

Uday S. Jagtap

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

CRIMINAL WRIT PETITION NO. 2316 OF 2022

Mohammed Sabir Abbas Gujarati .. Petitioner

Vs.

The State of Maharashtra & Ors. .. Respondents

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Mrs. Rimpal Trivedi for the petitioner

Mr. Saeed Akhtar a/w Hitesh Anil Thorat & Rehan Ansari for the
respondent nos. 2 to 6

Mrs. P.P. Shinde, APP for the respondent – State

Mr. Bhagwant Choudhari, API, Dongri Police Station present

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**CORAM : REVATI MOHITE DERE &
PRITHVIRAJ K. CHAVAN, JJ.**

DATED : 21st SEPTEMBER, 2022.

P.C.

1. Heard learned Counsel for the petitioner.
2. By this petition, the petitioner seeks a writ of habeas corpus
inter alia directions to respondent no.1 to investigate and report the

whereabouts of the petitioner's minor son Fakhruddin and upon locating such whereabouts, produce the minor son Fakhruddin before this Court by removing him from the illegal and unlawful custody of the respondent nos. 2 to 6. There is also a prayer to declare the custody of the minor son with the respondent nos. 2 to 6 as illegal and unlawful and for restoration of the lawful custody of the minor son to the petitioner.

3. Perused the papers.

4. The petitioner is the husband of the respondent no.2. From the said wedlock, couple has a son, aged about 5 years. It appears that presently the respondent no.2 is staying with her son at her mother's residence.

5. It is not in dispute, that the petitioner has filed a petition, seeking custody of his minor son, under Section 25 of the Guardian and Wards Act, in the Family Court at Bandra, Mumbai, on **16th December, 2021**. A copy of the petition is annexed at page 32 of the petition. The prayers / reliefs sought in the said petition i.e.

filed before the Family Court are as under :-

- “(a) The permanent custody and guardianship of the minor child, Fakhruddin be awarded to the petitioner.*
- (b) That pending the hearing and final disposal of the petition the weekend access and 50% vacation physical access to be given to the petitioner of the minor son Fakhruddin.*
- (c) That pending the hearing and final disposal of the petition the regular video access of 2 hours to be granted to the petitioner.*
- (d) That this Hon’ble Court to direct the Respondent to deposit the passport of Minor son with the court and any independent authority.*
- (e) Ad-interim and interim relief as per prayer clause (b) (c) and (d).”*

6. In the said petition, the petitioner has also filed an interim application for physical access and overnight stay of the minor son, on **15th March, 2022**. It is not in dispute, that the said application / petition is pending before the Family Court Court, Mumbai. Despite the said proceedings pending before the Family Court and the petitioner knowing fully well that the custody of the minor son is with the respondent no.2, the petitioner has filed the aforesaid petition seeking a writ of habeas corpus, in this Court, on **2nd May, 2022**.

7. Learned Counsel for the respondent no.2 submits that this petition is a complete abuse of the process of this Court, inasmuch as, yesterday at 4.30 p.m. an order of access was passed by the Family Court.

8. Despite the proceedings pending before the Family Court, the petitioner has filed the aforesaid petition in this Court seeking writ of habeas corpus, which is completely an abuse of the process of the Court.

9. We deprecate this practice. For wasting precious judicial time, we deem it appropriate to impose costs of Rs.15,000/- on the petitioner. The said costs to be paid to the Kirtikar Law Library within two weeks from today and receipt thereof be produced before the Registry.

10. The petition stands dismissed accordingly.

11. All parties to act on the authenticated copy of this order.

12. List the petition on **12th October, 2022** for reporting compliance of the order of deposit.

PRITHVIRAJ K. CHAVAN, J.

REVATI MOHITE DERE, J.