



Esha/Shephali

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO. 141 OF 2026

[REDACTED]

...Petitioner

~ versus ~

1. **STATE OF GOA**, Through Station House Officer (SHO) Margao Town Police Station, Goa (Notice to be served On Public Prosecutor High Court, Goa).

2. [REDACTED]

3. [REDACTED]

...Respondents

APPEARANCES**For the Petitioner****Mr. Prabhjit Jauhar**, with Ms. Vijeta Poulekar, Ms. Rosemary Raju and Mr. Chahat Raghav.**For Respondent No. 1****Mr. Pravin Faldessai, APP**, with Ms. Swizel Falcao.**For Respondent No. 2.****Ms. A. Agni, Senior Advocate**, with

Ms. Gautami Kamat and Mr. Junaid
Shaikh Shirodkar & Ms. Samiksha
Vaigankar.

CORAM : SUMAN SHYAM &
AMIT S. JAMSANDEKAR, JJ

RESERVED ON : 25TH FEBRUARY 2026.
PRONOUNCED ON : 7TH MAY 2026.

JUDGMENT (Per Amit S Jamsandekar, J):-

1. By the present Petition, the Petitioner (husband) is seeking a Writ of *Habeas Corpus* by invoking the jurisdiction of this Court under Article 226 of the Constitution of India. The Petitioner is seeking repatriation of his daughter, who was 3 years and 3 months as of January 2026. According to the 2nd Respondent (wife), the daughter was admittedly being breastfed as of August 2025 and has been breastfed to date.

2. **Rule.** The notice is waived on behalf of the 2nd and 3rd Respondents by Ms. Gautami Kamat. The 2nd Respondent is the wife of the Petitioner and the 3rd Respondent is their minor girl child. The Notice is waived on behalf of the State by the learned Additional Public Prosecutor, Mr. Pravin Faldessai. By consent of the parties, the Rule is made returnable forthwith and heard finally.

3. The Petitioner has made the following prayers:

“a. Direct that Respondent No. 2 hand over custody of Respondent No. 3, the minor daughter, [----] so that she may be repatriated to Utah, USA in the custody of the Petitioner in compliance with orders dated 28.10.2025, signed on 15.12.2025 by the Third Judicial District Court — Salt Lake City in and for Salt Lake County, State of Utah or upon the Respondent No. 2 failing to handover the custody of the minor daughter, Respondent No. 3 in that event the Respondent No. 1 be directed to locate the Respondent No. 3 and handover the custody of the Respondent No. 3 minor daughter in order to be repatriated back to her native country, i.e., U.S.A;

b. Direct that Respondent No. 2 hand over custody of all [----]’s original documents, such as her US passport, her birth certificate, her Indian Visa, and all other relevant documents, to the Petitioner;

c. Any other and further reliefs which this Hon'ble Court deems fit in the facts and circumstances of the case. (the [name] of the child is redacted in the prayers).”

4. The submissions of Mr. Prabhjit Jauhar, the Learned Counsel for the Petitioner, in brief, are as follows:

i) The Petitioner and the 2nd Respondent, prior to their marriage, began living together in August 2009 in the United States of America (***U.S.***) while pursuing their higher studies. On 3rd September 2013, the Petitioner and the 2nd Respondent married in Los Angeles, California, and their marriage was duly registered with the Los Angeles County. On 14th September 2022, the 3rd Respondent girl (***the child***) was born in New York City, NY, U.S. On 1st August 2023, the parties, along with the child, finally relocated from New York City, NY, U.S., to Salt Lake City, Utah, U.S., due to work commitments. On 7th October 2025, the Petitioner

filed divorce and custody proceedings against the 2nd Respondent before the Third Judicial District Court – Salt Lake City (*U.S. Court*), being Case No. 254905361. It is the case of the Petitioner that, the U.S. Court also issued a Domestic Relation Injunction (DRI) Order restraining the 2nd Respondent from travelling with the child without the written consent of the Petitioner or without a Court order. According to the Petitioner, the DRI came into effect the moment it was served upon the 2nd Respondent. According to the Petitioner, the DRI was served on the 2nd Respondent on 8th October 2025 at 2.55 p.m. It is alleged by the Petitioner that the 2nd Respondent, after receiving the served official summons and DRI Order, left the Matrimonial Home in Utah, with the child, on the pretext of going to the Local Police and stealthily booked the tickets at 5.24 p.m. on the same day, i.e., on 08th October 2025, for same-day travel to India for herself and the child on 08th October 2025 and flew to India at around 9 p.m. US (MT) time, on 08th October 2025. This was without the consent and knowledge of the Petitioner. It is submitted that the tickets were booked by the 2nd Respondent only after the service of the DRI and the Summons. The Petitioner submitted that the proceedings initiated by the Petitioner in the US Court have proceeded further. It is the case of the Petitioner that on 27th October 2025, the U.S. Court orally directed the 2nd Respondent to return the child to the U.S.

by 16th November 2025. It is submitted that the 2nd Respondent has submitted to the jurisdiction of the Court in the U.S. and has made a Counter Claim, sought divorce, custody of the child and protective orders from the Court in the U.S. The 2nd Respondent has appeared in the proceedings, and the respective Counsels were heard by the U.S. Court in the proceedings. The 2nd Respondent has also sought Spousal Support to the tune of US\$ 1,275 per month and Child Support to the tune of US\$ 1,260 per month on the grounds that the Petitioner was earning US\$ 14,242 per month. In this background, the case of the Petitioner is that the 2nd Respondent has abducted the child and, in violation of the orders passed by the US Court, has left the US and travelled to India along with the child. Therefore, the Petitioner has filed the present petition as early as possible, on 6th January 2026.

ii) Mr. Jauhar heavily relied on the order passed by the U.S. Court. The order is dated 08.10.2025 and is on page 110 of the Petition, which reads as follows:

“1 Findings: The Court finds there is reason to believe: it has jurisdiction over the parties and this case, the Respondent and Petitioner are cohabitants, the Respondent will be served notice of his/her opportunity to be heard at the scheduled hearing, and the Respondent has abused or committed domestic violence against Petitioner, or that there is a substantial likelihood that Respondent immediately threatens Petitioner's physical safety.

2 The petitioner is an intimate partner of the respondent.

The term intimate partner means, with respect to a person, the spouse of the person, a former spouse of the person, an individual who is a parent of a child of the person, and an individual who cohabitates or has cohabited with the person. 18 USC Sec. 921 (a)(32).

3 *The party to be protected is the child of an intimate partner to the respondent.*

4 *The Court orders the Respondent to obey all orders included on this form and to not abuse, or threaten to abuse, anyone protected by this order.*

5 ***You must not have contact with the Petitioner.***

6 *Warnings to the Respondent:*

- This is a court order. No one except the court can change it. You can tell your side when you go to court. If you do not obey this order, you can be arrested, fined, and face other charges.

- This order is valid in all U.S. states and territories, the District of Columbia, and tribal lands. If you go to another U.S. state, territory or tribal land to violate this order, a federal judge can send you to prison.

- No guns or firearms! (See item 5.)

To: [REDACTED] [REDACTED]

Go to the court hearing on the date listed below. If you do not go to the hearing, the judge can make orders without hearing your side.

A hearing will be held on OCTOBER 27, 2025 with Judge COMMISSIONER SAGERS at 10:00 A.M. in room W36 at 450 South State Street PO Box 1860 Salt Lake City UT 84114-1860.

This order lasts until the above hearing date; or later, if the Court extends time for service.

Respondent must obey all orders marked below.

Criminal orders (you can be arrested for violating these)

If you (respondent) violate the criminal orders below, it is a criminal Class A Misdemeanor, punishable by up to 364 days in jail and a fine. A second or subsequent violation can result in more severe penalties.

7 *Personal Conduct Order Do not commit, try to commit or threaten to commit any form of violence against the*

Petitioner or any person listed on this order. This includes stalking, harassing, threatening, physically hurting, or causing any other form of abuse that could cause bodily injury.

8 *No Contact Order Do not contact, phone, mail, e-mail, or communicate in any way with the Petitioner and the people listed on this order either directly or indirectly except as allowed by the parent-time provisions of this order.*

9 *Contact for Mediation You are allowed to have contact with the Petitioner only during mediation sessions for your divorce or custody case that are scheduled with a Court Qualified Mediator.*

10 *Stay Away Order*

Stay at least 200 FEET from the Petitioner.

11 *Stay away from Petitioner's home:*

The Petitioner is not a Safe at Home Program participant.

Petitioners home address is: 7899 SOUTH DANISH PINE LANE, COTTONWOOD HEIGHTS, UT 84121.

12 *No Guns or Other Weapons The Court finds that your use or possession of a weapon poses a serious threat of harm to the Petitioner. You cannot possess, have, or buy a gun or firearm or any of these weapons:*

Warning! If a final protective order is issued against you after the hearing, you will then become subject to the federal law making it a crime to possess, transport, ship or receive any firearm or ammunition, including a hunting weapon.

13 *Property Orders Until the hearing, only the Petitioner can use, control and possess the following property and things, but cannot dispose of this property without court approval:*

Home at: 7899 SOUTH DANISH PINE LANE, COTTONWOOD HEIGHTS, UT 84121 Car, truck, or other property: Dark Green Land Rover Range Rover Autobiography LWB, License plate No.MADHAVA

14 *Civil Orders(you can be held in contempt of court for violating these)*

If you (respondent) violate the orders below, you will be in contempt of court and may be punished with jail time and fines.

15 *Property Orders*

You cannot interfere with or change Petitioner's phone, utility or other services.

16 Child Custody and Parent-time Orders.

The Petitioner (the person asking for protection) will have temporary custody of the minor children of the parties listed below. The person with custody may give a copy of this order to the principal or director of the child's school or daycare. If you do not obey the custody and parent-time orders listed here, the person with custody may ask for the court's help by filing a motion to enforce the order:

17 You will have parent-time as follows: Standard time pursuant to Utah Code 81-9-304

18 No Travel with Children Do not take the children listed above out of the state of Utah.

19 Law Enforcement to Assist A law enforcement officer from Cottonwood Heights will enforce the orders below:

- Help the Petitioner gain and keep control over home, car or other personal belongings.
- Help the Petitioner obtain custody of the children.
- Help the Respondent remove essential personal belongings from the home.

Essential personal belongings means daily use items, such as clothing, medications, jewelry, toiletries, financial or personal records solely in one person's name, or items needed to work at a job or go to school.

Warning to the Respondent: Do not go to the home or other protected places without an officer. Law enforcement can evict you or keep you away from protected places, if needed.

Notice to the Petitioner:

The court may amend or dismiss a protective order after one year if it finds that the basis for the issuance of the protective order no longer exists and the petitioner has repeatedly acted in contravention of the protective order provisions to intentionally or knowingly induce the respondent to violate the protective order, demonstrating to the court that the petitioner no longer has a reasonable fear of the respondent. (Utah Code 78B-7-105(6)(c))."

5. Therefore, Mr. Jauhar, the Learned Counsel for the Petitioner, submitted that the child ought to be repatriated to the U.S. for the following reasons:

i) The child was born in the U.S. and is a U.S. citizen by birth. The U.S. is the native country of the child. The parties have stayed in the U.S. from August 2009 until 08th October 2025. They both have active U.S. green card applications in process since 2016. The parties chose to marry in the U.S. on 03rd September 2013, and the child was born in the U.S. on 14th September 2022, with the sole intent to make her a U.S. Citizen by birth, further underscoring the parties' desire to make the U.S. their permanent and habitual home. The mother chose not to come back to India for the delivery of the child and delivered the child in New York City, N.Y., U.S. on 14th September 2022. Since the U.S. recognises citizenship according to the Jus Soli principle, the child is a U.S. Citizen. Therefore, keeping in view the nationality of the child and the fact that she has a passport of that country while deciding the issue of custody, the same ought to be taken into consideration by the Court. This submission is made on behalf of the Petitioner on the basis of paragraph 28 of the judgment of the Hon'ble Supreme Court in ***Yashita Sahu V. State of Rajasthan*** (2020) 3 SCC 67.

ii) On the basis ***Yashita Sahu*** (supra), it is submitted that a child of tender years requires the love, affection, company,

and protection of both parties, and the same was also stated in paragraph 22 of the said Judgment that the Court should be wary of what is said by either of the spouses (not just one of them). Therefore, the welfare of the child demands that the child be repatriated to the U.S. so that the child also gets love, affection, company, and protection of the Petitioner.

iii) Further, the child has spent more than 3 years in the U.S. and only 4 months in India. The child has been well accustomed to the social and cultural milieu of the U.S. Since her birth, the child has not travelled to or lived in India. The child's stay in India has been only for the last four months, and that too in total contravention and violation of the Order dated 07th October 2025 passed by the U.S. Court. The child has been accustomed to the habitat of the U.S. since her birth, and therefore, it is in her interest and welfare to be returned to the U.S., where she shall have recourse to the company of both parents in an environment that is most habitually familiar to her and which affords her the lifestyle, care, affection, love, safety, security, social and cultural milieu, etc. to which she has become accustomed to since her conception as well as birth. However, if the child is allowed to stay in India with only the mother, then the child will not have recourse to the company of her father in any meaningful manner, and he will be legally arm-twisted to become a holiday father. In

the absence of repatriation, the child will be (A) essentially deprived of all the love, care, affection, safety, security, and company of a dedicated, caring, affectionate, and dutiful father, (B) expected to erase her well-established roots with her nation of birth (and citizenship), and also (C) required to dissolve her connections and profoundly established familiarity with a certain lifestyle, social and cultural milieu, social circles (friends, neighbours, etc.), etc., and those all put together will undoubtedly constitute irreparable harm to the child, especially in her formative years. Therefore, it is in the best interest and welfare of the child to have the company of both her parents, which can only be achieved if the child is returned to the U.S. This submission is based on paragraph 36 of the judgment of the Hon'ble Supreme Court in *Vasudha Sethi Vs Kiran V. Bhaskar* (2023) 17 SCC 478. Mr. Jauhar submitted that, in *Vasudha Sethi* (supra) the decision of the 3-Bench in *Nithya Anand Raghavan V. State of NCT of Delhi* (2017) 8 SCC 454 as well as *Kanika Goel V. State of Delhi* (2018) 9 SCC 578 were considered and the argument with regard to proviso (a) of Section 6 of the Hindu Minority and Guardianship Act was also taken into consideration and it was held that even if the age of the minor is less than 5 years, even in those cases the custody can be given to the father.

iv) Mr. Jauhar submitted that it is clear that the child has not developed roots in India and therefore, it would be

better for this Court to exercise its summary inquiry and repatriate the child back to the U.S. and the issues regarding the welfare, interest and to whom the custody should be awarded should be left to the discretion of the U.S. Court, which is the Court of Competent Jurisdiction in this matter. The Court is to engage in an elaborate inquiry only if considerable time has passed since the child was removed from its Native Country or if the child has developed roots in India. In support of this submission Mr. Jauhar cited paragraphs 11, 12, 15, and 16 of the judgment of the Hon'ble Supreme Court in *Nilanjan Bhatt* [REDACTED] *V. State of Karnataka* (2021) 12 SCC 376.

v) Mr. Jauhar submitted that in the present case, to date (previously or even now), there is no material on record produced by the 2nd Respondent to show that any physical, sexual, psychological, or mental harm shall be caused to the child if she is returned to the U.S. The 2nd Respondent has not filed any complaint or made any allegation following the birth of the child from 14th September 2022 till 8th October 2025, i.e. the date when the minor daughter was wrongfully removed from the jurisdiction of the U.S. in contravention of the Order dated 7th October 2025 passed by the U.S. Court. The 2nd Respondent never made any kind of allegation of the father having abused the child physically, sexually, mentally, or in any manner, and all the allegations now being made by the 2nd Respondent are a

counterblast and in retaliation to the proceedings of divorce and custody undertaken by the Petitioner before the U.S. Court on 7th October 2025. Even the Police in Goa have investigated the allegations levelled by the 2nd Respondent in the FIR registered under the POCSO Act and have filed a Cancellation Report stating that they could not find any kind of evidence *qua* the allegations made by the 2nd Respondent. Moreover, all the allegations now being levelled could have allegedly transpired only in the U.S., and it is only the U.S. Courts that shall have the jurisdiction to decide and adjudicate upon the said allegations.

vi) It is further submitted by Mr. Jauhar that the 2nd Respondent has not only prosecuted and filed a Reply to the Divorce and Custody case filed by the Petitioner husband but also has, on 10th October 2025, invoked jurisdiction of the U.S. Court by filing her own Counter Claim for Divorce and Custody before the U.S. Court through her own U.S. Attorney. The 2nd Respondent has sought sole custody of the child from the U.S. Court and also has sought Spousal and Child Support from the U.S. Court etc. Therefore, a person who invokes the jurisdiction of a competent Court by claiming the reliefs of custody and divorce, cannot now refuse to abide by the orders of the said Court by refusing to disregard the said proceedings, once an adverse order is passed against 2nd Respondent by the said Court after the Court has followed an extensive, impartial, and

comprehensive due process over several months to arrive at its conclusions and the said Order. In support of this submission Mr. Jauhar relied upon paragraphs 47 and 48 of the judgment of the Hon'ble Supreme Court in ***Lahari Sakhamuri V. Sobhan Kodali*** (2019) 7 SCC 311.

vii) It is the submission of the Petitioner that no Indian Court under the Guardians and Wards Act, 1890, will have the jurisdiction to decide upon the Custody of a U.S. National. The Custody Petition filed by the 2nd Respondent in Civil Court, Goa, India, was filed on 2nd February 2026, i.e. much after the filing of the present *Habeas Corpus* proceedings before this Court. However, the said Petition is also not maintainable under Section 9 of the Guardians and Wards Act as the child, who is a U.S. Citizen, and has practically lived her entire life in the U.S., is not an Ordinary Resident of India or Goa. This submission is made on the basis of paragraphs 30 and 31 of the Judgment of the Hon'ble Supreme Court in ***Lahari Sakhamuri*** (supra) and ***Dr. Abhilasha Sharma V. Vayu Kishore*** 2025:JHHC:36692-DB.

viii) On the basis of the judgment of the Hon'ble Supreme Court in ***Rajeswari Chandrasekar Ganesh V. State of Tamil Nadu*** (2023) 12 SCC 472 in para 99, Mr. Jauhar submitted that the invocation of Writ of *Habeas Corpus* is an Inherent Jurisdiction and it ought to be exercised in the interest of the child and for the welfare of the child.

ix) Mr. Jauhar submitted that the Petitioner has a valid Visa until 16th November 2028, and the 2nd Respondent also has a valid visa till 11th June 2026. The child has a valid U.S. passport, being a U.S. citizen by birth. Therefore, there is no impediment for the return of the child to the U.S., and the mother can also safely travel back to the U.S. Additionally, the Petitioner husband has a stable job and is working fully remotely (as he has been since July 2022, even before the birth of the child), like most of the employees of his firm. Therefore, it is submitted that the Petitioner has sufficient time and dedication to look after the child and take responsible care of her, as he has been doing since before the child's birth. Apart from that, the paternal grandmother of the child is also residing in the U.S., who shall readily take care of the well-being and interest of the child in case she is repatriated to the U.S. and the 2nd Respondent chooses to stay back in India or is unable to return to the U.S., for any reason.

x) Mr. Jauhar submitted that the comity of Courts is a healthy doctrine. The Courts in India have consistently frowned upon the removal of children by one parent from one country to another in violation of the orders passed by another competent Court. The 2nd Respondent has taken custody of the child and travelled to India with the child without the Petitioner's consent. He relied upon paragraphs 14 and 19 of the judgment of the Supreme Court of *Yashita*

Sahu (supra). The 2nd Respondent has illegally travelled to India with the child and has violated the order passed by the U.S. Court. Therefore, it is submitted that this is a fit case for the grant of the relief as sought. He further submitted that all the proceedings adopted by the 2nd Respondent, including the proceedings under the POSCO Act, are false and frivolous. The proceedings are initiated by the 2nd Respondent only as a counterblast to the pending U.S. proceedings and the present writ petition. The Goa Police have investigated the complaint made by the 2nd Respondent and have filed 'A Summary' report and have closed the proceedings. The complaint, making allegations of sexual harassment of the child by the Petitioner, is false on the face of it because no such complaints were ever made by the 2nd Respondent when she was residing in the U.S. with the child. The custody matter cannot be decided by the Courts in India in view of the fact that the proceedings are already pending before the Court in the U.S. and the 2nd Respondent has submitted to the jurisdiction of the U.S. Court.

xi) Mr. Jauhar, on instructions, submitted that the Petitioner is willing and happy to submit an Affidavit of Undertaking incorporating all the facilities, such as house, maintenance, etc., to be provided to the 2nd Respondent in case there is a direction for the 2nd Respondent to go back to the U.S. with the child. He further submitted that the

Petitioner is also ready and willing to give in an undertaking that the Petitioner shall not initiate any coercive proceedings for willful disobedience of the Orders of the U.S. Court by the 2nd Respondent.

xii) Therefore, Mr. Jauhar submitted that the Writ Petition is liable to be allowed and the child be repatriated to the U.S., keeping in mind the interest and welfare of the child.

xiii) Mr. Jauhar has relied upon various judgments in support of his submissions, which include, *Jeewanti Pandey Vs. Kishan Chandra Pandey*, 1981 (4) SCC 517, *Smt. Surindar Kaur Sandhu Vs. Harbax Singh Sandhu & Another*, 1984 (3) SCC 698, *Mrs. Elizabeth Dinshaw Vs. Arvand M. Dinshaw & Another*, 1987 (1) SCC 42, *Mr. Paul Mohinder Gahun Vs. Mrs. Selina Gahun*, 2006 (130) DLT 524, *Aviral Mittal Vs. The State & Another*, 2009 (112) DRJ 635, *Shilpa Aggarwal Vs. Aviral Mittal & Another*, 2010 (1) SCC 591, *Dr. V. Ravi Chandran Vs. Union of India*, 2010 (1) SCC 174, *Sondur Gopal Vs. Sondur Rajini*, (2013) 7 SCC 426, *Arathi Bandi Vs. Bandi Jagadrakshaka Rao & Others*, (2013) 15 SCC 790, *Surya Vadanani Vs. State of Tamil Nadu & Others*, (2015) 5 SCC 450, *Nithya Anand Raghavan Vs. State of NCT of Delhi*, (2017) 8 SCC 454, *Tippa Srihari Vs. State of A.P.*, 2018 SCC Online Hyd 123, *Ganamukkala Sirisha Vs. Tippa Srihari*, MANU/SCOR/23943/2019, *Lahari Sakhamuri Vs. Sobhan Kodali*, (2019) 7 SCC 311, *Varun*

Verma Vs. State of Rajasthan, 2019 SCC Online Raj 5430, *Yashita Sahu Vs. State of Rajasthan & Others*, (2020) 3 SCC 67, *Tejaswini Gaud Vs. Shekhar Jagdish Prasad Tewari*, (2019) 7 SCC 42, *Nilanjan Bhatt* [REDACTED] *Vs. The State of Karnataka*, 2020 SCC Online SC 928, *Ghadian Harshavardhan Reddy Vs. State of Telangana & Others*, MANU/TL/1033/202, *Vasudha Sethi Vs. Kiran V. Bhaskar*, 2022 SCC Online SC 43, *Rohith Thammana Gowda Vs. State of Karnataka & Others*, 2022 SCC OnLine SC 937, *Rajeswari Chandrasekar Ganesh Vs. State of Tamil Nadu*, 2022 SCC OnLine SC 885, *Abhinav Gyan Vs. State of Maharashtra & Another*, CrI. W.P. No. 693/2021, *Abhay Vs. Neha Joshi & Another*, 2023 SCC OnLine Bom 1943, *Neha Joshi Vs. State of Maharashtra & Another*, SPL (CrI) No. 12866/2023, *Anupriya Vs. Abhinav Gyan*, SLP (CrI) No. 10381/2022, *Sunanina Rao Kommineni Vs. Abhiram Balusu*, 2025 SCC OnLine Del 4176, *Sunanina Rao Kommineni Vs. Abhiram Balusu*, SLP (CrI) No. 8800/2025.

xiv) According to Mr. Jauhar the present case is covered by the judgments cited by him and therefore, all the issues raised by the 2nd Respondent to oppose the petition are closed by these judgments.

6. On the other hand, Mrs. Agni, the Learned Senior Counsel on behalf of the 2nd Respondent, opposed the reliefs on the following grounds:

i) There is gross suppression of material and vital facts in the petition. Therefore, the petition ought to be dismissed solely on this ground. The Petitioner has, *inter alia*, suppressed the fact that the 2nd Respondent has travelled to India with the child with the consent of the Petitioner. The Petitioner has no stable job, and the visa was obtained by the Petitioner by misrepresenting the immigration authorities. He was terminated from the services and was without a job for a considerable time. The couple has changed residences from time to time. No medical insurance, no permanent residence, and total uncertainty about the job and visa status of the Petitioner were the crucial facts that the Petitioner has suppressed in the petition.

ii) It is the case of the 2nd Respondent that they lived as a nuclear family in the U.S. with no support system. The 2nd Respondent, in spite of her high qualifications, had been relegated to being a homemaker and has always been the primary caregiver to the child, who did not stay for a single day without the mother. Admittedly, the child was breastfed as of August 2025. She submitted that the child is still being breastfed.

iii) *Habeas Corpus* is a prerogative writ which is an extraordinary remedy recourse which ought not to be permitted unless an ordinary remedy provided by law is

unavailable or ineffective and in child custody matters, the powers of the Court are qualified only in cases where detention of a minor is by a person who is not entitled to her/his legal Custody. In this case, the Hindu Minority and Guardianship Act or the Guardian and Ward Act applies, and therefore, the custody of the child can only be decided in accordance with the provisions of these Acts. The 2nd Respondent is the biological mother of the child, and therefore, she is the natural guardian of the child, who is admittedly less than five years old.

iv) She further submitted that the Orders which cannot withstand the tests laid down in Section 13 of the Code of Civil Procedure, 1908, shall not receive recognition of Courts in India. The orders passed by the U.S. Court are *ex parte* orders and therefore cannot be in conformity with the provisions of Section 13 of the Code of Civil Procedure, 1908. In any case, the Petitioner is unable to demonstrate that any of the Orders passed by the U.S. Court declares the custody of the child with 2nd Respondent unlawful. Further, the temporary orders passed against the 2nd Respondent were not served on the 2nd Respondent. She came to know of the orders only when she reached India. Further, the orders passed by the U.S. Court cannot be the sole factor to decide the custody of the child and repatriate the child who is less than five years old.

v) There are pleadings about sexual abuse concerning the child on the part of the Petitioner and there is a complaint filed and an FIR is registered. Though there is 'A Summary' closure report filed, the POSCO Court has not issued notice to the 2nd Respondent and has not passed orders permitting closure. Summary report of closure signifies that the incident is true when the accused is known, but there is insufficient material to go to trial. Further, there are serious allegations of harassment against the Petitioner. The 2nd Respondent and the child were not safe in the U.S. with the Petitioner and the 2nd Respondent was justified in coming to India with the child. Mrs. Agni submitted that the e-mail sent by the Petitioner to the 2nd Respondent's relative on 5th June 2025 speaks for itself and justifies the acts of the 2nd Respondent and the apprehension about the safety and security of the 2nd Respondent and the child.

vi) Father does not give any maintenance to the child or the mother. The child lives in a settled house with her grandparents and mother and is admitted to Manovikas School in Goa, India. The language of the child is Marathi, and the child is in a natural, comfortable and safe environment.

vii) While deciding the *Habeas Corpus* Petition and the matter pertaining to custody of the child and the focal point

is what is in the paramount interest and welfare of the child, this Court would have to consider the total absence of documents showing a stable and safe environment for the child in U.S.

viii) There were no funds available with the 2nd Respondent to maintain herself and the child. All the monies were withdrawn by the Petitioner from the account of the 2nd Respondent.

ix) Mrs. Agni submitted that the judgments cited on behalf of the Petitioner are distinguishable and each case ought to be decided on its own merits after considering the facts and circumstances of each case.

x) The Court, being *parens patriae*, would examine the order passed by a foreign court and what is in the paramount interest and welfare of the child to decide whether there should be a summary or detailed inquiry in the matter. It is the submission of the 2nd Respondent that there are many disputed facts which cannot be decided by this Court and ought to be decided in a custody matter filed by the 2nd Respondent before the Court in India.

xi) Mrs. Agni submitted that, looking at the overall scenario, the facts on record and the applicable law this is not a fit case to repatriate the child to the U.S.

xii) In support of her submission Mrs. Agni cited many judgments including: *Ruchi Majoo Vs. Sanjeev Majoo*, (2011) 6 SCC 479, *Nithya Anand Raghavan Vs. State (NCT of Delhi) & Another*, (2017) 8 SCC 454, *Kanika Goel Vs. State of Delhi*, (2018) 9 SCC 578, *Prateek Gupta Vs. Shilpi Gupta & Others*, (2018) 2 SCC 309, *Sarita Sharma Vs. Sushil Sharma*, (2000) 3 SCC 14, *Dhanwanti Joshi Vs. Madhav Unde*, (1998) 1 SCC 112, *Sharmila Velamur Vs. V. Sanjay & Others*, *Contempt Petition* (c) No. 9/2025 in SLP (Crl) No. 17281/2024 decided on 03.03.2025, *Lahari Sakhamuri Vs. Sobhan Kodali*, (2019) 7 SCC 311, *Vivek Singh Vs. Romani Singh*, (2017) 3 SCC 231, *Rosy Jacob Vs. Jacob A. Chakramakkal*, (1973) 1 SCC 840, *Tejaswini Gaud & Others Vs. Shekhar Jagdish Prasad Tewari & Others*, (2019) 7 SCC 42, *Vasudha Sethi & Others Vs. Kiran V. Bhaskar & Another*, Criminal Appeal No. 82/2022 arising out of SLP (Crl) No. 7129/2021 decided on 12.01.2022, *Nirmal Vs. Kulwant Singh & Others*, (2024) 10 SCC 595, *Gangadhar Janardan Mhatre Vs. State of Maharashtra & Others*, (2004) 7 SCC 768, *Arnab Manoranjan Goswami Vs. State of Maharashtra & Others*, Criminal Appeal No. 743 of 2020 arising out of SLP (Crl) No. 5599 of 2020 decided on 27.11.2020, *Neethu B. @ Neethu Baby Mathew Vs. Rajesh Kumar, R.P* (C) Nos. 2273-2274/2024 in Civil Appeal Nos. 5395-5396 of 2024 decided on 15.07.2025, *Shravan Baburao Dinkar Vs. N.B. Hirve*, Criminal Writ Petition Nos.

301, 302 of 1996 decided on 25.09.1996, *xxx Vs. State of Maharashtra & Others*, Criminal Writ Petition No. 512 of 2023 decided on 06.12.2023 (High Court of Judicature at Bombay).

7. We have heard Mr. Jauhar and Mrs. Agni at length and have considered the pleadings, documents and the written submissions placed on record by the parties. We have also carefully considered all the judgments cited by the Learned Counsel on behalf of the Petitioner and the 2nd Respondent.

8. Initially, we made an attempt and suggested that the parties amicably settle the disputes. However, we were informed that there is no possibility of an amicable settlement of the disputes. The 2nd Respondent has also made it very clear that she will not go back to the U.S. The reasons given by the 2nd Respondent are that she cannot compromise on her safety and security and that of her child. Also, according to her, she may not be entitled to get a visa to travel, and even if she gets a visa, her status based on such VISA would be vulnerable in the future. The most important reason given by the 2nd Respondent is that there have been incidents of sexual abuse of the child by the Petitioner. In view thereof, we have to consider the prayer of the Petitioner to repatriate the child without the 2nd Respondent.

9. To begin with, Mr. Jauhar and Mrs. Agni have fairly submitted that the *parens patriae* jurisdiction of the Court to issue

a writ of *Habeas Corpus* is a relief in equity and is solely for the welfare of a child and that should be of paramount consideration while deciding the matter.

10. The Hon'ble Supreme Court in *Rajeswari Chandrasekar Ganesh* (Supra), has held in paragraph 99 as follows:

“99. Thus, it is well established that in issuing the writ of Habeas Corpus in the case of minors, the jurisdiction which the Court exercises is an inherent jurisdiction as distinct from a statutory jurisdiction conferred by any particular provision in any special statute. In other words, the employment of the writ of Habeas Corpus in child custody cases is not pursuant to, but independent of any statute. The jurisdiction exercised by the court rests in such cases on its inherent equitable powers and exerts the force of the State, as parens patriae, for the protection of its minor ward, and the very nature and scope of the inquiry and the result sought to be accomplished call for the exercise of the jurisdiction of a court of equity. The primary object of a petition, as applied to minor children, is to determine in whose custody the best interests of the child will probably be advanced. In a Habeas Corpus proceeding brought by one parent against the other for the custody of their child, the court has before it the question of the rights of the parties as between themselves, and also has before it, if presented by the pleadings and the evidence, the question of the interest which the State, as parens patriae, has in promoting the best interests of the child.”

(emphasis supplied)

11. In *Nithya Anand Raghavan* (supra) the Hon'ble Supreme Court has held that:

“47. In a habeas corpus petition as aforesaid, the High Court must examine at the threshold whether the minor is in lawful or unlawful custody of another person (private respondent named in the writ petition). For considering that issue, in a case such as the present one, it is enough to note that the private respondent was none other than the natural guardian of the minor being her biological mother. Once that fact is ascertained, it can be presumed that the custody of the minor with his/her mother is lawful. In such a case, only in

exceptionable situation, the custody of the minor (girl child) may be ordered to be taken away from her mother for being given to any other person including the husband (father of the child), in exercise of writ jurisdiction. Instead, the other parent can be asked to resort to a substantive prescribed remedy for getting custody of the child.

*48. The next question to be considered by the High Court would be whether an order passed by the foreign court, directing the mother to produce the child before it, would render the custody of the minor unlawful ? **Indubitably, merely because such an order is passed by the foreign court, the custody of the minor would not become unlawful per se.***

*50. The High Court in such a situation may then examine whether the return of the minor to his/her native state would be in the interests of the minor or would be harmful. **While doing so, the High Court would be well within its jurisdiction if satisfied, that having regard to the totality of the facts and circumstances, it would be in the interests and welfare of the minor child to decline return of the child to the country from where he/she had been removed; then such an order must be passed without being fixated with the factum of an order of the foreign Court directing return of the child within the stipulated time, since the order of the foreign Court must yield to the welfare of the child.** For answering this issue, there can be no strait jacket formulae or mathematical exactitude. Nor can the fact that the other parent had already approached the foreign court or was successful in getting an order from the foreign court for production of the child, be a decisive factor. Similarly, the parent having custody of the minor has not resorted to any substantive proceeding for custody of the child, cannot whittle down the overarching principle of the best interests and welfare of the child to be considered by the Court. That ought to be the paramount consideration.*

*51. For considering the factum of **interests of the child, the court must take into account all the attending circumstances and totality of the situation. That will have to be decided on case to case basis. ...***

*53. ...**Being a girl child, the guardianship of the mother is of utmost significance. Ordinarily, the custody of a “girl” child who is around seven years of age, must ideally be with her mother unless there are circumstances to indicate that it would be harmful to the girl child to remain in custody of her mother** [see Sarita Sharma Vs. Sushil Sharma, (2000) 3 SCC 14, para 6]. No such material or evidence is forthcoming in the present*

case except the fact that the appellant (mother) has violated the order of the U.K. Court directing her to return the child to the U.K. before the stipulated date.

59. ...It does not whittle down the principle expounded in Dhanwanti Joshi Vs. Madhav Unde, (1998) 1 SCC 112, the duty of the Court to consider the overarching welfare of the child. Be it noted, the predominant criterion of the best interests and welfare of the minor outweighs or offsets the principle of comity of courts. ...

66. The invocation of first strike principle as a decisive factor, in our opinion, would undermine and whittle down the wholesome principle of the duty of the Court having jurisdiction to consider the best interests and welfare of the child, which is of paramount importance. If the Court is convinced in that regard, the fact that there is already an order passed by a foreign Court in existence may not be so significant as it must yield to the welfare of the child. That is only one of the factors to be taken into consideration. The interests and welfare of the child are of paramount consideration. The principle of comity of courts as observed in Dhanwanti Joshi's case (supra), in relation to non-convention countries is that the Court in the country to which the child is removed will consider the question on merits bearing the welfare of the child as of paramount importance and consider the order of the foreign Court as only a factor to be taken into consideration. While considering that aspect, the Court may reckon the fact that the child was abducted from his or her country of habitual residence but the Court's overriding consideration must be the child's welfare.

67. The facts in all the four cases primarily relied upon by the respondent no.2, in our opinion, necessitated the Court to issue direction to return the child to the native state. That does not mean that in deserving cases the Courts in India are denuded from declining the relief to return the child to the native state merely because of a pre-existing order of the foreign Court of competent jurisdiction. That, however, will have to be considered on case to case basis-be it in a summary inquiry or an elaborate inquiry. We do not wish to dilate on other reported judgments, as it would result in repetition of similar position and only burden this judgment.

69. We once again reiterate that the exposition in the case of Dhanwanti Joshi (supra) is a good law and has been quoted with approval by a three-judge bench of this Court in V. Ravi Chandran (supra). We approve the view taken in Dhanwanti

Joshi (supra), inter alia in paragraph 33 that so far as non-convention countries are concerned, the law is that the Court in the country to which the child is removed while considering the question must bear in mind the welfare of the child as of paramount importance and consider the order of the foreign Court as only a factor to be taken into consideration. The summary jurisdiction to return the child be exercised in cases where the child had been removed from its native land and removed to another country where, may be, his native language is not spoken, or the child gets divorced from the social customs and contacts to which he has been accustomed, or if its education in his native land is interrupted and the child is being subjected to a foreign system of education, for these are all acts which could psychologically disturb the child. Again the summary jurisdiction be exercised only if the court to which the child has been removed is moved promptly and quickly. The overriding consideration must be the interests and welfare of the child.”

(emphasis supplied)

12. In ***Kanika Goel*** (supra), the Hon’ble Supreme Court has taken a view that:

*“32. After these decisions, it is not open to contend that the custody of the female minor child with her biological mother would be unlawful, for there is presumption to the contrary. In such a case, the High Court whilst exercising jurisdiction under Article 226 for issuance of a writ of habeas corpus need not make any further enquiry but if it is called upon to consider the prayer for return of the minor female child to the native country, it has the option to resort to a summary inquiry or an elaborate inquiry, as may be necessary in the fact situation of the given case. In the present case, the High Court noted that it was not inclined to undertake a detailed inquiry. The question is, having said that whether the High Court took into account irrelevant matters for recording its conclusion that the minor female child, who was in custody of her biological mother, should be returned to her native country. As observed in *Nithya Anand Raghavan Vs. State*, (2017) 8 SCC 454, the Court must take into account the totality of the facts and circumstances whilst ensuring the best interest of the minor child. In *Prateek Gupta Vs. Shilipi*, (2018) 2 SCC 309 case, the Court noted that the adjudicative mission is the obligation to secure the unreserved welfare of the child as the paramount consideration. Further, the doctrine of “intimate*

and closest concern” are of persuasive relevance, only when the child is uprooted from its native country and taken to a place to encounter alien environment, language, custom etc. with the portent of mutilative bearing on the process of its overall growth and grooming.”

(emphasis supplied)

13. In *Tejaswini Gaud* (supra), the Hon’ble Supreme Court has held that:

“19. 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. 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 legal custody. In view of the pronouncement on the issue in question by the Supreme Court and the High Courts, in our view, in child custody matters, 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.

20. In child custody matters, the ordinary remedy lies only under the Hindu Minority and Guardianship Act or the Guardians and Wards Act as the case may be. In cases arising out of the proceedings under the Guardians and Wards Act, the jurisdiction of the court is determined by whether the minor ordinarily resides within the area on which the court exercises such jurisdiction. There are significant differences between the enquiry under the Guardians and Wards Act and the exercise of powers by a writ court which is of summary in nature. What is important is the welfare of the child. In the writ court, rights are determined only on the basis of affidavits. 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 only in exceptional cases, the rights of the parties to the custody of the minor will be determined in

exercise of extraordinary jurisdiction on a petition for habeas corpus.”

(emphasis supplied)

14. The above-quoted paragraphs from the judgments of the Hon’ble Supreme Court elucidate the settled principle of law that:

The Court exercises its inherent jurisdiction in equity to determine in whose custody the best interests of the child will probably be advanced. The Court must examine at the threshold whether the minor is in lawful or unlawful custody of another person (the private Respondent). For considering that issue, it is enough to note that the private Respondent was none other than the natural guardian of the minor, being her/his biological mother. Once that fact is ascertained, it can be presumed that the custody of the minor with his/her mother is lawful. Only in an exceptional situation, the custody of a minor (especially a girl child) may be ordered to be taken away from her mother for being given to any other person, including the husband (father of the child), in exercise of writ jurisdiction. When it comes to a girl child, the guardianship of the mother is of utmost significance. Ordinarily, the custody of a “girl” child who is around seven years of age, must ideally be with her mother unless there are circumstances to indicate that it would be harmful to the girl child to remain in the custody of her mother. It is the duty of the Court to consider the overarching welfare of the child. Therefore, the predominant criterion of the best interests and welfare of the minor outweighs or offsets the principle of comity of courts. In deserving cases, the Courts in India may decline to repatriate the child irrespective of the order of a foreign court. Merely because there is an order passed by a foreign court against the mother of the child to produce the child before it, the custody of the child with the mother would not become unlawful per se. The Court must be satisfied about the totality of the facts and circumstances, that it would be in the interests and welfare of the minor child to either allow or decline the return of the child to the country from where he/she had been removed. The overriding consideration must be the interests and welfare of the child. In child custody matters, the ordinary remedy lies only under the Hindu Minority and Guardianship Act or the Guardians and Wards Act as the case may be. It is only in exceptional cases that the rights of the parties to the custody of

the minor will be determined in exercise of extraordinary jurisdiction on a petition for *Habeas Corpus*.”

15. We have to decide the matter in accordance with the above principles of law. The decision in each case will depend on the facts and circumstances of the case. Depending on the facts and circumstances of each case, the Court will have to consider all the relevant factors to decide the matter. However, utmost important factor that the Court must consider is the welfare of the child. Therefore, although all the judgments cited by the Learned Counsel for the parties were of great assistance to us, those would be relevant only to the extent they are applicable to the facts of this case.

16. First of all, the jurisdiction of this Court under Article 226 of the Constitution of India is extraordinary, and when it comes to a *Habeas Corpus* writ in a child custody matter, it is an equitable relief which the Court may grant, if the facts of the case so justifies. Therefore, when the Petitioner approached the Court seeking relief in equity, it is the established principle in law that the party must approach the Court with clean hands. The party must disclose all the related and incidental facts and documents. In the present case, the Petition proceeds mainly on the basis of the allegations against the 2nd Respondent that the she has abducted the child and left the U.S. without the consent of the Petitioner and in gross violation of the protective order passed by the Court in U.S. on 8th October 2025.

17. All the grounds for seeking a writ of *Habeas Corpus* and repatriation of the child are interwoven leading to the allegation regarding the abduction of the child by the 2nd Respondent by violating the order passed in the pending proceedings before the U.S. Court.

18. Mr. Jauhar has also made a submission in respect of the principles of comity of Courts to contend that in view of the orders passed by the US Court, the child ought to be repatriated. The entire thrust of the statements made in the petition and the submission of Mr. Jauhar is on the proceedings pending in the US Court and the orders passed therein. However, it is to be noted herein that the Court, while exercising jurisdiction under Article 226 of the Constitution of India does not exercise jurisdiction to execute a foreign decree or an order passed by a foreign court. The Petitioner in the present case is virtually seeking the relief to execute the orders passed by the US Court. Though the comity of court is a healthy principle in law, yet, by invoking it, this Court cannot execute the order passed by the US Court, and that cannot be a criterion to issue a writ of *Habeas Corpus*, unless it is cogently established that such an order will be in the best interest of the child.

19. We agree with the submission of Mrs. Agni that the principles of Section 13 of the Code of Civil Procedure, 1908, will apply if at all we have to decide the matter on the basis of orders passed by a foreign court.

20. Further we have noted that the Petitioner has made a statement in paragraph 4 of the Petition, which reads thus:

“Further, in order to celebrate with their families and friends, the Petitioner and the Respondent No. 2 also indulged in Hindu rites and ceremonies as a celebration-in Goa, India on 20.02.2024.”

21. The Petitioner has clearly made a guarded statement so as to avoid the applicability of special law governing the legal rights of the couple. In view of this fact, the 2nd Respondent has produced a copy of the certificate of the couple's marriage registration which was solemnized on 21st February 2014 in Goa. The certificate issued by the Civil Registrar of Salcete at Margao, Goa, bearing registration No. 6100/2014 clearly establishes that the marriage of the couple was also solemnized in the State of Goa. That being the case, the Portuguese Civil Code, 1867 and Portuguese Civil Procedure Code, 1939 will apply to the rights of the couple. In view thereof, any decree of dissolution of marriage of the couple will have to be confirmed and ratified by the High Court at Goa under Article 1102 of the Portuguese Civil Procedure Code, 1939. This is another factor which we consider to be relevant in the facts and circumstances of the present case and in view of the allegations of the Petitioner that the custody of the child shall be solely governed by the proceedings initiated by the Petitioner in the U.S. Even if any decree of dissolution is passed and consequently, the custody of the child is decided by the U.S. Court, even then, the same will have to be ratified and confirmed

by the High Court at Goa, in an appropriate proceeding. Therefore, we reject the argument of Mr. Jauhar that the orders passed by the U.S. Court i.e. the ex-parte order dated 08th October 2025 passed by the U.S. Court would be binding on the 2nd Respondent and therefore, ought to be considered by this Court as one of the crucial factor.

22. We also reject the above argument of the Petitioner for one more reason i.e. the Petitioner has initially made a false statement in the Petition. He has suppressed the fact that the marriage of the couple solemnized in Goa on 21st February 2014. To the Petitioner's knowledge if the marriage was solemnized in the State of Goa, then the Petitioner ought to have disclosed the said fact in the Petition and should have enclosed a copy of the marriage registration certificate issued by the Civil Registrar. The Petitioner, for his convenience, has however, chosen to suppress this fact. The same came to light only when the 2nd Respondent filed her second reply. Mere denial of the fact that the marriage of the couple was solemnized in the State of Goa would not suffice in view of the actual certificate produced on record by the 2nd Respondent.

23. Further, in the present case, the order dated 8th October 2025 was passed by the U.S. Court *ex parte*. The 2nd Respondent has appeared in the proceedings before the U.S. Court and has also filed proceeding in India. In writ jurisdiction, we do not wish to comment on the competency of the courts in the U.S. and India. The respective courts shall decide the issue of jurisdiction.

24. Further, there is a dispute about the service and knowledge of the order passed by the U.S. Court on 8th October 2025. According to the 2nd Respondent, she only read the order when she reached India on 10th October 2025. We will deal with this aspect separately; however, this is one disputed fact which will call for proper determination without which, we would not be inclined to place much reliance in this case on the principle of comity of court. Additionally, considering the fact that the child is merely 3 years and 6 months old now and is being breastfed having regard to the plea raised by the 2nd Respondent, we are of the view that this is not a fit case to be decided solely on the principle of comity of courts. Therefore, we reject the submissions of Mr. Jauhar made on the basis of the principles of comity of court.

25. We also do not agree with the submission of Mr. Jauhar that the 2nd Respondent has abducted the child and travelled to India on 08.10.2025 for the following reasons.

26. The proceedings initiated by the Petitioner before the U.S. Court resulted in an order dated 08.10.2025. According to the Petitioner, the order was served by the Petitioner on the 2nd Respondent on 08.10.2025 at 02:55 p.m. Therefore, when the 2nd Respondent booked her air tickets at 05:24 p.m. on 08.10.2025, she was well aware of the order passed by the U.S. Court. The 2nd Respondent has explained in her affidavit the circumstances under which she had to leave her matrimonial home and booked her air

tickets at 5:24 p.m. She noticed the messages received by her only after her arrival in India. These statements of the 2nd Respondent are obviously denied by the Petitioner. However, what is important to note herein is that the Petitioner has failed to provide a clear picture of the sequence of events that occurred on 08.10.2025 and the communications exchanged between the Petitioner and the 2nd Respondent. We find that the statements made in the Petition are aimed at covering of the true facts regarding the communications made between the Petitioner and the 2nd Respondent on the afternoon of 08.10.2025. Admittedly, there were several messages sent by the Petitioner to the 2nd Respondent on that evening. One message which the Petitioner had sent to the 2nd Respondent reads as follows:-

“Please go wherever you wish to go, just drive safely and put [REDACTED] in car seat. Make sure she is safe and secure, rest you do as you see fit. No restrictions or issues from my side.”

27. Based on the circumstances explained by the 2nd Respondent in her affidavit, it is possible that she understood the message as consent from the Petitioner for her and the child to travel to India. We are convinced that the 2nd Respondent possibly thought it was the Petitioner's consent because there was already a plan for the 2nd Respondent's travel to India with the child. The statements in the Petition are also carefully drafted to conceal the true and correct facts regarding this aspect. The Petitioner has also suppressed the fact in the Petition that the 2nd Respondent and the child were supposed to travel to India on 17.10.2025. The tickets

for this trip were booked by the Petitioner. Importantly, the required forms for sending the minor child were also executed and given so that the same could be submitted to the concerned Authorities. Therefore, travel to India by the 2nd Respondent with her child, it is not an isolated incident as portrayed in the Petition. The Petitioner has initially suppressed this fact and has made allegations of abduction of the child by the 2nd Respondent. It is clear that the Petitioner had to suppress this fact in the Petition since disclosure thereof would have been inconsistent with the allegations of abduction made against the 2nd Respondent. Further, the Petitioner has also suppressed the fact that he had cancelled the air tickets of the 2nd Respondent and then, only after 3:00 p.m. on 08.10.2025, he messaged the 2nd Respondent, which coincides with the time and the date on which the 2nd Respondent had left the matrimonial home. There is nothing on record to establish that the 2nd Respondent was aware of the cancellation of the air tickets by the Petitioner. Therefore, the statement made by the 2nd Respondent to the effect that when she realised that the Petitioner had cancelled the tickets booked by the Petitioner, she had to book fresh tickets is found to be credible enough. Therefore, we are also inclined to accept the statement of the 2nd Respondent that, considering the overall past events and conduct of the Petitioner, the 2nd Respondent had a reasonable apprehension as regards the safety, security and mental health etc. of herself and the child. The Petitioner has dealt with these important facts and communication in his rejoinder only when the

2nd Respondent had made a statement in her reply that she did not abduct the child. In our view, the explanation given by the Petitioner in the rejoinder lacks *bona fide* because if the Petitioner was so sure about the interpretation of his communication and if there was no consent given by the Petitioner to the 2nd Respondent to travel to India, then in that event, there was no reason for him to suppress these relevant, important and crucial facts in the petition.

28. Further, considering the events as narrated by the parties on record, we find that the apprehension expressed by the 2nd Respondent, particularly in view of the order dated 8th October 2025 passed by the U.S. Court, was justified, assuming that she was aware of the order dated 8th October 2025 when she left the U.S. As per the order dated 8th October 2025, the 2nd Respondent did not have the custody of the breastfed child and she was not supposed to be within 200 feet of the Petitioner. Additionally, when she realised that the tickets which were booked for their travel to India were cancelled by the Petitioner. Therefore, we find that these events must have resulted in a panic situation for the 2nd Respondent. In any case, the 2nd Respondent is a natural guardian of the child, being the biological mother, and therefore, custody of the child with the 2nd Respondent cannot be termed as illegal. Therefore, we reject the submissions made on behalf of the Petitioner that the 2nd Respondent has abducted the child.

29. The 2nd Respondent is the biological mother of the child. According to the 2nd Respondent, the child is breastfed even now. Admittedly, the child was breastfed at least till August 2025, as per the deposition of the Petitioner recorded on 22.10.2025 in the U.S. Court, which reads as follows:

“In September 2022, the child and Petitioner were asleep. Respondent woke both the child and Petitioner with her shouting. The child cried, wanting to be fed. Respondent ignored the child to slap and berate Petitioner. Petitioner started to leave to get baby formula. Respondent slammed the child onto the bed before starting to breastfeed the child.”

30. In fact, there are allegations made by the Petitioner that the 2nd Respondent used to get frustrated because the child required more than her usual feed of 30 minutes. The said allegation in the Petition before the U.S. Court reads as follows:

“14. On August 19, 2025, █████ got frustrated with our three-year-old child, who had requested to be breastfed more than her usual feed of 30 minutes prior to sleeping in the night. As a punishment, █████ forcefully slammed her onto the bed from two to three feet above. The incident caused our child to have a cut on her lip. See Exhibit 7, Cut on Minor Child's Lip. This was the fourth time █████ did so since █████'s birth, the earliest incident of which occurred when █████ was barely five to seven days old.”

31. Therefore, there is a reason to believe that the 2nd Respondent used to breastfed the child even till August 2025. As such, if the child is being breastfed even till today, then the child would naturally have a strong emotional and physical attachment to the biological mother. If that is so, the custody of a girl child ought to be with the biological mother. Even on this aspect, we are con-

vinced that the Petitioner has suppressed the true and correct facts in the present proceedings. If the Petition is based on the settled principles of law that the welfare of the child is a paramount consideration while granting custody, then the petitioner ought to have made a clear statement in the Petition that the child is being breastfed. This is also another suppression and mischievous attempt on the part of the Petitioner to suppress all the material facts.

32. We are not impressed by the argument of Mr. Jauhar that the child is a native of the U.S., and that merely because the child was born in the U.S. and remained there until 08.10.2025, the child has become accustomed to the society, living standards, and other aspects in U.S. While making this claim, the Petitioner has suppressed the fact that the 2nd Respondent was a full time homemaker. She is the one who was with the child at home and was the child's primary caretaker. There is no mention in the Petition about the language that the child is speaking. The child speaks Marathi (i.e., the mother tongue), and that has come on record only in the reply of the 2nd Respondent. There are no details in the Petition or on the record about the society in which the couple was living. There are no details of their friend circle or their professional colleagues or even that of their neighbours, etc., who would have influenced the child about the social aspect of the U.S., to which, according to the Petitioner, the child was used to. There is nothing on record to establish any of the allegations made

by the Petitioner. On the contrary, the 2nd Respondent, being a biological mother of the child and she being a full-time homemaker, was with the child and the child speaks Marathi. We, therefore, do not agree with the submission of Mr. Jauhar that the child is accustomed to life in the U.S. only because she was born in U.S. and holds U.S. citizenship.

33. There is another important fact which has invited our notice. The Petitioner has not given any particulars about his job, visa status, or details about his family in the U.S. or the details and particulars of the society around the residences, where the couple lived. These details and particulars are very important, especially when the Petitioner has stated that the child is used to the living conditions in the U.S. These factors become relevant and crucial when the 2nd Respondent has made allegations against the Petitioner in respect of these issues. In the Petition, the Petitioner has merely stated that the Petitioner started living at Salt Lake, Utah, U.S. since 01.08.2023. The allegation of the 2nd Respondent is that the couple has changed their residences during their stay in the U.S. and it is an admitted position of fact that the child was born in New York and thereafter, they shifted to Utah, U.S. Therefore, it is not that the child is not used to living in changed circumstances. As such, the argument of Mr. Jauhar that the change of place from the U.S. to India is not in the interest and welfare of the child, cannot be accepted.

34. As noted above, the Petitioner did not give a clear picture in respect of his visa status. It was portrayed by the Petitioner that the visa status of the Petitioner is stable and therefore, the child would be secured in the U.S. In the reply, when it is disputed that he has a limited duration of work visa, only then, the Petitioner has produced an H-1B visa, which is valid up to 16.11.2028. However, it is important to note that after the allegation that the Petitioner had a vulnerable visa status and had to manipulate many things to maintain his visa even after termination of his service, it was necessary for the Petitioner to deal with these allegations and produce the complete record in respect of his stable visa status. The Petitioner has chosen merely to deny the allegations of the 2nd Respondent. If the Petitioner was very sure of his visa status, then there was no reason not to produce the relevant documents before the Court. Admittedly, the couple has made an Application for a 'Green Card', and the application has been pending since 2016. However, that cannot be a ground to allow the prayer made in the Writ Petition since the visa of the Petitioner is valid only till November 2028. We cannot presume that his visa would be extended beyond November 2028 and/or the Petitioner will be granted a Green Card by the Authorities in the U.S. Therefore, merely because the child is a U.S. citizen, we cannot base our decision to repatriate the child to the U.S. solely on that fact. If the visa status of the Petitioner is not stable, then it would be highly risky to repatriate the child to the U.S. Additionally, the 2nd Respondent has filed a complaint with the U.S. Immigration against the Peti-

tioner, which is pending investigation. It is the 2nd Respondent's allegation that the Petitioner has manipulated facts and documents to obtain the visa. We are not getting into the veracity of these allegations. However, we are of the opinion that, in this factual background, sending the child to the U.S. and giving custody to the Petitioner will not be in the interest and welfare of the child.

35. During the course of arguments, Mr. Jauhar has submitted that even if the 2nd Respondent is not ready and willing to come back to the U.S., the Petitioner is working remotely and therefore, he can take care of the child. Additionally, it was submitted that the Petitioner's mother can also help the Petitioner to take care of the child. We cannot accept this argument because of the fact that the Petitioner may be working remotely today, but if, for any reason, his working arrangements are changed, then there would be no other option but to put the child in a day care centre. That certainly will not be in the best interest and welfare of the child. The option suggested by the Petitioner that his mother could help the Petitioner is an untenable submission because there is nothing on record before us to show that the mother of the Petitioner is physically fit to take care of the child and she has a valid visa to remain in the U.S., or if the visa is for a longer duration etc. Therefore, we reject the submission of Mr. Jauhar on such count as well.

36. Another most important fact which needs to be taken note of is that the 2nd Respondent, after coming back to India, has filed a complaint before the Goa Police under the POCSO Act. The allegations in the complaint are very serious, which include that the Petitioner has sexually abused the child. The Petitioner has stated that this complaint is frivolous and made solely as a counterblast to the Matrimonial Petition filed in the U.S. The Petitioner has only stated that the 2nd Respondent has not made a single allegation during their stay in the U.S. We cannot take these allegations lightly even though the Goa Police has filed 'A' Summary report before the POCSO Court. Admittedly, the POCSO Court has not issued notice to the Petitioner on the 'A' Summary report filed by the Goa Police. Therefore, the 'A' Summary report has not been accepted by the POCSO Court as yet. We are not inclined to deal with the other submissions of Ms. Agni against the 'A' Summary report, as the matter is still pending before the POCSO Court. However, the allegations are serious and the same were made by the 2nd Respondent before the U.S. authority as well. The proceedings in respect of these allegations are still pending in the U.S.

37. Another allegation of the 2nd Respondent, which the Petitioner has merely denied, is that the Petitioner had threatened the 2nd Respondent that he would file divorce proceedings unless the 2nd Respondent signed a document containing 37 unilateral conditions as preconditions for continuation of their marriage. According to the 2nd Respondent, this document was shared by the Peti-

tioner through his email ID, adi. [REDACTED]@alumni.duke.edu to her cousin, viz., Mr. Prashant Kulkarni in his email ID, Pkkulkarni091@gmail.com on 05.06.2025 at 22:33 hours. The Petitioner has merely denied this allegation. However, the contents of the attachment to the email are important, part of which reads as follows:-

*"1. Authority: I will be the final, absolute, undisputed authority on any and all matters concerning our family and household (**Barring fatal flaws or harm). I might choose to grant you authority on a certain topic(s), but at no point is it your dominion or nor the allowed authority permanent or irrevocable. So do not live under the delusion of shared authority. I claim it all, forever. You may provide "counsel" as and when needed, but authority is mine and mine alone. So you comply, else goodbye.*

2. Wife: you will actively strive to be a traditional Dharmic/Hindu wife, to enable me to strive to be a traditional Dharmic/Hindu husband. If you need text to guide you, buy primary source text and absorb it. We are NOT gf/bf anymore, nor will we EVER again be that. So do not hold unnecessary or rose-tinted expectations that are going to also spoil our daughter slowly (but surely!). Also, you are NO LONGER [REDACTED] or Puranic or any mix of it. Accept it and eliminate it from all instances, including mentally, in writing, passport (we will take care of it later), etc. To make it amply clear, you are and will be: [REDACTED] [REDACTED] [REDACTED], and that is it, unless we divorce.

3. Principles: the overarching principles of my house will be Dharmic. One shall totally comply, else goodbye. If we are ever in confusion, we will resort to #1, until we can secure full and final clarity from a Dharmic authority figure (w/ Adhikara).

*5. My Daughter: ALL my decisions regarding her will be final. Her upbringing, end to end, will be based primarily on my choosing/my sampradaya. She is NOT your sister. (**Barring fatal flaws or harm) I am not her friend neither should you be, we are her parents. Our Dharmic duty is to raise THE next "[REDACTED]" (one who is or at least aims to be sinless;*

perfect), not just another girl or just another "happy" girl. She will be very happy if she can truly emulate The [REDACTED]. She will neither be happy nor [REDACTED] if she is raised purely "gently". That does not mean we have to be rude or harsh as a default, but there is a pecking order on how to raise her and gentleness is low on it in certain cases. Also, she will not be [REDACTED] [REDACTED] [REDACTED]. That is a joke!

6. My son: irrespective of your desire to have a second child, I have always wanted to have a son because (a) I need to ensure my family lineage carries on, that I can shape and mentor, and (b) dharmically only a son ought to light the pyre of the father (rather parents), and absent that the atman cannot fully release from the karma-bhandhana of this janama. I doubt I can have sex with you again in this lifetime. So I am not sure what we (rather I) should do: adopt, have you do artificial insemination using my semen, have it with another brahmin woman, etc. If you have a clue, please share prior to signing (assuming NO to usual sex).

8. Your parents+bro+SIL: you will always maintain a safe distance from them, especially when it comes to [REDACTED]. They can have a healthy, personal relationship with her - she can see and be with them, and vice-versa, etc. - no issues with that ever. Just that they will not be allowed to have a "life-influence" on her of ANY kind (we should, we ought, we think, is meant to be, etc.). I don't mind if your Hyderabad Masi (Praful?) has an influence on her or Shruti's mom has an influence on her, but NOT your first family. Please!

9. Feminism: you will not introduce even a sliver of your covert feminist mentality/ideology into my house or my family. Patriarchy that abides by Dharma is the ONLY norm of my family.

15. Temperament: always mellow for you (**Barring harm) and mostly mellow for me, with exceptions where I might become a bit hot, once in a long while. Please understand I am a testosterone-driven entity. That said, it will NOT give me a free pass ever to cross a line, but at least you don't chop off my testicles and adrenal glands every passing day. I want a wife who is a woman/lady, not a man caged in a woman's body who wants to be treated like a lady for her own convenience and benefits (only) and otherwise behaves like a man.

26. Mode of communication and frequency: you will communicate to people only in English, Hindi, or Kashmiri. Even with your own family (mother, father, brother included),

pick one of three I will allow you to use. If in the future I am comfortable with you speaking in Kannada, Marathi, Konkani, French, Portuguese, or sign-language. I will let you know. You will not speak with your family more than once a week, for no more than 15 mins. With non-family (except healers), you cannot speak more than once in two weeks for a total aggregate of 30 mins. If in the future I am comfortable with you speaking with them or anyone else for a longer duration or more frequently. I will let you know. FOCUS on your family, MY FAMILY, first then deal with others.

27. *Household stuff: this is your responsibility, not mine. Period. I might choose to get involved in it as and when needed (need to lift stuff, move stuff, bring/procure stuff, cook during periods or illness, feed [REDACTED] when you are tied up, mow lawn, fix car, shovel snow, trip garden, etc. - my list could be endless) Irrespective of my full time, generally exhausting job. You shall keep the house in proper order, end to end, without slacking all the time and DO NOT blame it on your poor daughter. You have messed up since 2018. It is despicable of a mother to use their newborn/kid as a scapegoat for their own lack of discipline, order, and all shortcomings !!*

28. *Food: cook at least four meals per week constituting what I like (ask me if you are unsure). Salt as well as spices in proper measure in meals (generally speaking). Each meal made with haldi makes it come across as if we are all unhealthy and in need of a quick recovery from the week-long hospital visit. And you will make all the items the way they are meant to be made. Not the way someone makes it on YouTube or your twist on it (tea). If you have doubts - ask me and I will provide clarity. Also adding one or 18 vegetables to a daal does not enhance it in most cases. The lumpy end-product it creates is off-putting and unappetizing.*

33. *Sex: we will likely have none, ever. I won't have it with someone else nor will you.*

37. *Final say: on all matters reaching a binary end-point between your wish versus my wish, will be MINE. Period! (** Barring fatal flaws or harm). If there is still any confusion, look at items #1 and #2."*

38. This email is merely denied by the Petitioner. However, if it was in fact sent by the Petitioner, then considering the contents of the email, we are of the opinion that it would not be in the

welfare and best interest of the child to repatriate the child to the U.S. and give custody to the Petitioner. This allegation requires a deep investigation and we cannot do that in a writ jurisdiction.

39. The child is in Goa and has already been admitted to Monovikas School. The child is living with her biological mother and her grandparents. There is no issue of the accommodation of the 2nd Respondent and the child. The child, being only 3½ years old, must already have adapted to the living conditions and standards at her grandparents' place in a safe, secure and nurturing environment. There is nothing contrary on record to establish that the welfare of the child is not taken care of. Therefore, we do not agree with the submissions of Mr. Jauhar that only the environment of the U.S. is most habitually familiar to the child and which affords the child, lifestyle, care, affection, love, safety, security, social and cultural milieu, etc. and the child has solely become accustomed to it. The child is merely 3 years and 6 months old and can easily adapt to any environment when the biological mother is with the child. In India, apart from the child's biological mother, the child is also with her grandparents. This is another factor in the interest of the child. There is no material on record produced by the Petitioner to show that any physical, sexual, psychological, or mental harm can be caused to the child by the 2nd Respondent in India.

40. In view thereof, we are of the opinion that there is no case made out by the Petitioner for issuance of writ of *Habeas Corpus*

in exercise of the extraordinary jurisdiction of this Court. There is no adequate material on record so as to enable this Court to draw the conclusion that the welfare of the child can be taken care of only in the U.S. and only in the custody of the Petitioner. There is also no material on record to convince this Court that the child ought to be removed from the custody of her biological mother and be repatriated to the U.S. to remain in the sole custody of her father. We strongly believe that the welfare of the child, particularly one who is being breastfed, can only be ensured with the mother. Any exceptional circumstance, so as to take a contrary view in the matter, are not present in this Case.

41. We have also noted that the 2nd Respondent has adopted proceedings before the Court of Civil Judge Senior Division at Margao, Goa, seeking custody of the child. The Petitioner has questioned the jurisdiction of the Court to entertain the said proceedings. We are not called upon to decide on the question of maintainability of the civil proceeding. However, considering the fact that the 2nd Respondent has invoked statutory remedy in child custody matter, if the relief, as prayed for in this Writ Petition, is granted to the Petitioner, then the proceedings initiated by the 2nd Respondent before the Court of Civil Judge Senior Division at Margao, Goa, would be rendered infructuous. For this reason also we are not inclined to exercise our discretionary jurisdiction in the matter.

42. For the reasons stated above, we are of the view that no case is made out by the Petitioner for the issuance of a writ of *Habeas Corpus* to repatriate the child. The prayer is accordingly rejected and the **Writ Petition is dismissed.**

43. We clarify that our findings and observations made in the present judgment are only for the limited purpose of deciding the prayer made in the Writ Petition and the same shall not have any bearing in the other pending proceedings by and in between the parties. All other issues and contentions of the parties are kept open for decision in the appropriate proceedings pending before the Court of competent jurisdiction and in accordance with law.

44. **The Rule is discharged.**

45. No order as to costs.

(AMIT S. JAMSANDEKAR, J.)

(SUMAN SHYAM, J.)