



2026:AHC:90815-DB

## HIGH COURT OF JUDICATURE AT ALLAHABAD

SPECIAL APPEAL No. - 482 of 2026

Master Rudransh Minor And Another

.....Appellant(s)

Versus

State Of U.P. And 3 Others

.....Respondent(s)

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|---------------------------|---|-----------------------|
| Counsel for Appellant(s)  | : | Arun Kumar Srivastava |
| Counsel for Respondent(s) | : | C.S.C.                |

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**Court No. - 21**

**HON'BLE MAHESH CHANDRA TRIPATHI, J.  
HON'BLE KUNAL RAVI SINGH, J.**

1. Heard Shri Arun Kumar Srivastava, learned counsel for the appellants and Shri Ambrish Shukla, learned Addl. Chief Standing Counsel for State respondents.

2. The instant intra court appeal under Chapter VIII Rule 5 of the High Court Rules has been preferred challenging the validity of the judgment and order dated 18.3.2026 passed by learned Single Judge in Habeas Corpus Writ Petition No.86 of 2026 (Master Rudransh & Anr. v. State of U.P. & Ors.), which for ready reference is reproduced as under:-

*"1. Supplementary affidavit dated 9.3.2026 filed today be learned counsel for the petitioners is taken on record.*

*2. Heard learned counsel for the parties and perused the material available on record.*

*3. The instant petition has been filed by the mother (petitioner No.2 herein) of the corpus/ petitioner No.1 stating therein that, her son (corpus) has forcefully been taken away by her husband i.e. respondent No.4 herein and also the father of the corpus.*

*4. Learned counsel for the petitioners submits that, as per Section 6 of the Hindu Minority and Guardianship Act, 1956, the minor ought to have been in the custody of the mother.*

*5. Since the minor-son is in the custody of his father and is living with*

*him, in that case, it cannot be presumed that the child is in illegal custody of the father.*

*6. The instant petition is not maintainable and is dismissed with liberty to the petitioners to move an appropriate application under Section 6 of the Hindu Minority and Guardianship Act, 1956, to seek the custody of the minor child."*

3. Learned counsel for the appellants has contended that the appellant no.2 was married with respondent no.4 on 28.11.2023. Out of said wedlock, appellant no.1 was born on 25.9.2024 and at present he is about 18 months old. Matrimonial dispute arose between the parties due to which some proceeding has been initiated/ undertaken between the parties. It is alleged that on 15.11.2025 the respondent no.4 had forcibly and illegally snatched the appellant no.1 from appellant no.2 and rushed away. In this regard, a FIR was also lodged by appellant no.2 being Case Crime No.378 of 2025 under Section 140 (3) BNSS, P.S. Bilriyaganj, Distt. Azamgarh on 16.11.2025. Since the whereabouts of the respondent no.4 was not known to appellant no.2, she had no option except to prefer the aforesaid Habeas Corpus Writ Petition, which was dismissed by the aforequoted order.

4. Learned counsel for the appellants submits that the impugned judgment and order is illegal and arbitrary inasmuch as it is against the facts and law both. Learned Single Judge has not considered the question of paramount welfare and interest of the minor child, who at present is about 18 months old and totally dependent on nurturing from the mother. The interest and welfare of the minor child would be better served, if his custody is given to appellant no.2 (mother). It is contended that in case no indulgence is accorded, the minor will suffer extreme hardship.

5. Learned counsel for the appellants, in support of his submissions, has placed reliance on the judgment and order dated 03.04.2026 passed in Special Appeal No.1205 of 2025 (Smt. Rinku Ram @ Rinku Devi & Anr. v. State of U.P. & Ors.), wherein, in similar circumstances, the order of learned Single Judge dismissing the Habeas Corpus Writ Petition has been assailed. The Division Bench, while allowing the special appeal, has also considered the judgment of Hon'ble Supreme Court in Yashita Sahu v. State of Rajasthan & Ors., (2020) 3 SCC 67; Elizabeth Dinshaw v. Arvand M.

Disshaw & Ors., (1987) 1 SCC 42; Nithya Anand Raghavan v. State (NCT of Delhi) & Anr., (2017) 8 SCC 454 and Lahari Sakhamuri v. Sobhan Kodali, (2019) 7 SCC 311, wherein it had been held that it is too late in the day to urge that a writ of habeas is not maintainable if the child is in the custody of another parent and the court can invoke its extraordinary writ jurisdiction for the best interest of the child. The Division Bench had also considered the judgment of Hon'ble Supreme Court in Gohar Begum v. Suggi, AIR 1960 SC 93. It is submitted that being on similar footing the instant matter is also liable to be allowed.

6. Learned Addl. Chief Standing Counsel has not disputed the factual and legal aspect, which has been considered by the Division Bench in Smt. Rinku Ram @ Rinku Devi & Anr. (Supra). He fairly submits that the matter is squarely covered by the said judgment as admittedly the first appellant is about 18 months old. In case the matter is relegated to learned Single Judge, definitely the said aspect can be considered on merit.

7. Heard rival submissions, perused the record and respectfully considered the judgments cited at Bar.

8. We find that in the instant matter, entire case has been set up on the basis of the mandate given by Division Bench in the case of Smt. Rinku Ram @ Rinku Devi & Anr. (Supra). In order to appreciate the controversy in hand, it is apt to reproduce the relevant paragraphs of the said judgment:-

*".....14. We have considered the submissions made and perused the material available on record.*

*15. We find that the claim of the appellant No. 1 to get custody of her minor son, who is now aged about 20 months, has not been considered by the writ court on merits and the opinion formed by the learned Single Judge is that availability of remedy under Guardians and Wards Act, 1890, renders the petition for Habeas Corpus either not maintainable or the writ court as not an appropriate forum.*

*16. In our opinion, the view taken by the learned Single Judge is contrary to the decision of the Hon'ble Supreme Court in Yashita Sahu Vs. State of Rajasthan and others: (2020) 3 SCC 67, wherein, after placing reliance*

*on judgments in Elizabeth Dinshaw Vs. Arvand M. Dinshaw and others: (1987) 1 SCC 42, Nithya Anand Raghavan Vs. State (NCT of Delhi) and another: (2017) 8 SCC 454 and Lahari Sakhamuri Vs. Sobhan Kodali: (2019) 7 SCC 311, it has been held that it is too late in the day to urge that a writ of habeas is not maintainable if the child is in the custody of another parent and the court can invoke its extraordinary writ jurisdiction for the best interest of the child.*

*17. The Hon'ble Supreme Court, in the case of Gohar Begum (supra), quoted observations of Lord Denman C. J., in R. Vs. Greenhill, (1836) 4 Ad and El at p. 640: 111 ER at p. 927, as under:-*

*"When an infant is brought before the Court by habeas corpus, if he be of an age to exercise a choice, the Court leaves him to elect where he will go. If he be not of that age, and a want of direction would only expose him to dangers or seductions, the Court must make an order for his being placed in the proper custody."*

*.....*

*"Where, as frequently occurs in the case of infants, conflicting claims for the custody of the same individual are raised, such claims may be enquired into on the return to a writ of habeas corpus, and the custody awarded to the proper person."*

*18. There is no need to refer judgments on the settled proposition of law that in custody matters, it is only the welfare of the child that is of paramount consideration and once we have arrived at a conclusion that writ petition could not be dismissed as not maintainable or the forum of the writ court as not the appropriate one, the matter has to be considered by the writ court on merits where the parties would have their full say.*

*19. The special appeal is, accordingly, allowed.*

*20. The order dated 06.11.2025 passed by the learned Single Judge is set aside.*

*21. Habeas Corpus Writ Petition No. 931 of 2025 is restored to its original number and status and the same shall be listed before appropriate Bench on 16.04.2026 as a fresh case."*

9. Considering the facts and circumstances of the case, we find that instant matter is squarely covered by the judgment in Smt. Rinku Ram @ Rinku Devi & Anr. (Supra). We are in respectful agreement with the ratio laid down in the case of Smt. Rinku Ram @ Rinku Devi & Anr. (Supra). Accordingly, the special appeal stands **allowed**. The judgment and order dated 18.3.2026 passed by learned Single Judge is set aside. The Habeas Corpus Writ Petition No.86 of 2026 is restored to its original number and status, and the same shall be listed before the appropriate Court on 28.04.2026 as fresh.

(Kunal Ravi Singh,J.) (Mahesh Chandra Tripathi,J.)

**April 23, 2026**

SP/