

# LAKHANI AND LAKHANI LEGAL CONSULTANCY LLP LAW FIRM

14 May 2022

## TO WHOMSOEVER IT MAY CONCERN

**Subject: Legal opinion in the case pertaining to Sri Nithyananda Swami also known as Bhagavan Nithyananda Paramashivam (referred to henceforth as "Swami Nithyananda")**

The case against Swami Nithyananda in the state of Gujarat has allegations relating to kidnapping of 2 minor girls depicting Swami Nithyananda and two female monks as conspirators and accused of the said alleged actus. The said two minor girls are now with their father who is the complainant in the alleged FIR. The allegation further goes on to state that major daughters of the complainant were kidnapped though they being major Adults have given affidavits to the Court stating that they left on their own free will to escape the clutches of their father who had been sexually abusing them since they were children. In fact, the eldest daughter did not even step foot in the state of Gujarat, and in the set and matrix of factum narrated above, It prima facie seems that the allegation levelled in the FIR does not connect the accused Swami Nityanada prima facie with the present alleged offense.

Some of the salient points presenting acute defense for the accused are as follows:

1. From the perusal of the First Information Report (FIR), it transpires that the first informant gathered the knowledge of the commission of the alleged offence on 01.11.2019 however, the FIR is filed on 17.11.2019. That, the alleged FIR does not provide any explanation whatsoever pertaining to the delay in filing of the FIR and the same raises suspicious eyes over the authenticity of the same.
2. The statements of the alleged kidnap victim have been taken by the police, shown before the media, given via sworn affidavit to the Court, all stating that neither she nor any of her family members was ever kidnapped and therefor prima facie the accused does not seem to be involved in the alleged crime.
3. As per Indian judicial system and as per constitutional provision Accused is always presumed to be innocent unless contrary proved beyond all shadow of reasonable doubt before a competent court of law. Presumption of innocence is always there with the accused person.
4. Each criminal trial has to start with clear presumption of innocence of accused and prosecution has to rebuts that presumption by adducing reliable and authentic and un impeachable evidence on record during course of trial. In criminal trial burden of proof always lies upon prosecution and at no stage it shifts upon accused person.

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5. In the trial yet even charges are not framed. Hence accused are having absolute right to file appropriate application for discharge.
6. Accused may also file appropriate application for quashing of FIR and chargesheet with all subsequent proceedings under section 482 of the CRPC before High court.
7. Two accused who were arrested are already released on regular bail which shows that there was no prima face case of prosecution against accused. That bail order has not even challenged by anyone hence it attained finality. In light of the same prima facie it could be presumed that no case is made out against Swami Nityanada also.
8. The present alleged FIR filed against Swami Nithyananda has been filled though he was not in the country and never set foot into the Gujarat campus which was opened by the women monks after Swami Nithyananda left the country.
9. It is a really shocking fact that in various media many times it appears that Swami Nithyananda and his followers are facing charges for human trafficking, rape, etc which are factually incorrect. In fact, till today no case of human trafficking has ever been registered against Swami Nithyananda or his followers and only one case of alleged rape was registered against Swami Nithyananda in which he got clear acquittal from a competent court at USA. Hence, prima facie it appears that some elements are behind Swami Nithyananda and his followers who are trying their level best to defame them by hook or crook, that too without any substantial legal base or material for the same. The same amounts undue harassment and also amounts to infringement of constitutional fundamental rights of Swami Nithyananda and his followers, for which they are entitled to initiate appropriate legal proceedings against the responsible persons.

**The following is the list of cases pending before various courts in this matter:**

1. Case in Lower Court alleging kidnapping - **CC 525/2020**
2. Habeas Corpus asking for appearance of the 2 adult women - **SCR.A. 9973/2019**
3. Case under POCSO (Protection of Children from Sexual Offences) case against police - **CR EN 2/2020**
4. Case by parents against illegal detainment of children by the police - **SCR A 10158/2019, SCR A 26/2020**

P.S- The Legal opinion is given on the basis of facts narrated and materials placed before me by my clients.

Thanking You,



P M Lakhani  
Advocate, Gujarat High Court