

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.4958 OF 2019

1. Smt. Indira Shantaram Gavand
Aged about 60 years,
Occ. : Housewife,
Residing at Aavregaon, Taluka Uran,
District Raigad
 2. Shri. Shantaram Baliram Gavand
Aged 65 years, Occ. : Retired
Residing at Aavregaon, Taluka Uran,
District Raigad
- Petitioners

Vs.

1. The State of Maharashtra
through Uran Police Station,
District Raigad
 2. Shri. Vishal Ramesh Taloskar
Aged 27 years, Occ. : Business,
Residing at Room No. 205,
Deepali Buildinig, Thakurwadi,
Dombivli (West), Dist. Thane
 3. Smt. Rina Pawar,
Adult, Occupation – Household,
Residing at 501, Sadguru Mawali Bldg.,
Infront of Nagmandir, Nagwadi,
Diva, District Thane
- Respondents

Mr. Shirish Gupte, Senior Advocate i/by Mrs. Racheeta R. Dhuru, Advocate for the Petitioners.

Ms. S.V. Sonawane, APP for Respondent No. 1 – State.

Mr. S.R. Phanse, Advocate for Respondent nos. 2 and 3.

Mr. Vijay Kavale, API, Uran Police Station, present.

**Coram : S.S. Shinde &
N.B. Suryawanshi, JJ.**

Date : 22nd October 2019

PC : (Per N.B. Suryawanshi J.)

1. This petition is filed by grandparents seeking writ of Habeas Corpus for production of their grandson “Tanush” and further for restoration of custody of Tanush to the petitioners. The facts leading to this petition are as follows :

2. Priyanka, daughter of the petitioners got married with the second respondent on 27th May, 2013. Tanush was born out of the said wedlock on 1st September, 2014. It is the case of the petitioners that their daughter was murdered on 18th July, 2015 at the instance of the second respondent, which led to lodging of F.I.R. by the petitioner no.1 at Murbad Police Station vide C.R. No.I-100/2015, for the offences punishable under Sections 302 and

120(B) of the Indian Penal Code. The second respondent was arrested in pursuance of registration of the crime and was remanded to police custody till 28th July, 2015. Tanush was in the custody of the petitioners, at that time.

3. The second respondent was granted bail on 13th December, 2016. He filed Civil Miscellaneous Application No. 66 of 2017 under Section 25 of Guardians and Ward Act, 1890 before the learned District Court, Kalyan. He also filed interim application (Exhibit 55) seeking interim custody of his minor son- Tanush.

4. The learned District Judge – I, Kalyan passed an order below Exhibit 55, wherein it is specifically observed that at the time of deciding the said application, Tanush was residing with the petitioners. The learned trial Court was pleased to partly allow the said application, granting interim access to the second respondent to meet Tanush once in fortnight i.e. on 1st and 3rd Sunday of the month between 10.00 am. to 4.00 pm. at the place with consent of both the parties or at any public place. Both the parties to the

proceeding were directed to maintain harmony during the temporary access period of Tanush to the second respondent and the petitioners were directed not to obstruct or create any obstacle in the meeting of the second respondent with his son Tanush.

5. It is the case of the petitioners that on 23rd July 2019, the second and third respondents forcibly took Tanush away, who is of 5 years age now, from the tuition teacher at Uran, though Tanush and the tuition teacher resisted him. The petitioners lodged F.I.R. with Uran police station at C.R. No. 0140 of 2019 under Section 363 of the Indian Penal Code. In pursuance of the said F.I.R., the second respondent was arrested and subsequently released on bail.

6. It is further averred that the second respondent, after illegally taking custody/abducting Tanush, filed purshis at Exhibit 74 in Civil Miscellaneous Application No. 66 of 2017 pending before the learned District Court, stating that since son - Tanush is in his custody, the object of filing the said proceeding is fulfilled and hence, the second respondent does not wish to prosecute the said

proceeding and hence the second respondent wants to withdraw the said proceeding unconditionally.

7. Heard the learned Senior Counsel for the petitioners, the learned APP for the State and the learned counsel representing the second respondent. The second respondent produced child before us in the second session. After hearing the arguments of both the sides, we are of the view that the custody of Tanush was illegally taken by the second respondent. Even if, the second respondent is a father and the natural guardian, that does not entitle him to take law in his own hands and illegally take custody of the child. The act of the second respondent removing Tanush from lawful custody of the petitioners is without any authority of law. The custody should have been sought and the second respondent ought to have prosecuted the proceeding filed by him under the Guardians and Ward Act, 1890 and only on the orders of the competent Court, he was entitled to take custody of the child.

8. The learned counsel for the second respondent had no answer to our query as to how the second respondent is entitled to

take illegal custody of the child. Though the learned counsel for the second respondent urged before us to interact with the child, we are not inclined to do so, taking into consideration the tender age of the child.

9. In view of the fact that the custody of Tanush was illegally taken by the second respondent, we are inclined to allow the present petition by directing the second respondent to forthwith handover the custody of Tanush to the Petitioners. It will be open for the second respondent to approach the competent Court to seek custody of Tanush in legal manner. Hence, we allow this petition by following order.

10. Before parting with the order, we must record behaviour of the second respondent, who tried to create ruckus in the court by shouting. We deprecate such behaviour and in fact the act of illegally taking away custody of Tanush should dis-entitle the second respondent from continuing him on bail. Be that as it may, we refrain ourselves from giving any directions in that behalf.

ORDER

- i) We direct the second respondent to forthwith handover the custody of Tanush to the Petitioners, who are present in the Court.
- ii) Mr. Vijay Kavale, Assistant Police Inspector, attached to Uran Police Station, who is present in the Court, shall ensure that the custody of Tanush is taken from the second respondent and he is forthwith handed over to the petitioners.
- iii) Liberty is granted to the second respondent to apply before the Court of competent jurisdiction for the custody of child Tanush. In case such application is filed, needless to observe that the concerned Court shall expedite hearing of the said application and proceeding. However, the Court shall afford reasonable opportunity of hearing to both sides.
- iv) With the above observations, writ petition is disposed of.
- v) Parties to act upon the authenticated copy of this order

(N.B. Suryawanshi, J.)

(S.S. Shinde, J.)