

2026:BHC-NAG:8157-DB



Judgment

14 WP436.26.odt

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

CRIMINAL WRIT PETITION NO.436 OF 2026

[REDACTED] homemaker.

2. [REDACTED]
[REDACTED] : salesman.

[REDACTED]
taluka Korpana, district Chandrapur. **Petitioners.**
:: V E R S U S ::

1. Child Welfare Committee,
through its Secretary.

2. Kshama V.Basarkar.

3. Vanita Ghume,

4. Jyotsna Mohitkar.

Respondent Nos.1 to 4 having
their offices at Dr.Allurwar
Building, Bal Nyay Mandal
Campus, Government Children
Home, Mool Road, Chandrapur. **Respondents.**

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Shri N.R.Rathod, Counsel for the Petitioners.
Shri Amit Chutke, Addl.PP for Respondent No.1.

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CORAM : URMILA JOSHI-PHALKE & NIVEDITA P.MEHTA, JJ.
DATE : 29/06/2026

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JUDGMENT : (Per : Urmila Joshi-Phalke)

1. Heard. **Rule.** Rule made returnable forthwith. Heard finally by consent.

2. By this petition, petitioners are seeking directions to quash and set aside impugned orders dated 27.5.2026 and 5.6.2025 and also to issue Writ of Habeas Corpus and to hand over custody of minor child “D” (the name of the child is not mentioned to maintain secrecy).

3. Petitioners are husband and wife and permanent resident of Nokari, (Palgaon), post Awalpur, taluka Korpana, district Chandrapur. They got married in the year 2014, but they were childless. Therefore, they decided to adopt a child. A relative working as Nurse of petitioners No.1 came across a couple namely Prashant Shilar and Komal Shilar who had given birth to twins i.e. a male child and a female child at Government Hospital at Gadchiroli on 25.11.2020. Said Shilar couple, farmer by occupation, already had two daughters and, therefore, they shown their desire of giving third girl child in
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adoption to some one who is reliable and having trust. On such information, petitioners decided to meet Shilar family and after full satisfaction of both families, Shilar family agreed to give girl child in adoption. Accordingly, both families have taken a legal advice and entered into Deed of Adoption as prescribed under the Hindu Adoptions and Maintenance Act, 1956. Shilar family belongs to “Kunbi Community” and, therefore, they are Hindus. Whereas, petitioners belong to “Madagi,” which is also under Hindu Religion and, therefore, the Hindu Adoptions and Maintenance Act, 1956 is applicable to them.

4. It is further contentions of petitioners that only mistake committed by them is that, they have not registered the Deed of Adoption and got it notarized as per legal advice received by them. The custody of the girl child, when was six days old, was given to petitioners with the consent of Shilar family. Since then, petitioners are taking utmost care of the child and also given her name. All necessary documents of the child were prepared as far as the adoption is concerned. At the age of
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three years, the said minor child came to be admitted in school in the year 2024-2025. Thus, petitioners are taking every care for the welfare of the said child.

5. On 21.5.2026, one Shashikant Mokashi, representing himself as NGO Officer, visited the house of petitioners and asked them to provide all documents related to the adoption. Petitioners have handed over all the documents. Thereafter, petitioners received an undated notice from respondent No.1 - Child Welfare Committee (the CWC) asking them to appear on 27.5.2026 before it. Complying with the said Notice, petitioners attended the office of the CWC on 27.5.2026. The office bearers of the CWC told them that petitioners have adopted the child illegally and they are liable to face prosecution and the child was taken into custody and handed over to the CWC. On 27.5.2026, petitioners were declared as fit persons to retain the custody of the child and the custody of the child was handed over to petitioners.

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6. On 3.6.2026, office bearer of the CWC, namely Vanita Ghume, telephonically called petitioner No.1 to appear before the CWC. However, petitioner No.1 informed that due to ill-health of the child, he would not be able to produce the child before it and he would be able to bring the child only on 5.6.2026. On 5.6.2026, when petitioners along with the child attended the office of the CWC, they were kept busy in communicating with each other and the child was taken away. Thereafter, it was informed that the child will be kept in custody for seven days and after seven days, they would return the child. On multiple occasions, petitioners requested office bearers of the CWC to permit them to meet the child. However, they were not permitted and the custody was also not handed over to petitioners and, therefore, they were constrained to file this petition.

7. Learned APP for respondent No.1 opposed the petition on the ground that the petition in the form of Writ of Habeas Corpus itself is not maintainable as it is not an illegal custody by the CWC. On the contrary, the Deed of Adoption, to which
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the parties have entered into, is illegal and, therefore, the child was taken into custody by the CWC and no interference is called for.

8. Learned counsel for petitioners vehemently submitted that even accepting that the adoption is not as per the CARA guidelines, biological parents and petitioners entered into an agreement and by the consent of the parties, the child was adopted. In view of provisions of The Juvenile Justice (Care and Protection of Children) Act, 2015, the child is not within definition of “abandoned” or “orphan” and, therefore, the contention of learned APP for respondent No.1 is not sustainable. He submitted that biological parents as well as petitioners both are present before the court.

We have verified terms of the Deed of Adoption from biological parents of the child. They accepted and agreed that they have given the child in adoption by their own consent.

9. Admittedly, the Deed of Adoption was not registered, but it is notarized. We have made an attempt to ascertain as to

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whether petitioners acquired the custody of the child by adopting procedure prescribed in law. Unfortunately, the Deed of Adoption executed between the parties is not registered and merely notarizing it does not amount to valid adoption.

10. The procedure as per the Central Adoption Resource Authority (CARA), constituted under the Ministry of Women and Child Development, Government of India, which has now received statutory recognition under The Juvenile Justice (Care and Protection of Children) Act, 2015 has not been followed. The traditional Hindu Adoptions and Maintenance Act (HAMA), which has its own limitations. The traditional HAMA, which has its own limitations, as it is available only for particular religion and the Guardians and Wards Act, which only provide for guardianship but not for adoption, which are otherwise deficient in its application and this issue is now taken care by CARA, which primarily deal with adoption or orphan, abandoned and surrendered children through the recognized adoption agencies.

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11. We have also considered the provisions of Juvenile Justice (Care and Protection of Children) Act, 2015 which state about the type of children which would be brought within the ambit of its provisions. The Act intends to offer protection to two categories of children, i.e. children in conflict with law and children in need of care and protection.

12. Chapter III of the Act provides for constitution of Juvenile Justice Board (JJB) for exercising the powers and discharging the functions relating to children in conflict with law under the Act. The procedure to be followed by the Board along with its powers, functions and responsibilities are specifically enumerated.

13. Chapter IV, prescribe the procedure in relation to the children in conflict with law and the term, 'child in conflict with law', is defined under Section 2(13), which is reproduced as under:-

"(13) 'child in conflict with law' means a child who is alleged or found to have committed an offence and who has not completed eighteen

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years of age on the date of commission of such offence."

14. Chapter VI of the Act, on the other hand, has set out the procedure in relation to the children in need of care and protection and Section 2(14) define the term, 'child in need of care and protection' as under :-

"(14) 'child in need of care and protection' means a child-

(i) who is found without any home or settled place of abode and without any ostensible means of subsistence; or

(ii) who is found working in contravention of the provisions of this Act or labour laws for the time being in force or is found begging, or living on the street; or

(iii) who resides with a person (whether a guardian of the child or not) and such person-

(a) has injured, exploited, abused or neglected the child or has violated any other law for the time being in force meant for the protection of child; or

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(b) has threatened to kill, injure, exploit or abuse the child and there is a reasonable likelihood of the threat being carried out; or

(c) has killed, abused, neglected or exploited some other child or children and there is a reasonable likelihood of the child in question being killed, abused, exploited or neglected by that person; or

(iv) who is mentally ill or mentally or physically challenged or suffering from terminal or incurable disease, having no one to support or look after or having parents or guardians unfit to take care, if found so by the Board or the Committee; or

(v) who has a parent or guardian and such parent or guardian is found to be unfit or incapacitated, by the Committee or the Board, to care for and protect the safety and well-being of the child; or

(vi) who does not have parents and no one is willing to take care of and protect or who is abandoned or surrendered;

(vii) who is missing or run away child, or whose parents cannot be found after making reasonable inquiry in such manner as may be prescribed; or

(viii) who has been or is being or is likely to be abused, tortured or exploited for the purpose of sexual abuse or illegal acts; or

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(ix) who is found vulnerable and has been or is being or is likely to be inducted into drug abuse or trafficking; or

(x) who is being or is likely to be abused for unconscionable gains; or

(xi) who is victim of or affected by any armed conflict; civil unrest or natural calamity; or

(xii) who is at imminent risk of marriage before attaining the age of marriage and whose parents, family members, guardian and any other persons are likely to be responsible for solemnization of such marriage."

15. The Child Welfare Committee constituted under Chapter V of the Act is empowered to exercise the powers and discharge the duties conferred in relation to the child in need of care and protection and the functions and responsibilities of the Committee include to take cognizance of and receive the children produced before it and conduct an inquiry on all the issue regarding the safety and well-being of the child. It is pertinent to note that the Child Welfare Committee would

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exercise its power only in relation to the children in need of care and protection, as defined in Section 2(14).

16. Under Chapter VI, when such a child is produced before the CWC, by any person, including any police officer or special juvenile police unit, public servant, Childline Services or any voluntary or NGO or a Child Welfare Officer or Probation Officer, any social worker or by the child himself, the procedure prescribed therein shall be adopted.

17. Learned counsel for petitioners submitted that the issue involved in this petition is already covered by the judgment of this court at Principal Seat in **Criminal Writ Petition No.2487 of 2024 and other connected matters (Leelendra Deju Shetty and anr vs. The State of Mah and ors)** decided on 22.7.2024 and submitted that in the said judgment this court has considered in detail the provisions of The Juvenile Justice (Care and Protection of Children) Act, 2015 and held that, “since all the three children before us cannot be termed as 'orphan' or 'abandoned' and, they do not fall in the category of the children

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in need of care and protection, as defined in Section 2(14) of the Act of 2015, the orders passed by CWC handing over their custody to Respondent No.3 is illegal, as CWC was not competent to exercise jurisdiction over the said children and transfer the children to respondent No.3-Baal Asha Trust.”

It is further held by this court that, “the case is made out by the petitioners in all the three petitions and directed to hand over the custody of the child to the parents who have adopted the said child.”

18. Learned counsel for petitioners submitted that similarly, in the present case also, the child is not “abandoned” or “orphan” and, therefore, the CWC has no right to take the custody of the child and hence the issue in the present petition is covered by the said judgment. In view of that, the petition deserves to be allowed.

19. It is a well accepted proposition in law that a writ of the nature of habeas corpus, a prerogative writ is an extraordinary remedy, and shall be granted only in exceptional cases, where
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the ordinary remedy provided by law is either unavailable or is ineffective. Exercise of power by the Writ Court, being summary in nature, where in view of the Court, a detailed inquiry is warranted, it may direct the parties to approach Civil Court. But, when a writ is sought for protection or for resuming custody of child, the writ of habeas corpus, is maintainable if it is proved that the detention of the minor child by the parents or others, was illegal and without any authority by law and this writ would also extend its influence to restore the custody of minor to his guardian, when wrongfully deprived of.

20. This court at Principal Seat referring the decision of the Hon'ble Apex Court in the case of **Tejaswini Gaud and ors vs. Shekhar Jagdish Prasad Tewari and ors, reported in (2019)7 SCC 42** wherein the Hon'ble Apex Court focused its attention upon the question of deciding custody of minor, by declaring that the welfare of the minor is of paramount importance and reproduced paragraph Nos.13 and 14, which are as under:

"13. Countering this contention, the learned counsel for the Respondent 1 submitted that in

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the given facts of the case, the High Court has the extraordinary power to exercise the jurisdiction under Article 226 of the Constitution of India and the High Court was right in allowing the habeas corpus petition. The learned counsel has placed reliance on Gohar Begam and Manju Malini Seshachalam. Contention of respondent 1 is that as per Section 6 of the Hindu Minority and Guardianship Act, Respondent 1, being the father, is the natural guardian and the appellants have no authority to retain the custody of the child and the refusal to hand over the custody amounts to illegal detention of the child and, therefore, the writ of habeas corpus was the proper remedy available to him to seek redressal.

14. 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. 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."

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21. Similarly, in case of **Rajiv Bhatia vs. State (NCT of Delhi)**, reported in (1999)8 SCC 525, where habeas corpus writ petition is filed by the mother of the girl, alleging that the girl was in illegal custody of her husband's elder brother, who relied upon Adoption Deed, which was alleged to be a fraudulent document, the Apex Court held that High Court was not entitled to examine the legality of the deed of adoption and then come to the conclusion one way or the other with regard to the custody of the child. However, the decision focused upon the facts to be taken into consideration for determining the welfare of the child and this was so spelt out in the following words :-

"34. As observed in Rosy Jacob earlier, the father's fitness has to be considered, determined and weighed predominantly in terms of the welfare of his minor children in the context of all the relevant circumstances. The welfare of the child shall include various factors like ethical upbringing, economic well being of the guardian, child's ordinary comfort, contentment, health, education, etc. The child Shikha lost her mother when she was just fourteen months and is now being deprived from the love of her father for no valid reason. As

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pointed out by the High Court, the father is a highly educated person and is working in a reputed position. His economic condition is stable.

35. The welfare of the child has to be determined owing to the facts and circumstances of each case and the Court cannot take a pedantic approach. In the present case, the first respondent has neither abandoned the child nor has deprived the child of a right to his love and affection. The circumstances were such that due to illness of the parents, the appellants had to take care of the child for some time. Merely because, the appellants being the relatives took care of the child for some time, they cannot retain the custody of the child. It is not the case of the appellants that the first respondent is unfit to take care of the child except contending that he has no female support to take care of the child. The first respondent is fully recovered from his illness and is now healthy and having the support of his mother and is able to take care of the child."

22. There is no dispute that biological parents have given the child in adoption to the present petitioners. However they have not followed the proper procedure. Under the Guardians and Wards Act, 1890, a 'guardian' is defined under Section 4(2) to mean a person having the care of the person of a minor or of

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his property, or of both is person and property. Under the said Act, it is the power of the Court to make order as to guardianship, when the Court is satisfied that it is in the welfare of minor that an order should be made; appointing a person or declaring a person to be such guardian. It is only upon an application being preferred before the Court, the power is permitted to be exercised.

23. As already observed by us that admittedly the proper procedure is not followed by petitioners and biological parents while handing over the child in adoption. However, admittedly, the child is neither “orphan” nor “abandoned.”

24. In the light of the above said facts, admittedly, biological parents, after giving birth to the girl child, decided to give the child in adoption as they were already having two girls and one male child. Petitioners have accepted the child and decided to take care of the child by obtaining custody of the child by adoption. The notarized document is Deed of Adoption. As per the provisions of HAMA, merely by executing the notarized

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Adoption Deed, petitioners cannot claim that they have right to hold the custody of the girl child. However, since we have already considered that the children involved do not fall in the category of 'children in need of care and protection', the custody being handed over to the CWC is not justified. The CWC itself does not get any power to deal with the child who is neither “abandoned” nor “orphan”.

25. Since only limited issue, at this stage, is for issuance of writ of Habeas Corpus, it is the contention of petitioners that custody of the minor child obtained by the CWC by assuming jurisdiction over the said children merely on the pretext that the child was wrongly taken into custody by way of adoption is not sustainable and, therefore, in view of the observations of this court in **Leelendra Deju Shetty and anr** *supra*, we have no reason to deviate from the same as the child before us cannot be termed as “orphan” or “abandoned” and does not fall in the category of “children in need of care and protection” as defined under Section 2(14) of the Act of 2015. The action on the part of the CWC obtaining the custody of the child is illegal as the
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CWC is not competent to exercise the jurisdiction over the said child and thereby the action of the CWC is wrong and illegal.

26. In view of that, the petition deserves to be allowed. Accordingly, we proceed to pass following order:

ORDER

(1) The writ petition is **allowed**.

(2) Respondent No.1 - Child Welfare Committee to hand over the custody of the child "D" to petitioners forthwith.

(3) The orders dated 27.5.2026 and 5.6.2026 are hereby quashed and set aside.

Petition is **disposed of**. Rule is made absolute in the aforesaid terms.

JUDGE

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