ADDL PUBLIC PROSECUTOR for the Respondent(s) No. 1

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CORAM: HONOURABLE MR.JUSTICE N.S.SANJAY GOWDA

and

**HONOURABLE MR.JUSTICE UTKARSH THAKORBHAI
DESAI**

Date : 19/09/2025

ORAL ORDER

(PER : HONOURABLE MR.JUSTICE N.S.SANJAY GOWDA)

1. On notice being served on the respondents, the learned APP has secured the presence of the petitioner and Ms. Bhakti Bhatt, the Superintendent of the 3rd respondent.

2. These facts are not in dispute:

2.1 On 10.01.2025, a complaint was lodged by the

petitioner alleging that she was subjected to rape and as a consequence, an FIR was registered. The petitioner, who was the complainant, appeared before the Magistrate and informed the Magistrate that she had no family to go to and that she did not want to go to her parents' house. Taking into consideration that she was produced before the Magistrate at about 8 pm, the Magistrate passed an order on 30.03.2025 directing the petitioner to be kept in the shelter home i.e. respondent no. 3.

2.2 Subsequently, the petitioner made an application to the Magistrate and requested the Magistrate that she be set at liberty. However, an order has been passed by the Magistrate rejecting her request, and as a consequence, the petitioner has been constrained to stay in the shelter home. The petitioner has, therefore, presented this petition stating that she has been illegally confined against her will and she is required to be set free.

3. In a given case, a Magistrate would no doubt have the power to pass an order to protect the safety and security of a woman by sending her to a shelter home. However, this direction to keep the woman in a shelter home cannot be indefinite and definitely cannot be against her will. Once a person who has been ordered to be kept in a shelter home makes a request that she be set at liberty, the Magistrate is duty bound to release the woman, more so, when the woman is a major and refuses to stay in the shelter home.

4. The Magistrate, in the instant case, has made certain observations which would be inappropriate given the fact that the petitioner was sent to the shelter home because she had no other place to go and she had refused to go to her parents' house. The order of the Magistrate contravenes the fundamental right of the petitioner to lead a life of her choice and cannot be permitted to stand. Even though there is no challenge to this order, in our view, this order is non est since no citizen can be kept in

a shelter home against their wish.

5. We would also like to add here that the observations made by the learned Magistrate would be inappropriate and unwarranted, given the fact that the request was made by the petitioner to be released from the shelter home, and more so, when she was not accused of any crime nor was she necessary for the purposes of any investigation.

6. Consequently, a direction is issued to the third respondent to set the petitioner free forthwith. The petitioner who is before us today is set at liberty and she is also permitted to collect her belongings from the 3rd respondent. Writ petition is, accordingly, allowed.

(NSSG,J)

(UTKARSH THAKORBHAI DESAI, J)

DIVYA