

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 3rd DAY OF JULY, 2026

PRESENT

THE HON'BLE MRS. JUSTICE ANU SIVARAMAN

AND

THE HON'BLE MR. JUSTICE VENKATESH NAIK T

WRIT PETITION (HABEAS CORPUS) NO.20 OF 2026

BETWEEN:

MR. BHASKAR DAS
S/O BIRENDRA CHANDRA DAS
AGED ABOUT 46 YEARS
INDIAN CITIZEN
RESIDING AT:
PRINCETON APARTMENTS
FLAT NO.A-104, A BLOCK
FIRST FLOOR, MANIPAL COUNTY ROAD
NEAR STAR BAZAAR
CHIKKA BEGUR, BEGUR POST
BENGALURU-560 114, KARNATAKA

...PETITIONER

(BY SRI. SHYAM SUNDAR H. V, ADVOCATE)

AND:

1. UNION OF INDIA
REPRESENTED BY ITS SECRETARY
MINISTRY OF HOME AFFAIRS
NORTH BLOCK, NEW DELHI-110 001.
2. MINISTRY OF HOME AFFAIRS
REPRESENTED BY ITS SECRETARY
GOVERNMENT OF INDIA
NORTH BLOCK, NEW DELHI-110 001

Digitally
signed by
PAVITHRAN
Location:
High Court
of Karnataka

3. MINISTRY OF EXTERNAL AFFAIRS
REPRESENTED BY ITS SECRETARY
GOVERNMENT OF INDIA
SOUTH BLOCK, NEW DELHI-110 011
 4. STATE OF KARNATAKA
REPRESENTED BY ITS SECRETARY
HOME DEPARTMENT, VIDHANA SOUDHA
BENGALURU-560 001
 5. MRS. SUMITA ROY DAS
W/O MR. BHASKAR DAS
AGED ABOUT 42 YEARS
INDIAN CITIZEN
LAST RESIDED IN INDIA AT SAI CHETHANA
FLAT 201, SY. NO.35/2, 20TH MAIN
NYANAPPANAHALLI, BTM 4TH STAGE
BENGALURU-560 076
 6. CONSULATE GENERAL OF INDIA
HOUSTON, CONSUL GENERAL OF INDIA
HOUSTON
4300 SCOTLAND STREET
HOUSTON, TX 77007
 7. OFFICE OF THE CHIEF PASSPORT OFFICER (CPO)
JOINT SECRETARY AND CHIEF PASSPORT OFFICER
PSP DIVISION, MINISTRY OF EXTERNAL AFFAIRS
ROOM NO.21, PATIALA HOUSE
TILAK MARG, NEW DELHI-110 001
 8. STATION HOUSE OFFICER
HULIMAVU POLICE STATION
BENGALURU-560 076
(AS PER ORDER DATED 06.03.2026)
- ...RESPONDENTS

(BY SRI. SHANTHI BHUSHAN H., DSGI FOR R1, R2, R3, R6 & R7;

SRI. JAGADISH B.N, SPP-1 A/W SRI. THEJESH P., HCGP FOR R4 & R8)

THIS WP(HC) IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT OF HABEAS CORPUS OR ANY OTHER APPROPRIATE WRIT ORDER OR DIRECTION DIRECTING THE RESPONDENTS TO PRODUCE THE MINOR CHILD, AARUSH ROY DAS BEFORE THIS COURT, PHYSICALLY.

THIS WP(HC) HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 24.06.2026 AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, **ANU SIVARAMAN J.**, PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MRS. JUSTICE ANU SIVARAMAN
and
HON'BLE MR. JUSTICE VENKATESH NAIK T

CAV JUDGMENT

(PER: HON'BLE MRS. JUSTICE ANU SIVARAMAN)

This Writ Petition (Habeas Corpus) is filed praying to issue a Writ of Habeas Corpus directing the respondents to produce the minor child before this Court physically.

2. We have heard Shri. Shyam Sundar H.V, learned counsel appearing for the writ petitioner as well as Shri. Shanthi Bhushan. H, learned Deputy Solicitor General of India (DSGI) appearing for the respondents - Union of India and Shri. Jagadish B.N, learned State Public Prosecutor-I

along with Shri. Thejesh P, learned High Court Government Pleader appearing for the respondents - State.

3. The essential contention in the writ petition is that the writ petitioner is unable to contact his wife or child and that a Writ of Habeas Corpus deserves to be issued. The learned counsel appearing for the writ petitioner submits that since he is unable to travel to the United States of America for want of visa and since he is unable to contact his wife or child by any means, he is entitled to an order as sought for.

4. It is submitted that the present proceedings are welfare-oriented and invoke the *parens patriae* jurisdiction of this Court for the limited purpose of safeguarding the welfare of the minor child and preserving the child-parent relationship. The communications placed on record before this Court by respondents No.3 and 6 received from the Consulate General of India, Houston, constitute the first substantive information received by the petitioner regarding the minor child's educational, welfare and present circumstances after a prolonged period of uncertainty. Prior

thereto, despite the temporary Orders passed by the District Court, Denton County, Texas, the petitioner had been denied access to information concerning the minor child's education, residence, health and welfare and was informed only that the child had been withdrawn from his previous school.

5. It is further submitted that no domestic violence proceedings are presently pending against the petitioner and no Court in the United States has declared the petitioner to be an unfit parent. On the contrary, the temporary Orders passed by the District Court, Denton County, expressly recognise the petitioner's right to receive information concerning the health, education and welfare of the minor child and also grant him electronic access to the child through the "OurFamilyWizard" platform. However, owing to technical and operational difficulties encountered while accessing the said platform from India and despite efforts undertaken through legal counsel in the United States, the petitioner has remained unable to establish communication with the minor child. The petitioner's request for alternative

modes of communication was made solely to preserve his parental relationship with the child.

6. It is only pursuant to the intervention of this Court and the consequent efforts of respondents No.3 and 6 that the petitioner has been able to obtain any information whatsoever regarding the welfare and whereabouts of the minor child. In the absence of such intervention, the petitioner would have remained completely deprived of information concerning his own child despite the rights recognised under the orders of the competent foreign Court.

7. It is further submitted that although the petitioner has participated in the proceedings before the District Court, Denton County, Texas, he is presently residing in India and is facing severe financial constraints, rendering prolonged litigation in the United States. The petitioner has exhausted all available avenues by approaching respondent No.5, his counsel in Texas, the Consulate General of India, Houston, and the Ministry of External Affairs. Despite such efforts, communication with the minor child remains absent and information regarding

the child continues to be received only because of the intervention of this Court.

8. Reliance is placed on the judgment of the High Court of Kerala in ***X v. Union of India*** passed in ***WP (Crl.) No.1206/2022***, wherein it has been held that Indian Courts, while exercising *parens patriae* jurisdiction, may step into the shoes of a parent to protect the welfare and best interests of a child in circumstances where an effective remedy before the jurisdiction of the foreign country is unavailable or practically inaccessible.

9. The learned DSGI appearing for the respondents - Union of India has filed two memos making available the details of the efforts made by the Consulate General of India, Houston in the United States of America to get the contact details of respondent No.5, the wife of the writ petitioner as well as the child. However, it is contended that there are proceedings pending before the Jurisdictional Courts in the Denton County, Texas - State, United States of America where the child is residing at present and that there are orders passed with regard to temporary custody of the

minor, which are very well within the knowledge of the writ petitioner, who is a party to the proceedings.

10. It is further submitted that the writ petitioner has been appearing online and has also engaged an attorney in the proceedings before the Competent Court of Denton County, Texas. It is submitted that the said orders passed by the Court makes it clear that the writ petitioner can contact respondent No.5 as well as the child via the approved mobile/web application "OurFamilyWizard" on Mondays, Wednesdays and Saturdays. It is stated that there is a specific restricting order passed that the child may not leave the United States without Court approval.

11. The learned counsel appearing for the writ petitioner would place reliance on the judgments of the Apex Court and contends that he is entitled to contact the child and to claim custody and that the domestic violence case filed by respondent No.5 is only a ruse to extend her stay in the United States.

12. Having considered the contentions advanced, we are of the opinion that, since there are proceedings pending between the parties in the United States, where the child is presently residing with his mother and since the writ petitioner is obviously attending and defending the proceedings through video conferencing and through counsel, any concern on his part is to be raised in those proceedings and not by filing a writ petition seeking a Writ of Habeas Corpus before this Court. It is clear that a Writ of Habeas Corpus can be issued in circumstances where there is an illegal detention, which is not the case in the present instance. The child is in the custody of its mother, who is the natural guardian and is subject to orders of the Competent Court in the United States of America, where he is presently resident. The writ petitioner is a party to the proceedings and is participating in the same. The contention that the mobile application is not available in India also does not appear to be factually correct.

13. The Apex Court in ***Tejaswini Gaud v. Shekhar Jagdish Prasad Tewari*** reported in ***(2019) 7 SCC 42***,

considered the scope and maintainability of a Writ of Habeas Corpus in matters concerning the custody of a minor child. The Apex Court explained the limited nature of the extraordinary writ jurisdiction and reiterated that the welfare of the child remains the paramount consideration. The relevant paragraphs are extracted below:-

"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 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. In ***Kanika Goel v. State (NCT of Delhi)*** reported in **(2018) 9 SCC 578**, the Apex Court held that where the custody of a female minor child is with her biological mother, such custody is presumed to be lawful, and the High Court exercising jurisdiction under Article 226 of the Constitution of India for issuance of a writ of habeas corpus need not make further enquiry on that count. It was further held that the question of return of the child to her native country is to be determined not on the rights of the parties but on the totality of the facts and circumstances,

with the welfare and best interest of the minor child as the paramount and sole consideration.

15. Further, in ***Nithya Anand Raghavan v. State (NCT of Delhi)*** reported in **(2017) 8 SCC 454**, the Apex Court held that where the child is in the lawful custody of a natural guardian, interference in writ jurisdiction is warranted only in exceptional circumstances, leaving the aggrieved parent to pursue the appropriate substantive remedy before the competent court. The relevant paragraphs on this point read as under:-

"46. *The High Court while dealing with the petition for issuance of a writ of habeas corpus concerning a minor child, in a given case, may direct return of the child or decline to change the custody of the child keeping in mind all the attending facts and circumstances including the settled legal position referred to above. Once again, we may hasten to add that the decision of the court, in each case, must depend on the totality of the facts and circumstances of the case brought before it whilst considering the welfare of the child which is of paramount consideration. The order of the foreign court must yield to the welfare of the child. Further, the remedy of writ of habeas corpus cannot be used for mere enforcement of the directions given by the foreign court against a person within its jurisdiction and convert that jurisdiction into that of an executing court. Indubitably, the writ petitioner can*

take recourse to such other remedy as may be permissible in law for enforcement of the order passed by the foreign court or to resort to any other proceedings as may be permissible in law before the Indian Court for the custody of the child, if so advised.

45. *In a petition for issuance of a writ of habeas corpus in relation to the custody of a minor child, this Court in Sayed Saleemuddin v. Rukhsana, has held that the principal duty of the court is to ascertain whether the custody of child is unlawful or illegal and whether the welfare of the child requires that his present custody should be changed and the child be handed over to the care and custody of any other person. While doing so, the paramount consideration must be about the welfare of the child. In Elizabeth, it is held that in such cases the matter must be decided not by reference to the legal rights of the parties but on the sole and predominant criterion of what would best serve the interests and welfare of the minor. The role of the High Court in examining the cases of custody of a minor is on the touchstone of principle of parens patriae jurisdiction, as the minor is within the jurisdiction of the Court. It is not necessary to multiply the authorities on this proposition.*

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."

(emphasis supplied)

16. We notice that the Ministry of External affairs, Union of India as well as the Consulate General at Houston have taken all possible efforts to trace the whereabouts of respondent No.5 and the child. They have been assured of safety of the child. However, it is informed that the whereabouts cannot be revealed in view of the fact that there is a domestic violence case pending and such details are not to be revealed taking note of the concerns of the privacy of the mother and the child. Respondent No.5 has also informed the Embassy about the well being of the child and there does not appear to be any concern as to the health or well being of the child as at present.

17. In the above view of the matter, we are clearly of the opinion that any further concerns of the writ petitioner

are to be addressed in the appropriate proceedings and not in this writ petition. The Writ Petition (Habeas Corpus) therefore fails and the same is accordingly ***dismissed***.

All pending interlocutory applications shall stand *disposed of*.

**Sd/-
(ANU SIVARAMAN)
JUDGE**

**Sd/-
(VENKATESH NAIK T)
JUDGE**

PN/cp*