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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION  
WRIT PETITION NO. 2226 OF 2022

Dattatreya M. Kamble

... Petitioner

V/s.

The State of Maharashtra and ors

... Respondents

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Mr. Anirban Tripathy for the Petitioner.

Mr. K.V. Saste, APP for the Respondent/State.

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

DATE : 28 JULY 2022.

P.C.

. Heard the learned counsel for the Petitioner.

2. The Petitioner is seeking a writ of Habeas Corpus in respect of his son Varad, whose custody is stated to be with Respondent Nos.2 to 5 i.e., maternal grandparents and maternal uncles of the child.

3. The mother of child Varad and wife of the Petitioner had filed a FIR against the Petitioner under Sections 498(A), 307, 323, 406, 504, 506 read with 34 of the Indian Penal Code. There were strained relations between the Petitioner and his wife. The Petitioner

filed the matrimonial proceedings for seeking divorce in Family Court, Pune and has also filed an application under the Guardians and Wards Act and Hindu Marriage Act, 1955 before the Sessions Court, Pune. Thereafter, the Petitioner's wife and mother of child Varad expired. The custody of child is now with Respondent Nos.2 to 5 since the year 2018. The Petitioner has moved the application seeking custody of child in the District Court at Kopergaon bearing No.16 of 2021. The learned counsel for the Petitioner submits that the application is not coming up for consideration and therefore, the present writ petition is filed.

4. It is an admitted fact that the custody of child is with Respondent Nos.2 to 5 since the year 2018 and the Petitioner has already moved District Court seeking custody of child. Merely because the application is pending that cannot be a ground to file a petition for Habeas Corpus. However, we do find merit in the contention of the Petitioner that, in view of the changed circumstances after death of Petitioner's wife, the application of the Petitioner, father of child should be taken on priority basis by the court.

5. Accordingly, the District Court at Kopergaon, where the application filed by the Petitioner bearing No. 16 of 2021 filed under the Guardians and Wards Act is requested to take up the

application for consideration at the earliest, subject of course to earlier time bound and urgent commitments.

6. With these observations, Writ Petition is disposed of.

(N.R. BORKAR, J.)

(NITIN JAMDAR, J.)