

... Petitioner

State of Maharashtra and another

... Respondents

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Mr. J.P. Yagnik, APP for the State.

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CORAM : NITIN JAMDAR AND
N.R. BORKAR, JJ.

DATED : 11 AUGUST 2022

P.C. :-

By this Petition, the Petitioner has invoked the extraordinary remedy of writ of habeas corpus.

2. The Petition is filed in respect of two children of the Petitioner, namely Affaan Weldon, aged 14 years, the son and Aafiah Weldon, aged 17 years, the daughter.

3. The prayer in the Petition is to trace the whereabouts of the minors and produce them before the Court and appropriate orders as regards the custody. The Petitioner contended that during the talaq between the Petitioner and Respondent No.3, it was understood that the children would be with the Petitioner which understanding

honoured by the Respondent No.3 – the ex-husband of the Petitioner.

4. In the Petition itself, it is stated that the children are with the father since the year 2015. The children are now grown up. The daughter on verge of becoming major. The learned Counsel for the Petitioner states children are studying in a school. Thus, it is not that their whereabouts are not known. This is a case where the Petitioner is seeking visitation rights and custody of the children who are, now for seven years, living with their father. Whether to give the Petitioner the custody in these facts and circumstances would require assessment of evidence, interviewing the children, understanding their wishes, find out what is better for them and entail adjudication of various disputed questions.

5. According to us, in these facts and circumstances, remedy of habeas corpus is not appropriate and the Petitioner will have to seek the reliefs in the ordinary course, which is available, which the Petitioner has so far not attempted to seek. Keeping the merits of the case open in case the Petitioner approaches the appropriate court of law, the Writ Petition is disposed of.

(N.R. BORKAR, J.)

(NITIN JAMDAR, J.)

KANCHAN
PRASHANT
DHURI

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