



Judgment

wp406.23.odt

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

CRIMINAL WRIT PETITION NO.406 OF 2023

Shri Sunil s/o Patiram
Parteti, aged- 37 years, occupation
- agriculturist, r/o Chendkapur Post,
Lohagad, tahsil- Katol, Chendkapur,
Lohagad, Nagpur- 441 302,
(Maharashtra). **Petitioner.**

:: VERSUS ::

1. The State of
Maharashtra, through Police
Station Incharge, Katol, taluka Katol, district Nagpur,
Maharashtra- 441 302.

2. Shri Vilas s/o Ankush
Sareyam; aged about 35 years,
r/o Mukkam Dhotki Post
Jhamsavali, tahsil- Sausarand,
district- Chhindwara (Madhya
Pradesh State- 480 106).

3. Shri Vinod s/o Ankush
Sareyam; aged about 37 years,
r/o Mukkam Dhotki Post
Jhamsavali, tahsil- Sausarand,
district- Chhindwara (Madhya
Pradesh State- 480 106).

4. Smt. Alka wd/o P Sareyam/Ivnati,
aged about 30 years, r/o
Mukkadam Dhotki Post Jhamsavali,
tahsil- Sausarand, district-

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Chhindwara (Madhya Pradesh State-480 106).

5. Shri Ankush Sarayam, aged about 68 years, r/o Mukkam Dhotki Post Jhamsavali, tahsil- Sausarand district Chhindwara (Madhya Pradesh State- 480 106).

6. Smt.Leelabai w/o Ankush Sareyam,; aged about 65 years, r/o Mukkam Dhotki, post Jhamsavali, tahsil Sausarand, district- Chhindwara (Madhya Pradesh State- 480 106). **Respondents.**

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Mrs.A.K.Dangre-Tripathi, Counsel for the Petitioner.
Shri A.J.Gohokar, APP for Respondent No1/State.
Shri U.Y.Sonkusare & Shri S.M.Kuhikar, Advocates for R-2 to 6.
=====

CORAM : URMILA JOSHI-PHALKE & NIVEDITA P.MEHTA, JJ.
CLOSED ON : 18/04/2026
PRONOUNCED ON : 30/04/2026

JUDGMENT

1. Heard. **Admit.** Heard finally by consent.
2. The present petition is preferred by the petitioner, who is father of a minor child of eight years, seeking her custody as she is illegally detained by respondent No.2 to 6, by way of writ of *habeas corpus* .

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3. The petitioner contended that his marriage was performed on 4.5.2017 with Smt.Suvarna Sareyam. After the marriage, they started cohabiting with each other. They were blessed with a girl child on 6.4.2018. However, due to matrimonial discords between them, as she was frequently visiting her parental house on unreasonable and trivial issues, she started residing at her parental house. It is further contended by him that despite of his repeated requests and he undertook to provide her with the best medical treatment, she left for delivery and, thereafter, not returned back. He continued visiting her on various occasions, but subsequently, even, he was not allowed to see his own daughter when his wife Suvarna was staying along with her parents. She died on 19.6.2020. After her death also, he made an attempt to meet his daughter, but respondent Nos.2 to 6 never allowed him to meet the minor child. Due to the death of his wife Suvarna, he performed second marriage on 26.12.2021. After his second marriage also, he made an attempt to bring the minor child, but his all efforts went in vain. On 25.7.2020, the

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minor child, through respondent No.2 uncle, filed an application before the JMFC at Saunsar, district Chhindwara under Section 125 of the CrPC claiming maintenance. The interim maintenance was granted. He has already complied with the order of the interim maintenance. It is contended by him that respondent Nos.2 to 6 are not allowing the petitioner even to have an access to meet the minor child despite requesting on numerous times and, therefore, he was constrained to file this petition.

4. Learned counsel for respondent Nos.2 to 6 has strongly opposed the present petition on the ground that the present petition itself is not maintainable as an alternative remedy is available with the petitioner to seek the custody from the Family Court under the relevant provisions. It is further submitted that due to the discords between the husband and wife, the mother of the minor child started residing with her parents along with the minor child. Since the mother of the minor child was deserted, the petitioner neither made a single attempt to bring them back nor made any provisions for their

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maintenance. Now, only because the maintenance order is passed against the petitioner, this petition is filed and, therefore, the petition deserves to be dismissed.

5. Learned APP for the State has also taken stand that as the maintenance order was passed, this petition was filed. As far as illegal detention is concerned, which is not substantiated by the petitioner and, therefore, the petition deserves to be dismissed.

6. Learned counsel for the petitioner submitted that due to the matrimonial discord, the wife of the petitioner started residing along her parents and her death is caused when she was at her parental house. Even an access to the petitioner was denied earlier by his wife and after her death, by respondent Nos.2 to 6. The petitioner being the natural guardian is entitled for custody of the minor child. She submitted that the illegal detention of the minor child revealed from the fact that the petitioner was never allowed to have an access to the minor child. Moreover, circumstance

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of claiming maintenance itself shows that respondent Nos.2 to 6 are not in a position to maintain the minor child. They are not having sufficient means to maintain the minor child. After all, paramount consideration is the welfare of the minor child and, therefore, the petition deserves to be allowed.

7. In support of her contentions, learned counsel for the petitioner placed reliance on following decisions:

- 1. Criminal Appeal (Special Leave to Petition (Criminal) No.14809/2024 (Vivek Kumar Chaturvedi vs. State of UP and ors) decided by the Hon'ble Apex Court on 7.2.2025; and**
- 2. Tejaswini Gaud vs. Shekhar Jagdish Prasad Tewari, reported in (2019)7 SCC 42, and**
- 3. Criminal Writ Petition No.1698/2023 (Amol Ramesh Powar vs. The State of Maharashtra and ors) decided by this court on 27.2.2014.**

8. Per contra, learned counsel for respondent Nos.2 to 6 submitted that since birth of the minor child, she is residing along with respondent Nos.2 to 6. The petitioner never shown his love and affection for the minor child. He has not

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made any efforts since the birth of the minor child till today for taking the custody of the minor child. Even, if it is accepted that the mother of the minor child was taking care the minor child, the petitioner has not made any attempt to take the custody of the minor child. Even, after the death of the mother of the minor child on 19.6.2020, the petitioner for three years, after the death of his wife, has not taken a single effort for bringing the minor child. Suddenly, after passing of the order of maintenance, he preferred this petition. He submitted that the welfare of child, undoubtedly, is paramount consideration. At the same time, writ of *habeas corpus* can be sought when custody is illegal. Here, since the birth of the minor child, her custody was with her mother and, after the death of her mother, the custody was with grandparents i.e. respondent Nos.5 and 6. The intention of the petitioner can be gathered from the circumstance that after the death of his wife, he has not made a single attempt even to meet the minor child and suddenly, he filed this petition contending the illegal detention of the minor child

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only because interim order of maintenance was passed against him and in the light of the above facts and circumstances, the petition deserves to be dismissed.

9. In support of his contentions, he placed reliance on following decisions:

1. **Mohtashem Billah Malik vs. Sana Aftab**, reported in 2026 SCC OnLine SC 146;
2. **Somprabha Rana and ors vs. State of Madhya Pradesh and ors**, reported in (2024)9 SCC 382; and
3. **Nirmala vs. Kulwant Singh and ors**, reported in 2024(5) Scale 709.

10. Before entering into the merits of the matter, it is necessary to consider broad proposition of the settled law on the point of writ of *habeas corpus* summarized by the Hon'ble Apex Court in the case of **Somprabha Rana and ors vs. State of Madhya Pradesh and ors** *supra*, which are as follows:

“a. Writ of Habeas corpus is a prerogative writ. It is an extraordinary remedy. It is a discretionary remedy;

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b. The High Court always has the discretion not to exercise the writ jurisdiction depending upon the facts of the case. It all depends on the facts of individual cases;

c. Even if the High Court, in a petition of Habeas Corpus, finds that custody of the child by the respondents was illegal, in a given case, the High Court can decline to exercise jurisdiction under Article 226 of the Constitution of India if the High Court is of the view that at the stage at which the Habeas Corpus was sought, it will not be in the welfare and interests of the minor to disturb his/her custody; and

d. As far as the decision regarding custody of the minor children is concerned, the only paramount consideration is the welfare of the minor. The parties' rights cannot be allowed to override the child's welfare. This principle also applies to a petition seeking Habeas Corpus concerning a minor.”

11. While dealing with the custody of the minor child, whose age is eight years, there is no dispute that the father is a natural guardian of the said minor child. The minor child is in custody of respondent Nos.2 to 6 from the tender age i.e. two years after her mother died. Her mother died on 19.6.2020. The birth of the minor child is 6.4.2018. Thus, at the time of death of mother of the minor child, she was hardly two years and two months of age. Since then, till today, the
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minor child is in custody of respondent Nos.2 to 6, who are maternal uncle; grand parents, and maternal aunt of the minor child.

12. While dealing with issue of *habeas corpus* regarding a minor, obviously, the court cannot treat child as a property and transfer custody casually. Such issues require to be decided sensitively on humanitarian ground. Obviously, the court cannot ignore the doctrine of *parens patriae*.

13. Considering the peculiar facts of the present case, the marriage of the petitioner with Late Smt.Suvarna (mother of the minor child) performed on 4.5.2017. The birth of the minor child is 6.4.2018. Admittedly, there was matrimonial dispute between the petitioner and his wife. As per allegations of the petitioner, the mother of the minor child was residing along with the minor child at the house of respondent Nos.2 to 6. Undisputedly, her death was also caused when she was residing along with her parents on 19.6.2020. The petitioner performed second marriage on

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26.12.2021. The petition came to be filed in 2023. Prior to that, the interim maintenance was granted on 14.1.2022. Therefore, contention of respondent Nos.2 to 6, that after the interim maintenance order was passed, this petition came to be filed, has a substance.

14. Even accepting arguments of learned counsel for the petitioner, that the present petitioner has taken efforts, but he was denied with an access to meet the minor child, admittedly, no single application/petition was filed by the petitioner within these six years after the death of his wife. Therefore, there is a substance in the contention of learned counsel for respondent Nos.2 to 6. Even accepting, that as the minor child is a female child and was of a very tender age and there was nobody to look after the minor child in the family and, therefore, the petitioner permitted to continue the custody of the minor child with respondent Nos.2 to 6, but he then performed the second marriage on 26.12.2021 and, thereafter, also, there is nothing on record to show that out of

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love and affection towards the minor child, he has taken any steps to obtain the custody of the minor child.

15. Learned counsel for the petitioner placed reliance on the decision in the case of **Tejaswini Gaud vs. Shekhar Jagdish Prasad Tewari** *supra* wherein the Hon'ble Apex Court observed that, "habeas corpus proceedings is not to justify or examine the legality of the custody. Habeas corpus proceedings is a medium through which the custody of the child is addressed to the discretion of the court. Habeas corpus is a prerogative writ which is an extraordinary remedy and the writ is issued where in the circumstances of the particular case, ordinary remedy provided by the law is either not available or is ineffective; otherwise a writ will not be issued. Writ of habeas corpus is a prerogative process for securing the liberty of the subject by affording an effective means of immediate release from an illegal or improper detention. In child custody matters, the power of the High Court in granting the writ is qualified only in cases where the detention of a minor by a person who is not entitled to his

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legal custody. The writ of habeas corpus is maintainable where it is proved that the detention of a minor child by a parent or others was illegal and without any authority of law. The writ also extends its influence to restore the custody of a minor to his guardian when wrongfully deprived of it. The detention of a minor by a person who is not entitled to his legal custody is treated as equivalent to illegal detention for the purpose of granting writ, directing custody of the minor child. For restoration of the custody of a minor from a person who according to the personal law, is not his legal or natural guardian, in appropriate cases, the writ court has jurisdiction.”

16. This court, in **Amol Ramesh Powar vs. The State of Maharashtra and ors** *supra* has also observed that the petitioner being natural guardian of the minor child, he cannot be deprived from obtaining the custody of minor child and granted the custody.

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17. In Criminal Appeal (arising out of SLP (Criminal) No.5171/2024) (**Gautam Kumar Das vs. Nct of Delhi and ors**) decided by the Hon'ble Apex Court on 20.8.2024, the father was considered to be natural guardian and custody was handed over to him.

18. In **Nirmala vs. Kulwant Singh and ors** *supra*, the Hon'ble Apex Court has considered the aspect of handing over custody of child and observed that the ordinary remedy lies only under the Hindu Minority and Guardianship Act or the Guardians and Wards Act as the case may be. It has been held that there are significant differences between the enquiry under the Guardians and Wards Act and the exercise of powers by a writ court which is summary in nature. What is important is the welfare of the child. It has been further held that, where the court is of the view that a detailed enquiry is required, the court may decline to exercise the extraordinary jurisdiction and direct the parties to approach the civil court. It is also held that in the peculiar facts and circumstances of the case, the High Court ought not to have entertained the
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habeas corpus petition under Article 226 of the Constitution of India. Since a detailed enquiry including the welfare of the minor child and his preference would have been involved, such an exercise could be done only in a proceeding under the provisions of the Guardians and Wards Act, 1890

19. Thus, the settled law is that a writ of habeas corpus is maintainable only when it is proved that detention of minor child by parents or otherwise was illegal or without any authority of law and hence in a peculiar facts and circumstances of the case, the order of the High Court granting writ of habeas corpus is justified one.

20. In the light of the settled legal position, the conduct of the petitioner requires to be noted.

21. Admittedly, the minor child, after her birth, was with her mother who died on 19.6.2020. The minor child was born on 6.4.2018 at the house of respondent Nos.2 to 6. After the death of the mother of the minor child, the petitioner has not taken any single efforts to obtain custody of the minor

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child, surprisingly for three years. There is nothing on record to show that at any point of time, he has taken efforts to bring the minor child. Admittedly, there was matrimonial dispute between the petitioner and his wife Suvarna, who are parents of the minor child.

22. The facts on record show that as soon as the interim order of maintenance was passed against the petitioner on 14.1.2022, he rushed to the court for obtaining the custody of the child. Therefore, the observation of the Hon'ble Apex Court in the case of **Somprabha Rana and ors vs. State of Madhya Pradesh and ors** *supra* has relevance wherein it is observed that, "coming to the facts of the case, at this stage, it will be very difficult to decide whether the welfare of the minor child requires custody of the maternal aunts to be disturbed. The child has not seen the father and grandparents for over a year. At the tender age of two years and seven months, if custody of the child is immediately transferred to the father and grandparents, the child will become miserable as the child has not met them for a considerably long time.
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Moreover, even the contesting respondents have not alleged that the child is not being looked after properly by the appellants. Whether the father is entitled to custody or not is a matter to be decided by a competent court, but surely, even assuming that the father is not entitled to custody, at this stage, he is entitled to have access to meet the child. It is in the child's best interest that she knows her father and grandparents and remains with them for some time to begin with.”

23. Here, in the present also, the minor child has not seen her father since her birth. She is at the age of transformation. At this stage, there is nothing on record to show that the minor child is in detention of respondent Nos.2 to 6 which is illegal and unauthorized custody. It cannot be ascertained that the welfare of the minor child requires custody of her father. It is the competent court who has to decide the same by taking into consideration the paramount consideration for the welfare of the minor child on the basis of the evidence adduced before it and, therefore, the present
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petition deserves to be dismissed. However, at this stage, it would be appropriate to give an access to the petitioner to meet the minor child. It would be in the interests of the minor child that if she knows her father and spends some time with him. Therefore, we propose to direct respondents to give access to the father of the minor child to meet the minor child once in a fifteen days. The access can be provided in the office of the Secretary of Taluka Legal Services Authority at Saunsar, district Chhindwara.

24. In view of the above, we pass following order:

ORDER

(1) The criminal writ petition is **dismissed**.

(2) We make it clear that respondents shall give access to the petitioner once in a fifteen days on working Saturday in the office of the Secretary of Taluka Legal Services Authority at Saunsar, district Chhindwara between 11:00 am to 2:00 pm..

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(3) The Secretary of Taluka Legal Services Authority at Saunsar, district Chhindwara shall supervise the access.

With these directions, the writ petition is disposed of.

JUDGE

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