

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CRIMINAL APPLICATION NO. 10949 of 2022**

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SHAIFIYA VAJIUDDIN CONTRACTOR

Versus

STATE OF GUJARAT

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Appearance:

FALGUNI D UPADHYAYA(2280) for the Applicant(s) No. 1,2,3

MR GG SOLANKI(5562) for the Applicant(s) No. 1,2,3

MS. ANKITA GOSWAMI WITH MR. CHINMAY GANDHI for the
Respondent(s) No. 2

MS. FALGUNI TRIVEDI, APP for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE NIRAL R. MEHTA****Date : 19/10/2022****ORAL ORDER**

1) Heard learned advocate Mr. Jayrajsinh Chauhan with Mr.G.G. Solanki, learned advocate for the applicants and Ms. Ankita Goswami, learned advocate for Mr. Chinmay Gandhi, learned advocate appearing on behalf of the respondent No.2.

2) Mr. Chuahan, learned advocate, at the outset, submitted that the provisions of Section 97 of the Code of Criminal Procedure, 1973 came to be invoked by the respondent No.2 against the grand mother and two paternal aunts of the child.

3) Mr. Chauhan, learned advocate has pointed out that the Magistrate concerned, while passing the order dated 09.09.2022, has observed that the provisions of Section 97 of the Code cannot be invoked for the purpose of deciding the custody of the child.

4) Mr. Chauhan, learned advocate, further submitted that, a bare perusal of the Section 97 of the Code, would make it clear that the provisions of Section 97 of Code would be applicable, in case, when there

is an illegal confinement. However, in the present case, the child is with grand mother, and thereby, the child cannot be said to be illegal confinement.

5) Ms. Ankita Goswami, learned advocate requested this Court grant some time to file reply.

6) Considering the aforesaid, let there shall be **NOTICE** returnable on **28.11.2022**. Learned Additional Public Prosecutor appears and waives service of notice for and on behalf of the respondent-State.

7) In the meantime, there shall be an ad-interim relief, in terms of para 11(C). Direct service is permitted.

VISHAL MISHRA

(NIRAL R. MEHTA,J)