

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 6385 OF 2021**

Pradeep Indar Kuckreja and anr. ...Petitioners

Versus

The State of Maharashtra and ors. ...Respondents

.....

Mr. Kushal Mor a/w Mr. Harshal Damania and Rubina Khan for the Petitioners.

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

Ms. Abha Singh a/w Mr. Aditya Pratap and Mr. Tanmay Bidkar for Respondent No.2.

.....

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

DATED : 19 AUGUST 2022

P.C. :-

Heard learned Counsel for the parties.

2. The Petitioners are the maternal grand parents of the child, the daughter of Respondent Nos. 2 and 3. We are informed by learned Counsel for the Petitioners that Petitioner No. 1 has expired and the Petition is now prosecuted by Petitioner No. 2 grand mother of the child. Leave granted to delete Petitioner No. 1.

3. The Petitioner has sought a writ of habeas corpus in respect of the child with a prayer that the Respondents be directed to produce the minor child before the Court and the custody of the child be handed over to the Petitioner. The learned Counsel for the Petitioner when

the Petition came up on board earlier, had sought to give notice to the Respondents stating that the stand of Respondent No. 2 be ascertained whether the custody can be given to the Petitioner. The learned Counsel for the Petitioner stated that there is nothing against the Petitioner in the pending criminal cases and Respondent No. 2 should consider giving at least visiting rights to Petitioner in respect of the child.

4. Respondent No. 2, mother of the child, has opposed grant of any relief in this Petition. The learned Counsel for Respondent No. 2 submits that custody of the child is with Respondent No. 2 as the mother and she is in lawful custody and therefore the Petitioner, who has no legal right, cannot consider the child to be detained by the Respondent No. 2. The learned Counsel for Respondent No. 2 also submitted that Respondent No. 3 is joined in this Petition to present a different picture as if it is Respondent No. 2 and 3 are not allowing access to the child to the Petitioner. The learned Counsel for Respondent No. 2 submits that there is serious dispute between the Respondent No. 2 and 3 and case is filed against Respondent No. 3 under Sections 354, 354A and Section 8 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) which is pending. It is also submitted that the Court while considering bail application of Respondent No. 3 had specifically directed that child be kept away from Respondent No. 3. It is submitted that the

Petitioner and Respondent No. 3 are on good terms and the Respondent No. 3 is trying to achieve through the Petitioner, something which is prohibiting by the Court.

5. We have considered the Petition and the controversy before us within the parameters of exercise of writ jurisdiction and issuance of writ of habeas corpus.

6. Firstly, the girl child is with the mother who is the natural guardian. Secondly, serious disputed questions are presented before us which involve even the allegations under the POCSO Act. As observed by the Supreme Court in the case of *Tejaswini Gaud and ors. vs. Shekhar Jagdish Prasad Tewari and ors.*¹, where serious disputed questions arise, the writ Court would relegate parties to ordinary remedies in law and also the welfare of the minor would also be of important consideration. We cannot hold that the apprehension of the Respondent No. 2 that, in the back drop of serious acrimony between the parties and allegations leveled that the visit would have a harmful effect on the child at this stage, is completely misplaced. Therefore, we do not find that this a fit case where writ jurisdiction can be exercised.

7. The Writ Petition is accordingly rejected.

(N.R. BORKAR, J.)

(NITIN JAMDAR, J.)

1 (2019) MANU/SC/0692/2019