

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. OF 2026
(Arising out of SLP (Crl.)No.8172 of 2026)

SURYAKANTH M RAIKAR ...APPELLANT (S)

VERSUS

THE STATE OF KARNATAKA ...RESPONDENT(S)
& ORS.

O R D E R

1. Leave granted.
2. This appeal assails the judgment and order dated 11th March, 2026 passed by the High Court of Karnataka at Bengaluru in W.P.H.C. No. 26 of 2026, whereby the writ petition filed by the appellant seeking a writ of habeas corpus for production and custody of his minor son was disposed of, leaving the parties at liberty to agitate their contentions before the appropriate forum.
3. The relevant facts, in brief, are as follows:
 - 3.1. The appellant's wife passed away on 17th August, 2020, leaving behind a son and a daughter. At the relevant time, both children were minors and were in the custody of the maternal relatives, arrayed as Respondent Nos. 7 to 10. The daughter (Respondent No.6 herein) has since attained majority.

- 3.2. The appellant had earlier approached the High Court for securing custody of the children by filing a habeas corpus petition being W.P.H.C. No. 104 of 2020. By order dated 25th January, 2021, the High Court directed that custody of the children be handed over to the appellant, while leaving it open to the parties to work out their rights with regard to custody before the appropriate forum.
- 3.3. According to the appellant, Respondent Nos. 7 to 10 thereafter took the minor son and daughter away from his custody. The appellant's daughter subsequently lodged a complaint dated 22nd January, 2026 against the appellant, which was challenged by him before the High Court. The said proceedings are pending and the investigation has been stayed by order dated 20th February, 2026.
- 3.4. Thereafter, on 26th February, 2026, the appellant submitted a complaint to the Station House Officer alleging that his minor son and major daughter were being illegally detained at Mangalore by their maternal uncles. As no action was taken on the complaint, the appellant approached the High Court by way of the present habeas corpus petition, seeking production of his minor son and restoration of his custody.

4. The High Court, by the impugned order, disposed of the writ petition observing that there was no element of illegal detention warranting exercise of habeas corpus jurisdiction. It further observed that the question of custody of a minor child falls within the jurisdiction contemplated under Section 7(1)(g) of the Family Courts Act, 1984, and relied upon the order passed in the earlier habeas corpus proceedings, whereby the parties had been left at liberty to approach the appropriate forum for determination of their rights with regard to custody.
5. We have heard Mr. Amit Pai, learned counsel appearing for the appellant, and Mr. Nishant Patil, learned Additional Advocate General appearing for the State of Karnataka. Despite service of notice, none has appeared on behalf of Respondent Nos. 6 to 10.
6. Learned counsel for the appellant submitted that Respondent Nos. 6 to 10 are in illegal custody of the minor son, who is under the guardianship of the appellant-father, being his natural guardian. It was submitted that the minor could not have been removed from the custody of the appellant without authority of law and that any claim to custody or guardianship by Respondent Nos. 6 to 10 had to be pursued before the competent forum under the Guardians and Wards Act, 1890. Reliance was placed on Section 41 thereof to contend that the appellant continues to be the guardian, there being no declaration

of his unfitness or other circumstance recognised by law bringing his guardianship to an end. It was, therefore, contended that the High Court ought to have examined the specific allegation of illegal custody on its merits, instead of declining to exercise its habeas corpus jurisdiction merely on the ground that the appellant could approach the Family Court.

7. *Per contra*, learned Additional Advocate General appearing for the State submitted that the appellant has an efficacious remedy before the Family Court under Section 7(1)(g) of the Family Courts Act, 1984, which specifically deals with matters relating to the custody of, or access to, any child. It was submitted that the case does not involve illegal detention and that no substantial question of law arises for consideration by this Court.
8. We have considered the rival submissions and perused the material on record. We find merit in the submissions advanced on behalf of the appellant.
9. The appellant had earlier approached the High Court by filing Writ Petition (HC) No.104/2020 seeking custody of his minor children. By order dated 25th January, 2021, the High Court recorded that custody of the children had been handed over to the appellant-father at his residence. The parties were left at liberty to work out their respective rights regarding custody before the appropriate forum.

10. The children thereafter remained in custody of the appellant. The respondent-daughter has since attained majority. According to the appellant, following a complaint lodged by the daughter against him on 19th January, 2026, Respondent Nos. 6 to 10 took the minor son from his custody. The appellant thereafter lodged a complaint dated 26th February, 2026 before the Station House Officer, alleging that his minor son was being illegally detained by Respondent Nos. 6 to 10. As no action was taken thereon, the appellant approached the High Court by way of the present habeas corpus petition.
11. The earlier order dated 25th January, 2021 is material to the consideration of the present petition. In the earlier habeas corpus proceedings, the High Court had directed that custody of the children be handed over to the appellant, while leaving the parties at liberty to pursue their respective claims before the appropriate forum. The appellant's case is that Respondent Nos. 6 to 10, without availing of such remedy, subsequently took the minor son from his custody. In view of the earlier order restoring custody to the appellant, the subsequent removal of the minor from his custody by Respondent Nos. 6 to 10, without recourse to the competent forum, was illegal. The circumstances in which the minor came to be in their custody were, therefore, material to the consideration of the present habeas corpus petition.

12. Section 6 of the Hindu Minority and Guardianship Act, 1956 recognizes the father as the natural guardian of a Hindu minor, subject to the provisions contained therein. The appellant, being the father, asserts his right to the custody of his minor son and alleges that the child was removed from his custody without authority of law. Since the daughter has attained majority, the present proceedings concern only the custody of the minor son.
13. In the facts and circumstances of the case, the High Court ought to have examined the allegation of illegal custody on its merits. The mere availability of a remedy before the Family Court under Section 7(1)(g) of the Family Courts Act, 1984 could not, by itself, warrant disposal of the habeas corpus petition. The appellant had raised a specific grievance regarding the removal of his minor son from his custody. This grievance had to be considered in the backdrop of the earlier order of the High Court and the circumstances in which the minor subsequently came into the custody of Respondent Nos. 6 to 10.
14. The High Court, however, did not examine these aspects and instead relegated the appellant to the remedy before the appropriate forum. In doing so, the High Court fell in error and failed to consider the effect of its earlier order restoring custody of the children to the appellant and the subsequent removal of the minor son from his custody. These were material circumstances bearing directly upon

- the allegation of illegal custody and could not have been left unexamined. The failure to consider them renders the impugned order unsustainable and warrants interference by this Court.
15. The appeal is accordingly allowed, and the impugned order is set aside. The matter is remanded to the High Court for fresh consideration of the habeas corpus petition on its merits and in accordance with law. The High Court shall examine all relevant facts and circumstances bearing upon the present custody of the minor child.
16. We clarify that we have expressed no opinion on the rival claims of the parties regarding the custody or guardianship of the minor child. The High Court shall consider the matter uninfluenced by any observation made herein.
17. Since the matter relates to the custody of a child, we expect the High Court to consider the request of the appellant for fixing an early date. Pending applications, if any, are disposed of.

.....J.
[VIKRAM NATH]

.....J.
[SANDEEP MEHTA]

**NEW DELHI;
AUGUST 19, 2026**