

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL WRIT PETITION NO. 952/2019

Vinod S/o Shankarrao Jaysingpure,
..VS..
Babarao S/o Marotrao Shahade and Ors.,

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri P. A. Dharaskar, Advocate for the petitioner.
Shri T. A. Mirza, A.P.P. for the respondent Nos.2 and 3 .

CORAM : Z. A. HAQ, AND
M. G. GIRATKAR, JJ.

DATED : 20th November, 2019

Heard.

The petitioner has prayed for writ of *habeas corpus*, for production of his 06 year old son Master Mehar, who according to the petitioner is in illegal custody of the respondent No.1. Admittedly, respondent No.1 – Babarao S/o Marotrao Shahade is maternal grandfather of Master Mehar. According to the petitioner, because of some matrimonial dispute, his wife had been residing with her parents since September 2014. Reference of some litigations is given in the petition, which shows that the relations between petitioner and his wife were not cordial. Wife of the petitioner died on 28th January, 2019.

Learned advocate for the petitioner, relying on the judgment given in the case of *Tejaswini Gaud Vs.*

Shekhar Jagdish prasad Tewari, reported in **AIR ONLINE 2019 SC 256**, argued that this is a fit case to issue writ of *habeas corpus*, and ensure production of Master Mehar before this Court and to handover custody of Master Mehar to the petitioner.

Writ of *habeas corpus* can be granted by this Court even for production of the child, if it is shown that the child is in illegal detention of someone who is not authorized to have custody of child. As per Section 6 of The Hindu Minority and Guardianship Act 1956, father is the natural guardian. However, in the facts of the present case, we find that Master Mehar is aged about 06 years and might be going to school. Admittedly, Master Mehar has been residing at the house of his maternal grandfather i.e. respondent No.1, since September 2014.

In the facts of the case, in our view, it would not be proper for this Court to exercise the extraordinary jurisdiction, and proceedings under The Hindu Minority and Guardianship Act 1956, before the District Court would be suitable remedy. Hence, we refrain from exercising the extraordinary jurisdiction.

The criminal writ petition is **disposed** with liberty to the petitioner to avail appropriate remedy, if so advised.

JUDGE

JUDGE