

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 1ST DAY OF OCTOBER, 2026

PRESENT

THE HON'BLE MRS. JUSTICE ANU SIVARAMAN

AND

THE HON'BLE MR. JUSTICE T.P.VIVEKANANDA

WRIT PETITION (HABEAS CORPUS) NO.63 OF 2025

BETWEEN:

RONALD EARL HUGHES JR.
S/O RONALD EARL HUGHES SR.
AGED ABOUT 41 YEARS
RESIDING AT 14202 NE
100TH ST. VANCOUVER
WA-98682-1758

...PETITIONER

(BY SRI. G.L.VISHWANATH, SR. COUNSEL A/W
SMT. MEENA V., ADV.)

AND:

1. THE STATE OF KARNATAKA
DEPARTMENT OF HOME
REPRESENTED BY ITS PRINCIPAL SECRETARY
VIDHANA SOUDHA
BANGALORE 560 001
2. THE DIRECTOR GENERAL AND
INSPECTOR GENERAL OF POLICE
POLICE HEAD QUARTERS
NRUPATHUNGA ROAD
BANGALORE 560 001
3. THE COMMISSIONER OF POLICE

Digitally
signed by
R&KSHA
Local
High Court of
Karnataka



BANGALORE CITY
INFANTRY ROAD
BANGALORE 560 001

4. JERUSHA RUTH DECOSTA
W/O RONALD EARL HUGHES JR.
AGED ABOUT 32 YEARS
RESIDING AT NO.41
3RD CROSS
ST THOMAS TOWN
HUTCHINS ROAD
BANGALORE 560 084

...RESPONDENTS

(BY SMT. DEEPTHI ALVA, HCGP FOR R1 TO R3;
SMT. SONIA RAJESH, ADV. FOR R4)

THIS WP(HC) IS FILED UNDER ARTICLES 226 AND 227 OF CONSTITUTION OF INDIA, PRAYING TO ISSUE AN ORDER OR DIRECTION OR WRIT IN THE NATURE OF HABEAS CORPUS DIRECTING THE 4TH RESPONDENT TO PRODUCE THE DETENUE I.E, THE SON OF THE PETITIONER MASTER JOSHUA FORTHWITH BEFORE THIS COURT.

THIS WP(HC) HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 08.09.2026 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 T.P.VIVEKANANDA

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

This Writ Petition (Habeas Corpus) is filed seeking issuance of a writ of Habeas Corpus directing respondent No.4 to produce the detinue, namely, the minor son of the writ petitioner before this Court and to return the minor child to the United States of America and handover his custody to the writ petitioner in terms of the orders passed by the Superior Court of Washington, Clark County.

2. We have heard Shri. G.L. Vishwanath, learned senior counsel as instructed by Smt. Meena V, learned counsel appearing for the writ petitioner, Smt. Deepthi Alva, learned High Court Government Pleader appearing for respondents No.1 to 3 and Smt. Sonia Rajesh, learned counsel appearing for respondent No.4.

3. The writ petitioner, a citizen and permanent resident of the United States of America and respondent No.4, an Indian citizen, were married at Vancouver, Washington, on 02.04.2022 and established their matrimonial home in the United States. A male child, Master

Joshua Nathan Hughes, was born to them in the United States on 13.02.2024 and is a citizen of that Country by birth.

4. On learning that respondent No.4 had made arrangements to travel to India with the child and apprehending that she would remove the child without his consent, the writ petitioner approached the jurisdictional Court in the United States seeking protection of his custodial rights. By order dated 01.11.2024 passed in Case No.24-2-08758-06, the said Court granted a temporary protection order in favour of the writ petitioner, restrained respondent No.4 from interfering with the custody of the minor child and directed her not to remove him from the State of Washington. Despite the said order, respondent No.4 traveled to India with the child and they are presently residing in Bengaluru.

5. Thereafter, respondent No.4 instituted O.S.No.512/2024, seeking an anti-suit injunction and G&WC No.444/2024, seeking sole custody of the child, before the Family Court at Bengaluru. Meanwhile, the Superior Court of

Washington, Clark County, by order dated 26.03.2025 in Case No.24-3-01360-06, directed respondent No.4 to return the child to the State of Washington and also ordered that the writ petitioner shall have the child in the exclusive care. The said direction was reiterated by order dated 16.05.2025. Alleging that respondent No.4 has failed to comply with these directions and continues to retain the child in India unlawfully, the writ petitioner has instituted the present petition seeking return of the child and delivery of his custody.

6. The learned senior counsel appearing for the writ petitioner contends that the custody of the minor child with respondent No.4 is unlawful, since the child was removed from the United States and continues to be retained in India despite the orders dated 26.03.2025 and 16.05.2025 passed by the Superior Court of Washington, Clark County, directing his return to the State of Washington and placing him in the exclusive care of the writ petitioner. It is submitted that the parties had established their matrimonial home in the United States, that the child was born there and is a citizen of that

Country and that the material events and evidence concerning the custody disputes are most closely connected with that jurisdiction. It is further submitted that respondent No.4 had appeared through counsel before the Superior Court of Washington and was aware of the orders passed therein, which continue to remain in force. It is further contended that respondent No.4 has obstructed the writ petitioner's access to the child and instituted proceedings before the Family Court at Bengaluru only after removing the child to India. It is also submitted that the welfare and best interests of the child would be served by restoring him to the jurisdiction of the Superior Court in Washington, United States, where the custody dispute may be finally adjudicated.

7. It is further submitted that the principle of Comity of Courts has been recognised by the Apex Court in several decisions, including ***Surinder Kaur Sandhu v. Harbax Singh Sandhu and Another*** reported in **(1984) 3 SCC 698** and that due regard must, therefore, be given to the orders passed by the Superior Court of Washington, being

the Court having the closest connection with the parties and the minor child. It is contended that, in matters concerning matrimony and custody, the law of the State having the most intimate contact with the spouses and the welfare of the child must ordinarily govern the dispute. Reliance is also placed on the decision of the Division Bench of the Delhi High Court in ***Aviral Mittal v. State and Another*** reported in ***II (2009) DMC 874 (DB)***, wherein the mother was directed to return the minor children to the jurisdiction of the Courts in the United Kingdom. The said decision was affirmed by the Apex Court in ***Shilpa Aggarwal v. Aviral Mittal and Another*** reported in ***(2010) 1 SCC 591***, wherein due regard was accorded to the principle of Comity of Courts and to the jurisdiction of the foreign Court having the most intimate contact with the issues concerning the custody of the children.

8. The learned senior counsel appearing for the writ petitioner has also placed reliance on the following decisions:-

- ***Yashita Sahu v. State of Rajasthan & Ors.***, passed in ***Crl. A.No.127/2020***;
- ***Mrs. Elizabeth Dinshaw v. Arvand M. Dinshaw and Another*** reported in ***(1987) 1 SCC 42***;
- ***Abhijit S. Shingote v. State of Maharashtra and Ors*** reported in ***2024 SCC OnLine Bom 1288***;
- ***Surya Vadanana v. State of Tamil Nadu and Ors***, reported in ***(2015) 5 SCC 450***;
- ***Lahari Sakhamuri v. Sobhan Kodali***, passed in ***Civil Appeal Nos.3135-3136/2019***;
- ***Abhay v. Neha Joshi and Another*** reported in ***2023 SCC OnLine Bom 1943***;
- ***Sunaina Rao Kommineni v. Abhiram Balusu***, passed in ***MAT.APP.(F.C.)135/2024***;and
- ***Camila Carolina de Matos Vilas Boas v. Union of India and Ors*** order dated ***22.04.2025*** passed in ***CRWP.1086.2025 (O&M)***;

9. The learned counsel appearing for respondent No.4 contends that the writ petition is not maintainable, since the minor child, who is below five years of age, has remained in the care and custody of his mother from birth and such custody cannot be characterised as illegal or unlawful so as to warrant issuance of a writ of habeas

corpus. The allegation that respondent No.4 abducted the child is denied and it is submitted that her journey to India was pre-planned and undertaken with the knowledge of the writ petitioner. It is further contended that the temporary protection order No.24-2-08758-06 relied upon by the writ petitioner was subsequently dismissed on 06.06.2025 by the Superior Court of Washington and cannot form the basis for treating her custody as unlawful. It is further contended that respondent No.4 was subjected to matrimonial cruelty, repeated abandonment and financial deprivation by the writ petitioner and raises concerns regarding his alleged alcohol and substance abuse, parenting ability and suitability to have the exclusive custody of the child.

10. It is submitted that the child is residing lawfully in India on a valid residence visa, is safe and well cared for and has substantially settled in India. It is further submitted that the writ petitioner has not been denied access to the child, as video calls have been facilitated and that he holds a valid visa enabling him to visit the child in India.

11. It is further contended that the welfare and best interests of the minor child are the paramount consideration in custody matters and must prevail over questions of jurisdiction and Comity of Courts. Relying upon ***Sarita Sharma v. Sushil Sharma***, reported in **(2003) 3 SCC 14**, it is submitted that even an order passed by a foreign Court cannot override the consideration of the child's welfare. Reliance is also placed on ***Ruchi Majoo v. Sanjeev Majoo*** reported in **MANU/SC/0621/2011**, to contend that the Indian Courts are not divested of jurisdiction merely because the child is a foreign citizen or custody proceedings have been instituted or decided by a foreign Court.

12. Reliance is further placed on ***Mansi v. State of Punjab*** reported in **MANU/PH/2197/2022** and ***Roxann Sharma v. Arun Sharma*** reported in **MANU/SC/0165/2015** that the custody of a child below five years of age should ordinarily remain with the mother unless she is shown to be mentally or physically incapable of caring for the child or unless such custody is demonstrated to be detrimental to the child's welfare. Reliance is placed

on ***Prince Richard Kofi Atigbor v. State of Karnataka*** reported in ***MANU/KA/3880/2024***, to contend that where a child below five years is in the mother's custody, no concern regarding the child's safety has been established and substantive custody proceedings are pending before the Family Court, the question of custody should be determined by that Court on the basis of the child's best interests. It is submitted that G&WC No.444/2024 concerning the custody of the child is already pending before the Family Court at Bengaluru, where the rival allegations can be adjudicated upon evidence and the welfare of the child comprehensively considered.

13. The learned counsel appearing for respondent No.4 has also relied on the following decisions:-

- ***Nithya Anand Raghavan v. State of NCT of Delhi and Ors*** reported in ***MANU/SC/0762/2017***;
- ***Roxann Sharma v. Arun Sharma*** reported in ***MANU/SC/0165/2015***;
- ***Kanika Goel v. State of NCT of Delhi and Ors*** reported in ***MANU/SC/1464/2018***;

- ***Syed Saleemuddin v. Rukhsana and Ors*** reported in ***MANU/SC/0278/2001;***
- ***Shashikanta Majhi v. State of Odisha and Ors*** reported in ***MANU/OR/0296/2026;***
- ***Tejaswini Gaud and Ors. v. Shekhar Jagdish Prasad Tewari and Ors*** reported in ***MANU/SC/0692/2019;***
- ***Somprabha Rana and Ors. v. The State of Madhya Pradesh and Ors*** reported in ***MANU/SC/0978/2024;*** and
- ***Veerpal Kaur v. State of Punjab and Ors*** reported in ***MANU/PH/2104/2025.***

14. Having considered the contentions advanced, we notice that the following facts emerge from the pleadings and materials on record. That the writ petitioner, a citizen of United States of America and respondent No.4, an Indian citizen were resident in the United States of America when the marriage took place at Vancouver, Washington. Respondent No.4 was aware that the writ petitioner was married before and had children from previous marriages. The child was born in the United States of America and is a citizen of United States of America by birth. When the child was aged nine months, respondent No.4 traveled to India

and has not returned to the United States of America since then.

15. Further, it is clear that there are matrimonial and custody proceedings pending before the Court in the United States of America and respondent No.4 is participating in those proceedings. Further, though respondent No.4 has approached the Family Court in Bangalore, there are no orders passed by the Family Court granting custody to the mother. It is in the said factual background that the law requires to be evaluated.

16. In ***Nithya Anand Raghavan***'s case (supra), the Apex Court has held that where a writ of habeas corpus is sought in a case that involves custody of minor children, the crucial question to be considered is the welfare of the child, taking note of the totality of the facts and circumstances of each case. The principle of Comity of Courts cannot be given primacy or more weightage for deciding the matter of custody or for return of the child. However, the facts of the said case was that the child was seven years of age and suffered from a cardiac disorder and had been in India for a

period of twelve months. The father did not initiate any action for the first six months. Therefore, it was held that even orders of foreign Courts should yield to the welfare and best interest of the child.

17. In **Roxann Sharma's** case (supra), the Apex Court again held that it is a child's welfare which is a focal point for consideration and that the custody of a child less than five years of age should ordinarily be with the mother and this expectation can be deviated from only for strong reasons, in the context of the Hindu Minority and Guardianship Act, 1956. In **Kanika Goel's** case (supra), it was found that on the totality of the facts and circumstances, there was nothing to indicate that there was any disruption to the education of the child and the best interest of the child would be retaining her in the custody of the mother in India. The same view has been reiterated in the decisions relied on by the writ petitioner.

18. In **Yashita Sahu's** case (supra), the Apex Court specifically held as follows:-

" 28. The wife is aware of her rights. She has been taking the help of the Police, Magistrate, the Domestic Court and Federal Programmes, when the need arose. She was also working with Walmart and we are unable to accept her contention that because of lack of translator she could not understand what was happening. We are also unable to agree with the contention now raised that her counsel coerced her to enter into the agreement. In any event if she has any grievance with regard to the manner in which the settlement was arrived at, the proper course was to raise the issue before the Norfolk Court. No Indian Court can sit in appeal over the orders of the Norfolk Court. We are clearly of the view that the plea she has set up is only to justify her patent violation of the orders of the Norfolk Court.

29. Obviously, the child who is less than three years old cannot be heard in the matter but keeping in view the facilities of education, social security etc., which would be available in USA, we are of the view that the child should not be deprived of the same only on the ground that the mother does not want to go back to USA.

30. Visa issue

Learned counsel for the appellant wife has laid great emphasis on the fact that the visa/work permit of the husband is expiring in 2020. That by itself is no ground to deny custody of the child to the husband. If his visa/work permit is extended no problem will arise but if

his visa/work permit is not extended, we shall be making directions in this regard in the latter part of the judgment. Whether the work visa/work permit of the husband is to be extended or not is for the authorities in the USA to decide and this Court cannot comment on the same. We cannot pass an order presuming that the visa will not be extended."

19. Further, in **Mrs. Elizabeth Dinshaw's** case (supra), it was held as follows:-

"8. Whenever a question arises before a court pertaining to the custody of a minor child, the matter is to be decided not on considerations of the legal rights of parties but on the sole and predominant criterion of what would best serve the interest and welfare of the minor. We have twice interviewed Dustan in our chambers and talked with him. We found him to be too tender in age and totally immature to be able to form any independent opinion of his own as to which parent he should stay with. The child is an American citizen. Excepting for the last few months that have elapsed since his being brought to India by the process of illegal abduction by the father, he has spent the rest of his life in the United States of America and he was doing well in school there. In our considered opinion it will be in the best interests and welfare of Dustan that he should go back to the United States of America and continue his education there under the custody and guardianship of the mother to whom such custody and guardianship have been entrusted by a competent court in that country. We are also satisfied that the petitioner who is

the mother, is full of genuine love and affection for the child and she can be safely trusted to look after him, educate him and attend in every possible way to his proper upbringing. The child has not taken root in this country and he is still accustomed and acclimatized to the conditions and environments obtaining in the place of his origin in the United States of America. The child's presence in India is the result of an illegal act of abduction and the father who is guilty of the said act cannot claim any advantage by stating that he has already put the child in some school in Pune. The conduct of the father has not been such as to inspire confidence in us that he is a fit and suitable person to be entrusted with the custody and guardianship of the child for the present."

20. In **Abhijit S. Shingote's** case (supra), the Division Bench of the Bombay High Court held that for invoking of the jurisdiction of a Family Court under the Guardians and Wards Act, it has to be shown that the minor ordinarily resides within its jurisdiction. The forceful removal of a minor child from its original place of residence and shifting him to a new residence will not make him an ordinary resident of the new place.

21. In **Lahari Sakhamuri's** case (supra) also, it was held that when a child is removed by one parent from one

Country to another, especially in violation of the orders passed by a Court, the Country to which the child is removed must consider the question of custody and decide whether the Court should conduct an elaborate inquiry on the question of the child's custody or deal with the matter summarily, ordering the parent to return the custody of the child. The same view has been expressed by the Bombay High Court in **Abhay's** case (supra) and by the High Court of Delhi in **Sunaina Rao Kommineni's** case (supra) and by the Punjab and Haryana High Court in **Camila Carolina de Matos Vilas Boas's** case (supra), which has been upheld by the Apex Court.

22. Having considered the precedents on the point, we are of the opinion that in the specific facts and circumstances of the instant case, where child is admittedly a citizen of United States of America and the mother had removed the child from the jurisdiction of competent Courts in the United States of America without informing the father and in violation of the orders passed, the contention that the child is ordinarily resident in India and that the question of

custody has to be decided by the Courts in India cannot be accepted. In the instant case, it is not only the child but the father who is also a citizen of the United States of America. The documents placed before us would show that the Courts in the United States of America have also considered the best interests of the child and have not directed the separation of the child from the mother. There is nothing on record to suggest that there is any imminent danger to the child from the writ petitioner, who is his natural father.

23. In the above circumstances, respondent No.4 could not have removed the child from the jurisdiction of the competent Family Court in the United States of America and denied the child the company of its father without proper justification. We also notice that respondent No.4 has been participating in the proceedings of the Family Court and that orders have been passed by the Court in the United States of America taking note of her contentions as well.

24. In the circumstances, we are of the opinion that the filing of a Guardian and Wards case before the Family Court in Bangalore cannot change the factual situation. It is

further an admitted case that respondent No.4 was working in the United States of America and her action in having left the United States of America with the child and not having chosen to go back could not be a reason for her to state that her Green Card has expired and therefore she is unable to go back.

25 We are of the opinion that this is a fit case where the mother - respondent No.4 has to go back to the United States of America, which is the place of birth of the child and the place of its ordinary residence and work out her rights in the competent Court there. The writ petitioner shall make all arrangements for the return of respondent No.4 as well as the minor child to the US. The writ petitioner shall also make available the flight tickets and bear the necessary expenses for the mother and the minor child to obtain the Visa and return to the United States of America. The expenses of the mother till she finds an appropriate employment and accommodation in the United States of America, shall also be borne by the writ petitioner and an affidavit to that effect

shall be placed before this Court with a copy to the Court in which the proceedings are pending between the parties.

26. The writ petition is accordingly ***allowed.*** All contentions of the parties are left open to be decided in the proceedings before the competent Court in the United States of America.

All pending interlocutory applications shall be *disposed of.*

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

**Sd/-
(T.P.VIVEKANANDA)
JUDGE**

cp/PN