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

***CRIMINAL WRIT PETITION NO. 3201 OF 2019***

Chetan Govind Chaudhari

... Petitioner

V/s.

The State of Maharashtra and Anr.

... Respondents

Mr. Tarak Sayyed a/w. Ramiz Shaikh i/b. Sandeep Bali for the  
Petitioner

Ms. Medha Jondhale a/w. Anand Jondhale and Rajnandi Jondhale  
i/b. Jondhale & Co. for the Respondent No.2

Ms. S.D. Shinde, APP for the Respondent - State

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

***DATE : 07 JULY 2022***

**P.C. :-**

Heard the learned Counsel for the parties.

2. By this Writ Petition the Petitioner is seeking a writ of habeas corpus in respect of his minor son Chetan, who is currently with the Respondent No.2, his maternal grand father. The Petitioner is a doctor. According to him, in the vacation the child

had gone to meet his maternal grand parents in Gujarat. On 10 May 2019 an incident took place where the wife of the Petitioner was burnt and the child was brought by Respondent No.2 After the incident he returned at home and the child is with the Respondent No.2 – grandfather. We are informed that the child is now 11 years old.

3. The learned Counsel for the Petitioner submitted that for denying the custody to the father and keeping the child in the own custody would be an illegal custody and detention and therefore, writ of habeas corpus is maintainable. As regard the contention of the Respondent that the mother of the child died in suspicious circumstances due to burn injuries, the learned Counsel for the Petitioner submitted that the Petitioner has been granted anticipatory bail.

4. In case of custody of child, even in case of family and matrimonial dispute, in certain circumstances, a writ of habeas corpus can be invoked. However, if the Court finds that looking at the complexities and facts and circumstances an appropriate remedy would be to relegate the parties to ordinary court then the court would not exercise this extraordinary power. The wishes of the minor also has to be considered. In this case the child is now 11 years old. He has been with the grand parents for some time. The Petition is pending in the file of this Court for some time. On 14

August 2019 a detailed order came to be passed and the child was also examined by a psychiatrist. Thereafter, the child has again been interviewed on 17 January 2021, wherein he had stated that he want to live with his grand parents. The prayer of the Petitioner that the Petitioner may be given access of the child was found reasonable and the Petitioner was given certain visitation rights which order has continued.

5. Considering the background in which the child came to reside with the grand parents and has continued, it cannot be considered as an illegal detention. As regard the permanent custody of the child and visitation rights, it would be appropriate for the Petitioner to avail of the remedy under the ordinary law.

6. The Petitioner has been granted visitation rights. We continue his visitation rights for a period of two months from today so that the Petitioner can approach the appropriate Court for continuation/modification, etc. of the visitation rights and also for his prayer for permanent custody. The proceedings that the Petitioner would file would be considered on its own merits and observations made in this order are in the context of exercise of habeas corpus jurisdiction.

7. The Writ Petition is accordingly disposed of.

*N.R. BORKAR, J.*

*NITIN JAMDAR, J.*