

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL WRIT PETITION NO. 693 OF 2021

Mr. Abhinav Gyan S/o Gangeshwar Prasad, : **PETITIONER**
Aged – 39 Years, Occupation – Service,
R/o 27809 N. Gidiyup TRL Phoneix
85085 Through his Power of Attorney
Holder Mr Abhimanyu Singh S/o Madan
Mohan Singh, Aged - 45 years , Resident
of 132, Saraswati Layout, Deendayal
Nagar, Ranapratap Nagar, Nagpur, Tahsil
& District – Nagpur (Maharashtra State)

VERSUS

1. State of Maharashtra, Through Police :
Station Incharge, Rana Pratap Nagar,
Nagpur Tahsil & District – Nagpur
(Maharashtra State)

2. Mrs. Anupriya D/o Anjani Sharan :
(Mrs. Anupriya W/o Abhinav Gyan
Prasad), Aged 35 Years, Occupation –
Service, presently residing at 1002
Vasundhara Enclave, Narendra Nagar,
Nagpur, Tahsil & District – Nagpur
(Maharashtra State)

RESPONDENTS

Mr. Prabhjit Jauhar, Advocate with Ms. Tulika Bhatnagar, Advocate
with Ms. Ayushi Dangre, Advocate for Petitioner
Mr. S.S. Doifode, AGP for respondent No.1 / State
Mr. S.K. Mishra, Senior Advocate with Mr. Ayush Sharma, Advocate
with Mr. Virat Mishra, Advocate for Respondent No.2

CORAM : **MANISH PITALE AND**
VALMIKI SA MENEZES, J.J.

RESERVED ON : 30/08/2022

PRONOUNCED ON :27/09/2022

JUDGMENT : (Per : MANISH PITALE, J.)

The petitioner is seeking a writ of *habeas corpus* for a direction to the respondents, particularly, respondent No.2 to produce minor child born out of the marriage between the petitioner (husband) and respondent No.2 (wife) and further direction for handing over the minor child to the petitioner for being taken back to the United States of America (USA). Admittedly, the minor child is a citizen of USA. This is another case of discord in the matrimonial life of husband and wife, leading to one parent i.e. respondent No.2 – wife taking the minor child from foreign jurisdiction (USA) to India, without the consent of the petitioner - husband. As a consequence of the deterioration of relations between the parties, legal proceedings have been initiated in the USA as well as in India and in the backdrop of such acrimony, the petitioner has filed the present writ petition seeking the aforesaid reliefs.

2. At the stage of final arguments in this petition, the learned counsel appearing for rival parties have relied upon a number of

judgments of the Hon'ble Supreme Court and this Court, in support of their respective stands. In fact, the same judgments have been interpreted in different ways by the learned counsel, in order to contend that such judgments support their respective arguments. By now, there are considerable number of judicial pronouncements in the context of situations similar to the one that arises in the present case, in the backdrop of large number of Indian immigrants landing up in the western world, particularly USA, for greener pastures. The couples in such cases are usually well educated and financially sound, as both are working individuals and there is no dearth of resources. Perhaps, it is the problem of plenty, which is leading to such frequent instances of one parent knocking the door of the writ Court, invoking the writ of *habeas corpus* to secure the custody of minor child or children, who are taken away by the other parent and brought to India. There is no dearth of intelligence and resources in the parties, but, there is lack of wisdom and maturity, thereby frequently bringing such cases to the writ Court for decision.

3. The detailed submissions made on behalf of the rival parties would necessarily require reference to and analysis of the judgments relied upon, but, before referring to the judgments and analyzing them,

it would be necessary to refer to the sequence of events, to properly apply the position of law to the facts of the present case. There can be no doubt about the fact that even when the position of law is reasonably clear, the case in hand needs to be decided on its own facts. Hence, it would be appropriate to narrate the sequence of events discernible from the material placed on record on behalf of the rival parties.

SEQUENCE OF EVENTS

4. The petitioner is a Software Engineer, who started working with the multinational company “Infosys” in May, 2006, in the USA, initially living in Charlotte, NC. In April, 2009, the petitioner moved to Phoenix, Arizona (USA). In February, 2012, the petitioner joined “American Express” as a Staff Engineer / Director and he has applied for green card for permanent residence in the USA in EB2 category. He claims that the said application is in its final stages of processing.

5. The petitioner and respondent No.2 got in touch with each other through a matrimonial site in the year 2013, when the respondent No.2 was living in Paris, France. She had completed her masters in Information Technology. The respondent No.2 travelled to the USA to meet the petitioner and eventually the marriage was fixed, which took place on 20/11/2013 at Patna, Bihar (India). Court marriage was

registered on 02/12/2013 and paper work was undertaken for the respondent No.2 to join the petitioner in USA. In January, 2014, the respondent No.2 joined the petitioner at Phoenix, Arizona (USA) and the parties started living together.

6. In September – December, 2015, the respondent No.2 joined the American Express on sub-contractual post as a new rule H4 EAD was introduced, under which spouses of certain H1B Visa holders, whose applications for green card were under process, could work in the USA. Later the respondent No.2 secured a permanent job as a full-time employee of Infosys earning about USD 80,000/- per annum. The respondent No.2 has further stated that subsequently she had started earning USD 1,05,000 per annum.

7. The parties resided together in their matrimonial house at Phoenix, Arizona (USA) and they bought a house together in the same place on 25/10/2017. On 06/02/2018, a son named Aarnav Gyan was born to the petitioner and respondent No.2, at a hospital at Glendale, Arizona (USA). Being born in the USA, he is admittedly a naturalized citizen of the USA, holding a passport of that country. While the petitioner has stated that it was a consensus decision of the parties to have the delivery of the child in USA, the respondent No.2 claimed that

she wanted to deliver the child in India in the care of her parents. Be that as it may, the son was indeed born, as noted above, in the USA and he is a citizen of that country. As both the parents were working, the minor child was enrolled in a day care center. It appears that due to the Covid-19 pandemic hitting the globe, including the USA, the minor child was confined at home in the USA and he lived with his parents in the said house, jointly purchased by them.

8. It appears that there was matrimonial discord between the parties. The petitioner claims that the respondent No.2 was in stress as her father was diagnosed with cancer and that due to this, there were some unpleasant interactions between the parties. The petitioner claims that he was always positively disposed and that he tried his utmost to take care of respondent No.2 and the minor child. On the other hand, the respondent No.2 made serious allegations of domestic violence inflicted by the petitioner on her and the minor child.

9. In this backdrop, on 30/12/2020, the respondent No.2 obtained a protection order from the competent Court at Arizona (USA) against the petitioner, which the petitioner claims was never served upon him. The respondent No.2 left the matrimonial house along with minor child and went to her brother, who resides in Texas (USA). She resided

with her brother in Texas (USA), till 03/02/2021. The respondent No.2 claimed that in order to avoid service of the order of protection issued by the competent Court at Arizona, the petitioner, on 02/01/2021, came to India. The respondent No.2 further states that on 05/02/2021, she along with the minor child came to India and started residing with her parents at Nagpur.

10. The petitioner has stated that he visited the respondent No.2 at Nagpur on 06/02/2021, which was the third birthday of the minor child, but, the respondent No.2 and her relatives did not allow him to enter the house. It appears that thereafter, there was exchange of emails between the parties, in order to settle the disputes and for specifying terms of such settlement. On 30/01/2021, the respondent No.2 sent a draft of terms for divorce by mutual consent, which according to the petitioner contained one sided terms, including a proposal that if the respondent No.2 passes away, the custody of the minor child ought to go to her brother and his wife. The parties could not agree to common terms and at this stage, on 04/05/2021, the petitioner initiated a proceeding for legal separation and for custody of the minor child in the Superior Court at Arizona (USA). The Superior Court at Arizona (USA), issued summons to the respondent No.2, directing that the

parties should appear for a Resolution Management Conference on 15/06/2021. The said Court gave further dates in the matter, as the respondent No.2 sought time.

11. On 14/06/2021, the respondent No.2 filed divorce petition before the Family Court at Nagpur (India) registered as Petition No. A-796/2021. On 22/06/2021, the respondent No.2 filed an application under Section 12 of the Protection of Women from Domestic violence Act, 2005, bearing Criminal Misc. Application No. 2001/2021, before the competent Court at Nagpur (India), claiming various reliefs against the petitioner. She also appeared before the Superior Court at Arizona (USA) in the said proceeding initiated by the petitioner and informed the said Court about the proceedings filed in the Courts at Nagpur (India). On 14/07/2021, the Superior Court at Arizona took cognizance of pendency of such proceedings before the Courts at Nagpur and vacated the temporary orders granted earlier, observing that the said Superior Court at Arizona would attempt to communicate with the Courts in India.

12. The respondent No.2 filed Civil Writ Petition No.3044/2021, before this Court on 04/08/2021, seeking to restrain the petitioner from continuing the proceedings in the Courts at USA, on the ground that

since the parties were governed by Hindu personal law within the jurisdiction of the Courts in India, the Courts in USA did not have jurisdiction.

13. On 20/08/2021, this Court issued notice in the aforesaid writ petition. On 09/09/2021, the Superior Court at Arizona (USA) proceeded to pass order in the form of temporary measures, taking note of the fact that emails sent to the Courts at Nagpur (India) had not elicited any response. By the said order dated 09/09/2021, the Superior Court at Arizona (USA) held that it had jurisdiction to consider the proceedings initiated by the petitioner on the ground that the home State of the minor child was Arizona and that he was residing in the home State within six months of filing of the motion and further recording that although the child was absent from the State, but, one parent continued to live in Arizona.

14. Having held that it had jurisdiction in the matter, the Superior Court at Arizona proceeded to pass temporary orders. It is significant that while raising the objection of jurisdiction, the respondent No.2 had placed her version before the Superior Court, specifically stating the background in which she was constrained to leave with the minor child, first to go to her brother in Texas (USA) and then to come to India. She

also referred to the protection order passed on 30/12/2020, by the competent Court at Arizona. The Superior Court at Arizona took into consideration such material and passed the interim order, *inter-alia*, directing that if the respondent No.2 returned to Arizona and resided in the Phoenix metropolitan area, the parties shall share an equal parenting time schedule, with a week on/ week off basis, in order to minimize the interaction of the parties. It was specifically directed as to the manner in which the exchange of the child would take place. The relevant portion of the temporary order passed by the Superior Court at Arizona reads as follows:

“IT IS THEREFORE ORDERED that parenting time shall be exercised as follows:

Father is designated as child’s primary residential parent. Mother shall return the child to Father in Arizona no later than September 16, 2021. The parties shall split the child’s travel costs 50% each, and Mother shall pay for her own costs to accompany the child to Arizona.

Father shall have video calls with the child on Friday, September 10, 2021, Sunday, September 12, 2021, and Tuesday, September, 14, 2021, at 8:00 a.m. India time. Each call shall last up to 20 minutes. Father shall place the calls to Mother’s mobile phone number. Mother shall provide her mobile phone number to Father.

If Mother fails to return the child to Father in Arizona as ordered, then Father shall retrieve the child in India from Mother as early as September 17, 2021, with Father paying all of the travel costs for himself and the child, subject to reallocation.

If Mother returns to Arizona and resides in the Phoenix metropolitan area, the parties shall share an equal parenting time schedule, on a week on / week off basis in order to minimize the parties’ interactions. Exchanges shall occur on Sundays at 5:00

P.M. in the parking lot of the police department that is the closest to Father's residence. When the child is with the other parent, each parent shall have video calls with the child on Tuesday and Thursday at 5:00 p.m. for up to 20 minutes.

If Mother does not return to Arizona and reside in the Phoenix metropolitan area, then she shall exercise parenting time on the second full weekend of each month, in Arizona, from Friday at 5:00 p.m. until Monday at 5:00 p.m. Mother shall have video calls with the child on Tuesdays and Thursdays at 5:00 p.m., Arizona time. Each call shall last up to 20 minutes."

15. On 27/09/2021, the petitioner filed the present writ petition before this Court, placing on record his version of the events along with relevant documents, including a copy of the said order dated 09/09/2021, passed by the Superior Court at Arizona. He also placed on record certain photographs with the petition to show the bonding between him and the minor child. The petitioner stoutly denied the allegations of domestic violence levelled by the respondent No.2 in the proceedings pending before the Superior Court at Arizona.

16. On 29/09/2021, this Court issued notice in the present writ petition. On 27/10/2021, this Court appointed a Mediator to examine as to whether differences between the parties could be resolved. It was agreed between the parties that the petitioner shall have reasonable facility of interaction with the minor child through video conferencing / video calls at least thrice a week for about 20 to 30 minutes.

17. The learned Mediator submitted a report before this Court, stating that the differences could not be settled.

18. On 23/11/2021, this Court directed the respondent No.2 to arrange for a meeting between the petitioner and the minor child at Radisson Blu Hotel, Nagpur, in the evening on the same day, so that the petitioner could interact with the minor child for one hour. The earlier order dated 27/10/2021, was also modified and it was directed that video conferencing / video calls would take place over alternate days for a period of about 30 to 40 minutes.

19. On 03/03/2022, this Court granted Rule in the writ petition, making it returnable in the third week of June, 2022. It was directed that the petitioner would have unsupervised visitation rights with the minor child at the lobby of the said Hotel at Nagpur, from 29/03/2022 to 10/04/2022, between 4:30 AM to 6:30 PM, as the petitioner was to return back to USA on 15/04/2022.

20. It was further directed that the respondent No.2 would permit the petitioner to interact with the minor child through video conferencing for 30 to 40 minutes. On 11/07/2022, this Court passed an order directing that when the petitioner would be visiting India and arriving on 22/07/2022, he would be permitted to enjoy visitation

rights with the minor child in the premises of the aforesaid Hotel between 23/07/2022 to 07/08/2022, for two hours i.e. 4:30 PM to 6:30 PM.

21. On 03/08/2022, when this petition was taken up for hearing, the learned counsel appearing for the petitioner, on instructions of the petitioner who was present in the Court, submitted that the petitioner was ready to make proper arrangements if the respondent No.2 agreed to visit the USA with the minor child and that appropriate undertaking would be given before this Court to ensure that the respondent No.2 was not harassed. The respondent No.2, who was also present in the Court, through her counsel submitted that if terms were offered in writing, she would consider and respond before the next date of hearing. The visitation rights, as granted hereinabove, were continued in favour of the petitioner. The said visitation rights continued to operate during the pendency of the petition when the petitioner was in India and at Nagpur. Thereafter, the petition was finally heard and reserved for orders. An assurance was given that during the pendency of this petition, the respondent No.2 would facilitate interaction by video conferencing / video calls between the petitioner and minor child, as directed by this Court during pendency of the writ petition, as the

petitioner had returned to the USA.

22. It is relevant that during this period, on 03/11/2021, a Court Appointed Advisor (CAA) submitted report before the Superior Court at Arizona in the pending proceeding. The CAA interacted with the petitioner and the respondent No.2 telephonically. In the report, the CAA recorded the contentions of the petitioner, as also the respondent No.2, specifically recording the serious allegations of domestic abuse levelled by the respondent No.2 against the petitioner. The CAA called for documents, including photographs and videos and the report states that as many as 41 such exhibits were perused by the CAA. In the report, it was opined by the CAA that the allegations of violence and abuse levelled by the respondent No.2 did not appear to be credible and it was recommended that the minor child be retained with the father i.e. the petitioner with specified parenting time of 8 hours to the respondent No.2 and it was further recommended that once the child returned to the USA, the parties should participate in reunion therapy.

23. It is in the backdrop of the aforesaid sequence of events that the present writ petition was heard finally.

24. Mr. Prabhjit Jauhar, learned counsel appeared on behalf of the petitioner, while the respondent No.2 was represented by Mr. S.K.

Mishra, learned Senior Counsel and Mr. S.S. Doifode, learned Assistant Public Prosecutor appeared on behalf of respondent No.1 – State.

SUBMISSIONS ON BEHALF OF THE PARTIES.

25. Mr. Prabhjit Jauhar, learned counsel appearing for the petitioner submitted as follows:

(A) By referring to and relying upon a series of judgments of the Hon'ble Supreme Court, reference to which shall be made hereinbelow, the learned counsel submitted that the present petition invoking writ of *habeas corpus* was clearly maintainable, for the reason that an order of a competent Court of foreign jurisdiction, in this case the Superior Court at Arizona (USA), was operating, whereby specific directions were issued to the respondent No.2 to bring the minor child back to the USA and, therefore, the custody of the minor child could no longer be continued with the respondent No.2. It was further submitted that the present writ petition is maintainable as this Court is exercising *parens patriae* jurisdiction and the overarching consideration is the welfare of the child.

(B) It was submitted that the petitioner was not relying only upon the aforesaid order dated 09/09/2021, passed by the Superior Court at

Arizona (USA). According to the petitioner, the welfare of the child lies only in he being repatriated to the USA, because he is a citizen of the USA, where he has all the rights of a citizen and opportunities to grow up and develop to his fullest potential, by taking advantage of the facilities available in the USA. It is submitted that, apart from being a citizen of the USA, the minor child has lived in the USA for a considerable period of time and, therefore, the Superior Court at Arizona in USA is the only Court of intimate contact with the minor child.

(C) It was submitted that the respondent No.2 had illegally and in a clandestine manner brought the minor child to India, without the consent of the petitioner i.e. father of the child and all the allegations of domestic abuse and violence were baseless, which was evident from the material on record. It was submitted that the respondent No.2 cannot claim that the minor child had developed roots in this country and the material on record sufficiently demonstrated that the welfare of the child lies in he being repatriated forthwith.

(D) It was further submitted that the respondent No.2 always intended to settle in USA and this was evident from the parties having jointly bought a house in Arizona. She was having a lucrative job with a

leading multinational company in USA and she was not justified in claiming that she desired to reside in India. Some differences in matrimonial life were wrongly being given the colour of harassment suffered by the respondent No.2, in the form of domestic abuse and violence, only to gain sympathy of the Courts in India.

(E) It was submitted that the present proceeding was not to decide the custody of the minor child, which was already a matter for consideration before the Superior Court at Arizona and by her actions, as also the material she placed before the Court at Arizona, the respondent No.2 had conceded to the jurisdiction of the said Court. Therefore, she ought to abide by the order passed by the Superior Court at Arizona. The objection regarding jurisdiction by emphasizing upon pendency of Civil Writ Petition No. 3044/2021, before this Court, was without any substance. The said writ petition was essentially seeking an anti-suit injunction, which was clearly not maintainable, because the minor child was not ordinarily a resident of India. It was submitted that no State authority was made a party to the writ petition and, therefore, on the face of it, the said civil writ petition was not maintainable. It was further submitted that the prayer made on behalf of respondent No.2 for clubbing the present petition with the said civil writ petition was

nothing but a tactic to delay the proceedings.

(F) It was submitted that the present case was a case of child abduction by the respondent No.2, which ought not to be permitted by this Court. On specific instructions, the learned counsel appearing for the petitioner reiterated the offer made on his behalf, recorded in the order dated 03/08/2022, as regards the arrangements that the petitioner was ready to make, if the respondent No.2 was to be directed to go back to the USA along with the minor child. It was specifically submitted that the petitioner was of the opinion that the child requires the company and care of both the parents. The learned counsel appearing for the petitioner extensively referred to number of judgments of the Hon'ble Supreme Court to emphasize upon the development of law concerning the subject matter of the present writ petition and he submitted that the position of law, as applied to facts of the present case, demonstrated that the writ petition deserved to be allowed.

(G) As regards the reliance placed on a specific judgment by the learned Senior Counsel appearing on behalf of respondent No.2, concerning the purport of Section 6 of the Hindu Minority and Guardianship Act, 1956, claiming that since the child was less than five years old, the custody can be only with the mother, it was submitted

that even the said position was commented upon by the Hon'ble Supreme Court in a latter judgment and it was evident that notwithstanding the said provision, the welfare and best interests of the child are the bedrock on which petitions like the present petition ought to be decided. On this basis, it was submitted that the writ petition deserved to be allowed.

26. On the other hand, Mr. S.K. Mishra, learned Senior Counsel appearing on behalf of the respondent No.2 submitted as follows:

(a) It was submitted that the petitioner had suppressed certain facts and misled this Court, as a consequence of which the present writ petition ought to be dismissed on the said ground. It was submitted that the petitioner sought to give an impression in the writ petition that the respondent No.2 had clandestinely taken away the minor child and reached India, due to which the petitioner had to pursue her to India. The learned Senior Counsel submitted that the material on record clearly demonstrated that it was the petitioner, who first reached India in January 2021, only with a view to avoid service of the protection order obtained by the respondent No.2 against him and the respondent No.2 reached India in February 2021, along with the minor child. When the attempts at settlement did not work out, the petitioner went

back to USA and initiated the proceeding before the Superior Court at Arizona on 04/05/2021, thereby indicating that the facts of the present case are clearly distinguishable from the facts of number of cases upon which the petitioner was placing reliance.

(b) It was submitted that the respondent No.2, at the first available opportunity, had raised objection to jurisdiction of the Superior Court at Arizona and that she had never conceded to the jurisdiction of the said Court. Consequently, one sided temporary order passed by the Superior Court on 09/09/2021, was of no consequence. It was further submitted that as per settled law laid down by the Hon'ble Supreme Court, merely because there was an order passed against the respondent No.2, by a Court of foreign jurisdiction, that in itself would not render illegal the custody of the minor child with the respondent No.2. This hit at the very root of the matter, demonstrating that no circumstances exist for this Court to invoke the writ of *habeas corpus* in the present case. On this ground also, the writ petition deserved to be dismissed.

(c) It was submitted that the respondent No.2 had suffered domestic abuse and violence and so had the minor child, due to which she had to seek a protection order from the competent Court at Arizona (USA). She then had to take shelter in the house of her brother at Texas (USA)

and eventually, she returned to India, after the petitioner had already reached India. It was emphasized that observations made by the CAA in the report submitted on 03/11/2021, before the Superior Court at Arizona (USA), ought not to be taken into consideration by this Court, as the report itself was submitted in a proceeding which was initiated before the Superior Court at Arizona (USA), without jurisdiction.

(d) On the aspect of welfare and best interests of the child, the learned Senior Counsel submitted that the child being less than five years of age, was now well settled at Nagpur with the respondent No.2 and her relatives, where he is now attending a school. It was submitted that removing him from such surroundings would prejudicially affect his welfare, thereby indicating that the writ petition deserved to be dismissed on this count also. The learned Senior Counsel interpreted the judgments relied upon by the learned counsel for the petitioner, to indicate that the law actually is in favour of respondent No.2, in the facts and circumstances of the present case.

(e) It was submitted that the principle of comity of Courts and the relevance of orders passed by the Courts of foreign jurisdiction must all pale into insignificance before the over-arching principle of the welfare and best interest of the child. It was emphasized that although the

minor child is a citizen of USA, neither the petitioner nor the respondent No.2 are even green card holders. By emphasizing upon the said fact, it was submitted that the law laid down by the Hon'ble Supreme Court in various judgments, relied upon by the learned counsel appearing for the petitioner, was not applicable to the facts of the present case.

(f) The learned Senior Counsel maintained that in the fitness of things the present writ petition ought to be heard with the aforesaid pending Civil Writ Petition, wherein the respondent No.2 has specifically raised the question as to whether the Courts in India or the Courts in USA would have jurisdiction on the question of custody of the minor child. As regards the alleged defect in the frame of the writ petition, it was submitted that the same could not be said to be fatal and it was certainly curable. On this basis, it was submitted that the present writ petition deserved to be dismissed.

(g) The learned Senior Counsel specifically emphasized upon Section 6 of the Act of 1956, to contend that since the minor child was less than five years of age, it was only the respondent No.2 – mother, who had the right of custody of the child. On this basis, it was submitted that the custody of the minor child with the respondent No.2

could not be said to be illegal in any manner and, therefore, the allegations made by the petitioner and the reliefs sought in the present writ petition were baseless and unsustainable. It was submitted that in all cases where the Hon'ble Supreme Court had directed the minor child to be repatriated, there were specific orders by the Courts of foreign jurisdiction, restraining the parent, who had taken the child out of jurisdiction of the foreign Court and such was not the case in the present matter. It was emphasized that in the present case, the minor child was already in India and, thereafter, the Superior Court at Arizona (USA) had passed the order. On this basis, it was submitted that the writ petition deserved to be dismissed.

27. Mr. S.S. Doifode, learned Assistant Public Prosecutor, appeared on behalf of respondent No.1 – State and submitted that this Court may pass appropriate orders in the light of the law laid down by the Hon'ble Supreme Court in various judgments.

CONSIDERATION OF JUDGMENTS RELIED UPON :

28. As noted above, the learned counsel appearing for the rival parties referred to and relied upon a number of judgments of the Hon'ble Supreme Court and this Court. Therefore, it would be appropriate to refer to the judgments, so as to understand the correct

position of law, which could be applied to the facts of the present case.

29. In the case of **Shilpa Agrawal (Ms) Vs. Avial Mittal and another** reported in **(2010) 1 SCC 591**, the Hon'ble Supreme Court considered challenge raised by the mother of a minor child to an order passed by the Delhi High Court, whereby the child was directed to be returned to the jurisdiction of the Courts in United Kingdom (UK), for passing appropriate orders in the best interests of the child. The High Court had held that the Court in UK had the most intimate contact with the issue to be decided. In the said case, there was matrimonial discord between the husband and wife and while visiting India from UK, when the wife and the minor child were to travel back to the UK, she got the tickets cancelled and remained behind in India. In these circumstances, the husband was constrained to initiate proceedings before the competent Court in UK for an appropriate order of custody. The child was a minor girl aged about 3½ years. The Court at UK ordered that the child would remain a ward with the Court during her minority and that she be returned to the jurisdiction of the Court and liberty was reserved for the mother to submit an appropriate application. In the said case also, the child was already in India when the competent Court at UK passed the said order. Yet, in such circumstances, the Hon'ble Supreme

Court held that various principles are required to be balanced, but, the interest of the child is to be given due importance. The Hon'ble Supreme Court refused to interfere with the order passed by the High Court and upheld the order directing return of the child to the jurisdiction of the Court in UK.

30. In the case of **V. Ravi Chandran (Dr.) Vs. Union of India and others** reported in **(2010) 1 SCC 174**, a *habeas corpus* petition was filed before the Hon'ble Supreme Court by the father of a minor child, which was disposed of by directing the mother to take the minor child to the USA and specific directions were given to the father to facilitate such return by bearing travel expenses and an assurance that appropriate steps were taken to see that the mother did not suffer any harassment due to legal proceedings in the USA. In this case, in a matrimonial proceeding initiated by the wife before the competent Court in USA, a consent order of joint custody was passed by the said Court and the mother brought the child to India and refused to return back, in defiance of the said order passed by the Court in USA. It is in the backdrop of such facts that in a detailed judgment, the Hon'ble Supreme Court took into consideration various principles, including the principle of comity of Courts, observing that a parent wrongly removing

a child out of a country, ought not to take advantage of the same. Ultimately, directions were issued for return of the child to the USA. In the said case, the Hon'ble Supreme Court passed such an order, despite taking note of the fact that the minor child had remained in India for almost two years since his removal from the USA.

31. In the case of **Arathi Bandi Vs. Bandi Jagadrakshak Rao and others** reported in (2013) 15 SCC 790, the Hon'ble Supreme Court followed the law laid down in the case of **V. Ravi Chandran (Dr.) Vs. Union of India** (supra). In this case also, the minor child was relocated to India by the wife, in defiance of orders passed by the competent Courts in USA. The Hon'ble Supreme Court referred to various legal proceedings initiated in the competent Courts of USA and even in India, eventually finding that the direction to return the minor child to USA was necessary, subject to specific directions issued to the husband to ensure proper accommodation for his wife when the child was to be returned to the USA and that all steps would be taken by the husband to ensure that the wife was not put to any harassment due to the legal proceedings in the USA.

32. In the case of **Surya Vadanana Vs. State of Tamil Nadu and others** reported in (2015) 5 SCC 450, the Hon'ble Supreme Court considered

the principles of “best interests and welfare of the child”, “comity of Courts”, “most intimate contact”, “closest concern” and “first strike”. After deliberating upon the aforesaid principles, the Hon’ble Supreme Court, in the facts of the said case, directed that the wife would take the minor children back to the UK and participate in the proceedings before the competent Court in UK, while the husband would bear expenses of air fare and litigation expenses for the wife.

33. Thereafter, came the judgment of three Hon’ble judges of the Supreme Court in the case of **Nithya Anand Raghavan Vs. State (NCT of Delhi) and another** reported in (2017) 8 SCC 454. The learned counsel for the rival parties have relied upon various portions of the said judgment to claim that the position of law stood clarified in support of their respective stands. In the said judgment, the Hon’ble Supreme Court discussed earlier precedents in detail. All the principles referred to and discussed in the case of **Surya Vadanam Vs. State of Tamil Nadu** (supra), were deliberated upon. The Hon’ble Supreme Court also referred to the Hague Convention of 1980 on civil aspects of international child abduction, to which India is not a signatory. The Hon’ble Supreme Court found that despite relevance of other principles, including “comity of Courts”, the paramount consideration

in such matters is only the welfare and best interest of the child. The said principle was held to be over-arching on other principles. The relevant portions of the said judgment need to be reproduced to examine as to whether the relief sought in the present writ petition can be granted. The relevant paragraphs of the said judgment read as follows:

“40. The Court has noted that India is not yet a signatory to the Hague Convention of 1980 on “Civil Aspects of International Child Abduction”. As regards the non-convention countries, the law is that the Court in the country to which the child has been removed must consider the question on merits bearing the welfare of the child as of paramount importance and reckon the order of the foreign Court as only a factor to be taken into consideration, unless the Court thinks it fit to exercise summary jurisdiction in the interests of the child and its prompt return is for its welfare. In exercise of summary jurisdiction, the Court must be satisfied and of the opinion that the proceeding instituted before it was in close proximity and filed promptly after the child was removed from his/her native state and brought within its territorial jurisdiction, the child has not gained roots here and further that it will be in the child’s welfare to return to his native state because of the difference in language spoken or social customs and contacts to which he/she has been accustomed or such other tangible reasons. In such a case the Court need not resort to an elaborate inquiry into the merits of the paramount welfare of the child but leave that inquiry to the foreign Court by directing return of the child. Be it noted that in exceptional cases the Court can still refuse to issue direction to return the child to the native state and more particularly inspite of a pre-existing order of the foreign Court in that behalf, if it is satisfied that the child’s return may expose him to a grave risk of harm. This means that the Courts in India, within whose jurisdiction the minor has been brought must “ordinarily” consider the question on merits, bearing in mind the welfare of the child as of

paramount importance whilst reckoning the pre-existing order of the foreign Court if any as only one of the factors and not get fixated therewith. In either situation – be it a summary inquiry or an elaborate inquiry - the welfare of the child is of paramount consideration. Thus, while examining the issue the Courts in India are free to decline the relief of return of the child brought within its jurisdiction, if it is satisfied that the child is now settled in its new environment or if it would expose the child to physical or psychological harm or otherwise place the child in an intolerable position or if the child is quite mature and objects to its return. We are in respectful agreement with the aforementioned exposition.

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42. The consistent view of this court is that if the child has been brought within India, the Courts in India may conduct (a) summary inquiry or (b) an elaborate inquiry on the question of custody. In the case of a summary inquiry, the Court may deem it fit to order return of the child to the country from where he/she was removed unless such return is shown to be harmful to the child. In other words, even in the matter of a summary inquiry, it is open to the Court to decline the relief of return of the child to the country from where he/she was removed irrespective of a pre-existing order of return of the child by a foreign Court. In an elaborate inquiry, the Court is obliged to examine the merits as to where the paramount interests and welfare of the child lay and reckon the fact of a pre-existing order of the foreign Court for return of the child as only one of the circumstances. In either case, the crucial question to be considered by the Court (in the country to which the child is removed) is to answer the issue according to the child's welfare. That has to be done bearing in mind the totality of facts and circumstances of each case independently. Even on close scrutiny of the several decisions pressed before us, we do not find any contra view in this behalf. To put it differently, the principle of comity of courts cannot be given primacy or more weightage for deciding the matter of custody or for return of the child to the native state.

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46. The High Court while dealing with the petition for

issuance of a writ of habeas corpus concerning a minor child, in a given case, may direct return of the child or decline to change the custody of the child keeping in mind all the attending facts and circumstances including the settled legal position referred to above. Once again, we may hasten to add that the decision of the Court, in each case, must depend on the totality of the facts and circumstances of the case brought before it whilst considering the welfare of the child which is of paramount consideration. The order of the foreign Court must yield to the welfare of the child. Further, the remedy of writ of habeas corpus cannot be used for mere enforcement of the directions given by the foreign court against a person within its jurisdiction and convert that jurisdiction into that of an executing court. Indubitably, the writ petitioner can take recourse to such other remedy as may be permissible in law for enforcement of the order passed by the foreign Court or to 16 113 (2004) Delhi Law Time 823 resort to any other proceedings as may be permissible in law before the Indian Court for the custody of the child, if so advised.

47. In a habeas corpus petition as aforesaid, the High Court must examine at the threshold whether the minor is in lawful or unlawful custody of another person (private respondent named in the writ petition). For considering that issue, in a case such as the present one, it is enough to note that the private respondent was none other than the natural guardian of the minor being her biological mother. Once that fact is ascertained, it can be presumed that the custody of the minor with his/her mother is lawful. In such a case, only in exceptionable situation, the custody of the minor (girl child) may be ordered to be taken away from her mother for being given to any other person including the husband (father of the child), in exercise of writ jurisdiction. Instead, the other parent can be asked to resort to a substantive prescribed remedy for getting custody of the child.

48. The next question to be considered by the High Court would be whether an order passed by the foreign court, directing the mother to produce the child before it, would render the custody of the minor unlawful? Indubitably, merely because such an order is passed by the foreign court, the custody of the minor

would not become unlawful per se.

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50. The High Court in such a situation may then examine whether the return of the minor to his/her native state would be in the interests of the minor or would be harmful. While doing so, the High Court would be well within its jurisdiction if satisfied, that having regard to the totality of the facts and circumstances, it would be in the interests and welfare of the minor child to decline return of the child to the country from where he/she had been removed; then such an order must be passed without being fixated with the factum of an order of the foreign Court directing return of the child within the stipulated time, since the order of the foreign Court must yield to the welfare of the child. For answering this issue, there can be no strait jacket formulae or mathematical exactitude. Nor can the fact that the other parent had already approached the foreign court or was successful in getting an order from the foreign court for production of the child, be a decisive factor. Similarly, the parent having custody of the minor has not resorted to any substantive proceeding for custody of the child, cannot whittle down the overarching principle of the best interests and welfare of the child to be considered by the Court. That ought to be the paramount consideration.

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68. In the present case, we are of the considered opinion that taking the totality of the facts and circumstances of the case into account, it would be in the best interests of the minor (Nethra) to remain in custody of her mother (appellant) else she would be exposed to harm if separated from the mother. We have, therefore, no hesitation in overturning the conclusion reached by the High Court. Further, we find that the High Court was unjustly impressed by the principle of comity of courts and the obligation of the Indian Courts to comply with a pre-existing order of the foreign Court for return of the child and including the “first strike” principle referred to in Surya Vadanani’s case (*supra*).

69. We once again reiterate that the exposition in the case of Dhanwanti Joshi (*supra*) is a good law and has been quoted with

approval by a three-judge bench of this Court in *V. Ravi Chandran (supra)*. We approve the view taken in *Dhanwanti Joshi (supra)*, inter alia in paragraph 33 that so far as non-convention countries are concerned, the law is that the Court in the country to which the child is removed while considering the question must bear in mind the welfare of the child as of paramount importance and consider the order of the foreign Court as only a factor to be taken into consideration. The summary jurisdiction to return the child be exercised in cases where the child had been removed from its native land and removed to another country where, may be, his native language is not spoken, or the child gets divorced from the social customs and contacts to which he has been accustomed, or if its education in his native land is interrupted and the child is being subjected to a foreign system of education, - for these are all acts which could psychologically disturb the child. Again the summary jurisdiction be exercised only if the court to which the child has been removed is moved promptly and quickly. The overriding consideration must be the interests and welfare of the child.”

34. On the basis of such reasoning the Hon’ble Supreme Court, in the aforesaid case of **Nithya Anand Raghavan Vs. State (NCT of Delhi)** (supra), held that the principles of “comity of Courts” and “First Strike” cannot be a decisive factor in such matters and that the wholesome principle of duty of the Court to consider the best interests and welfare of the child is of paramount importance. Much emphasis was placed by the learned Senior Counsel appearing for the respondent No.2 on the observations of the Hon’ble Supreme Court in the above quoted portion, wherein it was held that merely because an order was passed by a foreign Court directing the mother to produce the child before it, the custody of the minor child with the mother could not be said to be

unlawful. It was submitted that the said position of law clearly indicated that the writ petition filed by the petitioner in the present case seeking a writ of habeas corpus itself was not maintainable. In response, the learned counsel appearing for the petitioner vehemently submitted that while considering such matters where one parent has taken a child without consent of the other from a foreign country to India, the *parens patriae* jurisdiction of this Court assumes importance and that the present writ petition invoking writ of *habeas corpus* is clearly maintainable. He relied upon subsequent judgment of this Court in the case of **Rajeswari Chandrasekar Ganesh Vs. State of Tamil Nadu & Ors.** (judgment and order dated 14/07/2022, passed in Writ Petition (Criminal) No. 402/2021. We will refer to the said judgment a little later.

35. In the case of **Lahari Sakhamuri Vs. Sobhan Kodali** reported in **(2019) 7 SCC 311**, the principle of welfare and best interests of the child was again reiterated and the mother was directed to return to the USA along with the minor children within six weeks, with specific directions to the husband to make all arrangements of stay and travel. The Hon'ble Supreme Court also gave other directions in the matter. In this case also, proceedings were initiated in the USA due to matrimonial

differences between the parties and there was a specific direction to the parties not to change the residence of the children. Yet, the mother had brought the children to India, as a result of which the husband filed a petition before the High Court at Hyderabad, seeking the writ of *habeas corpus*. The writ petition was allowed by the High Court, directing the mother to return to USA with the children. By applying the position of law as elucidated in the earlier judgments, the Hon'ble Supreme Court dismissed the appeal and upheld the order of the High Court.

36. In the case of **Yashita Sahu Vs. State of Rajasthan and others** reported in (2020) 3 SCC 67, the Hon'ble Supreme Court considered the correctness of the judgment of the High Court of Rajasthan, whereby it had issued a writ of *habeas corpus*, directing the wife to return to USA along with the minor child within six weeks to enable the jurisdictional Court in the USA to pass further orders in respect of proceedings pending in the said Court. The husband, who was the petitioner, was directed to make all necessary arrangements for the travel of the wife and minor child. In the said case also, the proceedings were already pending before the competent Court at USA, due to matrimonial discord between the husband and wife. During the pendency of the proceedings and when specific orders were passed by

the competent Court at USA, the wife came along with the child to India before the next date fixed in the proceedings in USA. The Hon'ble Supreme Court in the said case referred to earlier precedents and considered the question as to whether the petition seeking writ of habeas corpus was maintainable and whether a summary enquiry or an elaborate enquiry was warranted in the facts and circumstances of the case. By reiterating that welfare of the child was the paramount consideration, the Hon'ble Supreme Court in the said case observed as follows:

“20. It is well settled law by a catena of judgments that while deciding matters of custody of a child, primary and paramount consideration is welfare of the child. If welfare of the child so demands then technical objections cannot come in the way. However, while deciding the welfare of the child it is not the view of one spouse alone which has to be taken into consideration. The courts should decide the issue of custody only on the basis of what is in the best interest of the child.

21. The child is the victim in custody battles. In this fight of egos and increasing acrimonious battles and litigations between two spouses, our experience shows that more often than not, the parents who otherwise love their child, present a picture as if the other spouse is a villain and he or she alone is entitled to the custody of the child. The court must therefore be very wary of what is said by each of the spouses.

22. A child, especially a child of tender years requires the love, affection, company, protection of both parents. This is not only the requirement of the child but is his/her basic human right. Just because the parents are at war with each other, does not mean that the child should be denied the care, affection, love or protection of any one of the two parents. A child is not an inanimate object

which can be tossed from one parent to the other. Every separation, every re-union may have a traumatic and psychosomatic impact on the child. Therefore, it is to be ensured that the court weighs each and every circumstance very carefully before deciding how and in what manner the custody of the child should be shared between both the parents. Even if the custody is given to one parent the other parent must have sufficient visitation rights to ensure that the child keeps in touch with the other parent and does not lose social, physical and psychological contact with any one of the two parents. It is only in extreme circumstances that one parent should be denied contact with the child. Reasons must be assigned if one parent is to be denied any visitation rights or contact with the child. Courts dealing with the custody matters must while deciding issues of custody clearly define the nature, manner and specifics of the visitation rights.

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27. Age of the child – the child is less than 3 years old. She is a girl and, therefore, there can be no manner of doubt that she probably requires her mother more than her father. This is a factor in favour of the wife.

28. Nationality of the child - The child is a citizen of USA by birth. Her father was already working in the USA when he got married. We are told that the mother had visited the USA once before marriage and when she got married it was done with the knowledge that she may have to settle down there. The child was born in a hospital in the USA and the mother did not come back to India for delivery which indicates that at that time the parents wanted the child to be a citizen of USA. Since the child is a citizen of USA by birth and holds a passport of that country, while deciding the issue of custody we have to take this factor into consideration.

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32. Obviously, the child who is less than three years old cannot be heard in the matter but keeping in view the facilities of education, social security etc., which would be available in USA, we are of the view that the child should not be deprived of the same only on the ground that the mother does not want to go back to USA.”

37. After making the above quoted observations, the Hon'ble Supreme Court upheld the order of the High Court, giving additional directions to the husband to ensure that, upon the wife returning with the minor child, she was not made to suffer any harassment.

38. In the case of **Nilanjan Bhattacharya Vs. State of Karnataka and others**, reported in **2020 SCC OnLine SC 928**, the Hon'ble Supreme Court was considering a challenge raised by a father of the minor child, who was aggrieved by certain conditions that were imposed upon him, while allowing his petition for a writ of *habeas corpus* and permitting him to take the minor child back to the USA. In this case also, the Hon'ble Supreme Court referred to earlier precedents and found on the facts of the case that a direction to return the child to USA could be granted upon conducting an enquiry whether the child would suffer any harm upon his return to the USA. The Hon'ble Supreme Court allowed the appeal and modified the conditions, upon which the father was permitted to take the minor child to USA, observing that the child being born in the USA, was a citizen of that country and the husband and wife therein being well qualified professionals employed in the USA can continue with such employment. In the process, *parens patriae* jurisdiction of the Courts in such matters was emphasized upon.

39. In the case of **Vasudha Sethi and others Vs. Kiran V. Bhaskar and another** reported in **2022 SCC OnLine 143**, the Hon'ble Supreme Court considered the effect of Section 6(a) of the Hindu Minority and Guardianship Act, 1956, in the context of welfare of the child. This judgment was emphasized upon by the learned counsel appearing for the petitioner, in the backdrop of the reliance placed by learned Senior Counsel appearing for the respondent No.2 on an earlier judgment of the Hon'ble Supreme Court in the case of **Roxann Sharma Vs. Arun Sharma** reported in **(2015) 8 SCC 318**. In the said judgment of **Roxann Sharma Vs. Arun Sharma** (supra), the Hon'ble Supreme Court considered the effect of Section 6 of the Act of 1956, particularly, the stipulation therein that custody of a minor, who has not completed the age of five years shall ordinarily be with the mother. The learned Senior Counsel appearing for the respondent No.2 emphasized upon paragraph No.10 of the said judgment, which reads as follows:

“10. Section 6 of the HMG Act is of seminal importance. It reiterates Section 4(b) and again clarifies that guardianship covers both the person as well as the property of the minor; and then controversially states that the father and after him the mother shall be the natural guardian of a Hindu. Having said so, it immediately provides that the custody of a minor who has not completed the age of 5 years shall ordinarily be with the mother. The significance and amplitude of the proviso has been fully clarified by decisions of this Court and very briefly stated, a proviso is in the nature of an exception to what has earlier been

generally prescribed. The use of the word "ordinarily" cannot be over-emphasised. It ordains a presumption, albeit a rebuttable one, in favour of the mother. The learned Single Judge appears to have lost sight of the significance of the use of word "ordinarily" inasmuch as he has observed in paragraph 13 of the Impugned Order that the Mother has not established her suitability to be granted interim custody of Thalbir who at that point in time was an infant. The proviso places the onus on the father to prove that it is not in the welfare of the infant child to be placed in the custody of his/her mother. The wisdom of the Parliament or the Legislature should not be trifled away by a curial interpretation which virtually nullifies the spirit of the enactment."

40. It was emphasized that the wisdom of the Parliament of this country could not be ignored when it was specifically legislatively laid down that the custody of a minor, who has not completed the age of five years shall ordinarily be with the mother, indicating that the welfare and best interests of such a minor can only be in the custody of the mother.

41. In the case of **Vasudha Sethi and others Vs. Kiran V. Bhaskar** (supra), the Hon'ble Supreme Court considered the concept of welfare and best interests of the child in the backdrop of Section 6 of the Act of 1956 and held as follows:

"27. The learned counsel appearing for the appellant heavily relied upon an article by Mr. John Ekelaar. The article contains some criticism of "the welfare principle". The author has strongly advocated how the law should be reformulated by getting rid of "welfare" or "best interest" principles. The article is in the realm of the opinion of the learned author. The decision of this Court

in the case of Kanika (*supra*) reiterates the well-settled law that the issue regarding custody of a minor child and the issue of the repatriation of the child to the native country has to be addressed on the sole criteria of the welfare of the minor and not on consideration of the legal rights of the parents. The principle that the welfare of the minor shall be the predominant consideration and that the rights of the parties to a custody dispute are irrelevant has been consistently followed by this Court. In fact, in sub-section (1) of Section 13 of the Hindu Minority and Guardianship Act, 1956 (for short “the 1956 Act”), it is provided that in appointment or declaration of guardian of a minor, the welfare of the minor shall be the paramount consideration. When a Court decides that it is in the best interest of the minor to remain in the custody of one of the parents, the rights of the other parent are bound to be affected. As provided in clause (a) of Section 6 of the 1956 Act, in the case of a minor boy or girl, the natural guardian is the father, but ordinarily, the custody of a minor who has not completed the age of 5 years shall be with the mother. On a conjoint reading of sub-section (1) of Section 13 read with clause (a) of Section 6 of the 1959 Act, if it is found that the welfare of a minor whose age is more than 5 years requires that his custody should be with the mother, the Court is bound to do so. In the same way, if interest of the minor which is the paramount consideration requires that the custody of a minor child should not be with the mother, the Court will be justified in disturbing the custody of the mother even if the age of the minor is less than five years. In such cases, the rights of the father or the mother, as the case may be, conferred by clause (a) of Section 6 are bound to be affected. Whenever the Court disturbs the custody of one parent, unless there are compelling reasons, the Court will normally provide for visitation rights to the other parent. The reason is that the child needs the company of both parents. The orders for visitation rights are essentially passed for the welfare of minors and for the protection of their right of having the company of both parents. Such orders are not passed only for protecting the rights of the parents. In view of the settled legal position, the welfare of the minor being the paramount consideration, we cannot act upon the suggestions of Mr. John Ekelaar in his Article. We cannot accept the submission that while applying the welfare principle, the rights of the mother or father need to be protected. The consideration of the well-being

and welfare of the child must get precedence over the individual or personal rights of the parents. Whether the Court while dealing with a case like this can compel one of the parents to move from one country to another is a separate issue. We are dealing with the said issue separately.”

42. We are of the opinion that the stipulation in Section 6(a) of the Act of 1956, no doubt indicates that ordinarily the custody of the minor child, less than five years of age, has to be with the mother, but, an enquiry into what would be in the best interests and welfare of the child ought not to stop at that point. In such cases where one parent takes the child away from the other and the parent taking away the child is the mother, only because the minor child happens to be less than five years, ought not to prevent the Courts from examining the facts of the case to reach a conclusion as to what would be in the best interests of the child. In such cases, the Hon’ble Supreme Court, while holding that the minor child needs to be sent back to the jurisdiction of foreign Court, has repeatedly given directions to ensure that the child is not separated from the mother, thereby indicating that appropriate directions can be given to ensure the best interests and welfare of the child.

43. The judgment of the Hon’ble Supreme Court in the case of **Rajeswari Chandrasekar Ganesh Vs. State of Tamil Nadu** (supra), has been relied upon by the learned counsel appearing for the petitioner. A perusal of the said judgment shows that the earlier precedents,

particularly, the three Judge Bench judgment of the Hon'ble Supreme Court in the case of **Nithya Anand Raghavan Vs. State (NCT of Delhi)** (supra), has been considered in detail. The Hon'ble Supreme Court in the said judgment in the case of **Rajeswari Chandrasekar Ganesh Vs. State of Tamil Nadu** (supra), in the context of writ of *habeas corpus*, has held as follows:

“91. Thus, it is well established that in issuing the writ of Habeas Corpus in the case of minors, the jurisdiction which the Court exercises is an inherent jurisdiction as distinct from a statutory jurisdiction conferred by any particular provision in any special statute. In other words, the employment of the writ of Habeas Corpus in child custody cases is not pursuant to, but independent of any statute. The jurisdiction exercised by the court rests in such cases on its inherent equitable powers and exerts the force of the State, as *parens patriae*, for the protection of its minor ward, and the very nature and scope of the inquiry and the result sought to be accomplished call for the exercise of the jurisdiction of a court of equity. The primary object of a Habeas Corpus petition, as applied to minor children, is to determine in whose custody the best interests of the child will probably be advanced. In a Habeas Corpus proceeding brought by one parent against the other for the custody of their child, the court has before it the question of the rights of the parties as between themselves, and also has before it, if presented by the pleadings and the evidence, the question of the interest which the State, as *parens patriae*, has in promoting the best interests of the child.”

44. The above quoted portion shows that a *habeas corpus* petition is maintainable in the context of a proceeding brought by one parent against the other, where a minor child is brought from a foreign jurisdiction into India against the desire of the other parent, as the writ

Court assumes *parens patriae* jurisdiction for promotion of the best interests and welfare of the child, thereby indicating that the sweep of jurisdiction of the writ Court while considering such *habeas corpus* petitions is the widest possible, with the best interests of the child being the paramount consideration. This is further evident from the following observations made by the Hon'ble Supreme Court in the case of **Rajeswari Chandrasekar Ganesh Vs. State of Tamil Nadu** (supra)

“105. The essence of the judgment in Nithya Anand Raghavan (supra) is that the doctrines of comity of courts, intimate connect, orders passed by foreign courts having jurisdiction in the matter regarding the custody of the minor child, the citizenship of the parents and the child, etc. cannot override the consideration of the best interest and the welfare of the child, and that the direction to return the child to the foreign jurisdiction must not result in any physical, mental, psychological, or other harm to the child.”

45. After making the aforesaid observations, in the said case also the Hon'ble Supreme Court allowed the *habeas corpus* petition filed by the father, directing that the minor children shall be sent back to USA.

46. In the case of **Rohit Thammana Gowda Vs. State of Karnataka & Ors.** (judgment and order dated 29/07/2022, passed by the Hon'ble Supreme Court in Civil Appeal NO. 4987/2022, the Hon'ble Supreme Court, yet again, reiterated the paramount importance of the welfare and best interests of the child, setting aside the order passed by the High

Court and allowed the *habeas corpus* petition, giving specific directions to the respondent to return the minor child to the USA. The Hon'ble Supreme Court emphasized upon the principle of *parens patriae* jurisdiction in such cases and held that the question as to what would be in the best interests of the child is a matter to be decided by the Court, although the Court may ascertain as to what is the wish or desire of the child through interaction. It has been specifically observed as follows:

“8. At the outset we may state that in a matter involving the question of custody of a child it has to be borne in mind that the question ‘what is the wish/desire of the child’ is different and distinct from the question ‘what would be in the best interest of the child’. Certainly, the wish/desire of the child can be ascertained through interaction but then, the question as to ‘what would be in the best interest of the child’ is a matter to be decided by the court taking into account all the relevant circumstances. When couples are at loggerheads and wanted to part their ways as parthian shot they may level extreme allegations against each other so as to depict the other unworthy to have the custody of the child. In the circumstances, we are of the view that for considering the claim for custody of a minor child, unless very serious, proven conduct which should make one of them unworthy to claim for custody of the child concerned, the question can and shall be decided solely looking into the question as to, ‘what would be the best interest of the child concerned’. In other words, welfare of the child should be the paramount consideration. In that view of the matter we think it absolutely unnecessary to discuss and deal with all the contentions and allegations in their respective pleadings and affidavits.”

47. Thus, it becomes clear that the best interests and welfare of the child looms large and way above other principles in such matters and

that return of the minor child to the foreign jurisdiction can be refused when the material available on record shows that some harm may be caused if such a direction be given.

48. Having referred to the aforementioned judgments rendered by the Hon'ble Supreme Court in the context of the questions that arise for consideration in this petition, it would be appropriate to apply the correct position of law to the facts of the present case.

ANALYSIS AND FINDINGS BY APPLYING THE POSITION OF

LAW:

49. Having heard the learned counsel for the rival parties, it is found that vehement submissions have been made on behalf of respondent No.2 as regards the very maintainability of the present writ petition, claiming that custody of the minor child with the respondent No.2, being the mother, cannot be said to be illegal, particularly when the child is admittedly less than five years old. Specific reliance is placed on Section 6(a) of the Hindu Minority and Guardianship Act, 1956, and judgment of the Hon'ble Supreme Court in the case of **Roxann Sharma Vs. Arun Sharma** (supra). Reliance is also placed on observations made by the Hon'ble Supreme Court in the case of **Nithya Anand Raghavan Vs. State (NCT of Delhi)** (supra), quoted hereinabove. On the other

hand, the learned counsel appearing for the petitioner has emphasized upon the *parens patriae* jurisdiction exercised by this Court, while considering such matters where one of the parents removes the minor child from a foreign jurisdiction without the consent of the other parent and having arrived in India, is resisting the claim of the other parent. Much emphasis is placed on the above quoted portion in the recent judgment of the Hon'ble Supreme Court in the case of **Rajeswari Chandrasekar Ganesh Vs. State of Tamil Nadu** (supra). Reliance is also placed on behalf of the petitioner on the judgment of the Hon'ble Supreme Court in the case of **Vasudha Sethi and others Vs. Kiran V. Bhaskar** (supra), of which the relevant portion is also quoted hereinabove.

50. It is submitted on behalf of the respondent No.2 that the crucial fact in the present case is that when the child was brought by the respondent No.2 to India, there was no order passed by any Court in the USA, either prohibiting the respondent No.2 from bringing the child to India and removing him from the jurisdiction of such Court in USA or directing such child to be brought back to the jurisdiction of the Court in USA.

51. This Court has considered the rival submissions on the basis of

the facts that have emerged from the material brought to the notice of this Court. It is found that there was indeed no order of either Superior Court in Arizona (USA) or any other Court when the minor child was brought to India by the respondent No.2. In fact, there was a protection order issued against the petitioner, at the behest of the respondent No.2 by a competent Court in Arizona (USA). Yet, the material on record sufficiently demonstrates that the respondent No.2 removed the minor child from Arizona (USA), first to Texas (USA) and then came to India, without the consent of the petitioner, who is admittedly the father of the minor child. There were obviously differences in the matrimonial life of the petitioner and respondent No.2 and there were allegations of domestic violence levelled by the respondent No.2 against the petitioner.

52. It is admitted by the respondent No.2 that while in India, when the respondent No.2 had brought the minor child to Nagpur, the petitioner had approached her, but, no access was granted to the minor child. Attempts were made for finding a middle ground, so that the matrimonial discord could be resolved, but, nothing really came out of such attempts made by the parties. The petitioner then returned to Arizona (USA) and, on 04/05/2021, filed the proceedings before the

Superior Court at Arizona (USA). The respondent No.2 clearly disputed the jurisdiction of the aforesaid Court in entertaining the grievance raised by the petitioner, which touched upon the question of custody of the minor child and after raising such an objection, she placed her version of the events before the Superior Court at Arizona (USA). The record shows that the Superior Court at Arizona (USA), initially suspended the proceedings when it was brought to its notice by the respondent No.2 that there were at least two proceedings initiated by her at Nagpur in India. After obtaining email addresses of the concerned Courts at Nagpur (India), the Court at Arizona (USA), sent emails and when there was no response, the aforesaid Court proceeded to consider the grievance of the petitioner and to pass orders, including the order dated 09/09/2021, giving temporary order and directions in the matter.

53. We are of the opinion that only because the order dated 09/09/2021, was passed by the Superior Court at Arizona (USA), after the child was removed from the jurisdiction of the said Court and brought to India, cannot be the only factor to throw out the present writ petition. In the case of **Shilpa Agrawal (Ms) Vs. Avial Mittal** (supra), the Hon'ble Supreme Court was faced with a similar situation, as the

child was already in India with the mother and the concerned Court in UK had passed its order subsequently. Despite such facts, the Hon'ble Supreme Court upheld the order of the Delhi High Court, allowing the *habeas corpus* petition filed by the father of the child. It was directed that the child be sent back to the jurisdiction of the Court in UK and such an order ought not to be construed as an order for separating the minor child from the mother.

54. We are conscious of the fact that in the case of **Nithya Anand Raghavan Vs. State (NCT of Delhi)** (supra), the Hon'ble Supreme Court has held that merely because an order is passed by a Court of foreign jurisdiction against the parent, who is in custody of the child in India, such custody is not rendered illegal for invoking the writ of *habeas corpus*, which view was followed by the Division Bench of this Court in **the judgment and order dated 27/04/2021, passed in Criminal Writ Petition No. 547/2021, (Chandima Janaka Wijesinghe Vs. Union of India and Others)**. But in the recent judgment in the case of **Rajeswari Chandrasekar Ganesh Vs. State of Tamil Nadu** (supra), after taking note of the specific observations made in the case of **Nithya Anand Raghavan Vs. State (NCT of Delhi)** (supra), the Hon'ble Supreme Court in paragraph No.91, quoted above, emphasized upon the *parens*

patriae jurisdiction of this Court while considering such petitions and emphatically laid down that *habeas corpus* jurisdiction as applied to such minor children is to determine as to in whose custody the best interests of the child would be advanced. Thus, the paramount factor of the best interests and welfare of the child gives its colour to the jurisdiction of this Court while considering a *habeas corpus* petition in such facts and circumstances.

55. The question really is, as to whether one parent bringing a minor child out of a foreign country to India against the wish of the other parent, in the backdrop of acrimonious matrimonial disputes, can be heard to say that a *habeas corpus* petition instituted by the other parent ought to be thrown out at the thresh-hold, without examining as to what lies in the best interests of the minor child? The acrimony, bitterness and differences of opinion between the parents ought not to lead to a situation where the minor child becomes a mere pawn, to be exploited by one parent against the other, while this Court is reduced to a mere spectator. The extraordinary writ jurisdiction of the High Courts is to be invoked in the interest of justice and in such cases, its *parens patriae* jurisdiction, to examine and to ensure what lies in the best interests and welfare of the minor child.

56. It is seen far too often that couples, who are highly educated and financially strong on the basis of their employment in foreign lands, after bouts of matrimonial discord, indulge in such acts of parental abduction of minor child or children, bringing them back to India, only to spite the other parent, without realizing the impact that such actions have on the minor child or children. This aspect has been referred to and commented upon by the Hon'ble Supreme Court in the above quoted portion of the judgment in the case of **Yashita Sahu Vs. State of Rajasthan** (supra).

57. Relying upon the said position of law and what is indicated in the judgments of the Hon'ble Supreme Court in the case of **Nithya Anand Raghavan Vs. State (NCT of Delhi)** (supra), read with judgment in the case of **Rajeswari Chandrasekar Ganesh Vs. State of Tamil Nadu** (supra), we cannot accept the contention raised on behalf of the respondent No.2 that the present writ petition seeking the writ of *habeas corpus* is not maintainable, only because the order passed by the Superior Court in Arizona (USA), was passed after the minor child was already brought to India by the respondent No.2.

58. The other aspect highlighted on behalf of the respondent No.2 was that this petition ought to be heard with Civil Writ Petition

No.3044/2021, wherein the respondent No.2 as the petitioner has claimed that only the Courts at Nagpur have exclusive jurisdiction in respect of child custody and the Courts in USA cannot have jurisdiction and further that this Court has already issued notice in the said writ petition. We find that entertaining the present writ petition and passing orders thereon cannot have the effect of rendering Civil Writ Petition No.3044/2021, infructuous as is sought to be claimed on behalf of respondent No.2. The question raised in the said writ petition, pending before the Division Bench of this Court, can certainly be decided on the basis of contentions that may be raised by the rival parties, obviously uninfluenced by what is held in the present writ petition and no case is made out for clubbing the two writ petitions. We are not commenting upon the contentions raised on behalf of the rival parties as regards the maintainability of the said writ petition and they are free to canvass their arguments in the said writ petition.

59. We find that the petitioner in the present case did take steps with alacrity before the Superior Court at Arizona (USA) after attempts of the parties to find settlement of disputes had met with failure and this is evident from the position referred to in the order of the Superior Court at Arizona (USA), wherein it is recorded that the said Court could

consider the grievance of the petitioner, so long as he being one of the parents was in the USA and the minor child had been living within the jurisdiction of the said Court in the past six months. It is also seen that upon the aforesaid Court in USA passing its order on 09/09/2021, immediately the petitioner moved the present writ petition on 27/09/2021. On that score, it is correctly submitted on behalf of the petitioner that the present writ petition was moved with alacrity and that the issues sought to be raised on behalf of the petitioner deserve to be considered and decided on merits, despite the fact that as on today, the minor child has remained in India for about 1 ½ years.

60. Thus, it becomes evident that the rival submissions need to be examined on the touchstone of the paramount consideration in such cases i.e. the best interests and welfare of the minor child, although other factors like the order dated 09/09/2021, passed by the Superior Court at Arizona (USA) and such material brought to the notice of this Court could be relevant factors. In order to examine the aforesaid aspect of the matter, some facts need to be appreciated. The minor child is a citizen of the USA. The petitioner and respondent No.2 were residing together after marriage in USA from January, 2014 and they together purchased a house in Arizona (USA) on 25/10/2017. As on

the date when the respondent No.2 brought the child to India, she was herself working with a very reputed company and drawing annual salary of USD 1,05,000. In her reply to the present writ petition, the respondent No.2 has herself stated that the house was jointly bought on 25/10/2017 in Phoenix, Arizona (USA) and that the petitioner and respondent No.2 planned to settle in USA. Both the rival parties were having valid visas that permitted them to work in USA. The application of the petitioner for green card was and is under process.

61. Undoubtedly, the material on record does show that matrimonial discord occurred between the petitioner and respondent No.2. The respondent no.2 has levelled allegations of domestic violence against the petitioner and she indeed had obtained a protection order from the competent Court in Arizona (USA). She immediately took the minor child on 30/12/2020, from the matrimonial house and went to the house of her brother in Texas, USA and in February, 2021, she came to India. Much emphasis was placed on behalf of the respondent No.2 on the fact that it was the petitioner, who first came to India and that the respondent No.2 came later. The said factor in our opinion is not of much consequence. It is found that the respondent No.2 took the minor child without the consent of the petitioner, taking him first to

Texas (USA) and then she came to India. She has admitted that when the petitioner visited Nagpur to meet the minor child, she closed the door on him and there was no contact of the petitioner with the minor child. The aforesaid actions of the respondent No.2 show that the genesis of the same is the matrimonial discord between the parties and that the respondent No.2 acted in such a manner to deprive the petitioner of contact with the minor child due to the matrimonial discord.

62. Although, it was repeatedly submitted before this Court that there were allegations of domestic violence made by the petitioner against the respondent No.2 and also assertions that the minor child was also physically abused or likely to be physically abused by the petitioner, we are not impressed by the said allegations, particularly in the context of the minor child.

63. It was only after this Court in the present writ petition passed interim orders that the petitioner was able to establish contact with the minor child virtually and physically, whenever he visited India. In the absence of such interim orders by this Court, the petitioner was completely deprived of contact with the minor child. We are of the opinion that only because there happened to be differences and discord

between the respondent No.2 and the petitioner, having brought the child to India, the respondent No.2 ought not to have acted in such a manner that the petitioner lost complete contact with the minor child. The material on record does not indicate that any harm would have been caused to the minor child at the hands of the petitioner and that this was the reason for the respondent No.2 to have completely blocked the petitioner from contact with the minor child. The essential reason for the same appears to be the differences of opinion and the discord in the matrimonial life of the parties.

64. We are of the opinion that even if married couples have differences of opinion and there is matrimonial discord between them, the process of reconciliation or initiating legal proceedings for resolving grievances has to be handled in such a manner that the minor child or children from the marriage are kept away from its adverse effects and bitterness. The situation has to be handled with maturity by both the parents and the needs of the child as regards presence of and contact with both the parents ought to be taken care of by the parents themselves, even if they are to pursue legal remedies. In such cases, where both the parents are highly educated, financially independent and undoubtedly intellectually well developed, such maturity is

expected, but unfortunately found wanting. A situation ought not to be created where the parent, who happens to have the physical custody of the minor child, uses the custody of such child as a tool to inflict suffering on the other parent, by depriving the other parent of contact with the minor child.

65. In this context, one of the factors indicated in the aforementioned judgments of the Hon'ble Supreme Court becomes relevant. It has been laid down that while considering such petitions, a direction to return the child to the foreign jurisdiction shall not be passed if the Court finds that some harm may be caused to the minor child if such a direction is given. We are of the opinion that with the material brought to our notice, we are unable to agree with the respondent No.2 that harm would be caused to the minor child if he is returned to the jurisdiction of the said Court in USA. There can be no doubt about the fact that supplementary directions can be given to ensure that the comfort and happiness of the child is maintained by facilitating the travel of the parent, who has custody of the child in India, to the foreign country so that the dispute between the parties is pursued and settled through legal proceedings or through the process of reconciliation in a civil and mature manner. The parent, who has custody of the child in

India ought not to be separated from the minor child and hence, we have seen that repeatedly the Hon'ble Supreme Court has given appropriate directions for ensuring that the child has contact with and access to both the parents, even if such *habeas corpus* petitions are allowed.

66. In this context, observations in the report of CAA dated 03/11/2021, are relied upon by the petitioner and they have been severely criticized on behalf of the respondent No.2. We find that although the observations made in the CAA report placed before the Superior Court at Arizona (USA), cannot be said to be final or even binding, they do indicate that the CAA, before submitting the said report, interacted with the respondent No.2 also. In fact, as many as 41 exhibits were before the CAA, including video clips and photographs, some of which had been forwarded by the respondent No.2 herself and after perusal of the same, certain opinion, findings and recommendations were given by the CAA. It would be for the Superior Court in Arizona (USA), to consider such material, but, the same is relevant to the limited extent of indicating that the contention raised on behalf of the respondent No.2 that harm would be caused to the minor child if he is returned to the jurisdiction of the Court in Arizona (USA),

is not worthy of acceptance.

67. In this context, the contents of the order dated 09/09/2021, passed by the Superior Court at Arizona (USA), assume significance. The relevant portion is already quoted hereinabove and it is found that although the petitioner, being the father, is designated as the minor child's primary essential parent, it is specifically directed in the very order as follows:

“If Mother returns to Arizona and resides in the Phoenix metropolitan area, the parties shall share an equal parenting time schedule, on a week on / week off basis in order to minimize the parties' interactions. Exchanges shall occur on Sundays at 5:00 P.M. in the parking lot of the police department that is the closest to Father's residence. When the child is with the other parent, each parent shall have video calls with the child on Tuesday and Thursday at 5:00 p.m. for up to 20 minutes.”

68. The above quoted portion clearly shows that the Superior Court at Arizona (USA) has directed shared equal parenting time schedule on week to week basis between the petitioner and the respondent No.2, even specifying the place where the exchange of the minor child will take place. Access through video calls is directed to the other parent when the minor child is with one parent. This indicates that exclusive custody of the minor child is not kept with only the petitioner, even during the pendency of the proceedings before the Superior Court at

Arizona (USA). We are of the opinion that even if the present petition is allowed and appropriate directions are given by this Court, the above quoted directions in the temporary order dated 09/09/2021, passed by the Superior Court at Arizona (USA) show that the respondent No.2 will not be deprived of the company of the minor child and that during the pendency of the proceedings before the said Court, the minor child will be able to enjoy company of both the parents. Nothing prevents the rival parties from seeking appropriate modification from the said Court in the USA, depending upon future course of action and the approach that the petitioner and respondent No.2 may adopt towards each other, till the proceedings are decided by the said Court in the USA.

69. We have taken into consideration all these aspects to determine as to what can be said to be in the best interests and welfare of the minor child, in the facts and circumstances of the present case. We find that being a citizen of the USA, the Court of intimate contact for the minor child is the aforesaid Court in USA, the minor child being a citizen of the USA obviously has rights and privileges as a citizen of the said nation and he ought not to be deprived of such rights and privileges, only because there happens to be matrimonial discord between his

parents. Although neither the petitioner nor the respondent No.2 are citizens of the USA, both had been residing in USA since 2014 and till the respondent No.2 chose to come back to India with the minor child, both of them were earning handsomely, on the basis of their educational qualifications and skills. As noted above, the application of the petitioner for grant of green card is under process. At a point in time during the course of arguments, it was submitted on behalf of the respondent No.2 that she may even independently consider going back to USA, thereby indicating that she is not averse to do so. We also find that merely because the minor child was brought into India in February, 2021 and about 1½ years have passed, it cannot be said that the minor child has developed such roots in this country that it would be against his best interest to uproot him, to be sent back to USA. Even today, the child is only 4½ years old and it cannot be said that the schooling, which he has been introduced to, at Nagpur in India, would be disturbed in such a manner that it would be against his interests to be taken to the USA. On the contrary, the child returning back to the USA with appropriate directions to ensure that both his parents are available to him, would be in the best interest and welfare of the minor child, in the facts and circumstances of the present case.

70. The desire of the child who is only 4½ years old is irrelevant, so long as this Court exercising *parens patriae* jurisdiction finds that it is indeed in the best interest of the child to be returned back to USA. Even otherwise, in the recent judgment in the case of **Rohit Thammana Gowda Vs. State of Karnataka** (supra), the Hon'ble Supreme Court has indicated that the desire of such a minor child would not be the key factor while passing orders in such cases and that merely because the child was brought by the mother to India and admitted to a school where he was taking education, ought not to lead to an order refusing to return the child to USA. It is also noted by the Hon'ble Supreme Court in the case of **Yashita Sahu Vs. State of Rajasthan** (supra), in a similar situation in paragraph No.32 quoted hereinabove, that such a minor child cannot be heard in the matter, but, in view of the facilities of education, social security, etc. available in USA, the minor child should not be deprived of such facilities, only on the ground that the mother does not want to go back to USA.

71. We have also taken note of submissions made by the learned counsel appearing for the petitioner, on instructions of the petitioner, who was present in Court that he would facilitate travel of the respondent along with the minor child to USA and if necessary, also

that of another person from the family of respondent No.2 to accompany her to the USA, that he would arrange for their residence in Arizona (USA), if the respondent No.2 is not desirous of the staying in the same house, which she jointly bought with the petitioner and that he would undertake to ensure that every step would be taken to ensure that the respondent No.2 is not harassed due to the legal proceedings initiated by the petitioner.

72. We have also found that when interim orders were passed by this Court, granting specific visitation to the petitioner with the minor child in the Hotel where he was staying in Nagpur, he appears to have had healthy interaction with the minor child and respondent No.2 did not make any complaint regarding the same. In fact, by a specific interim order dated 03/08/2022, the visitation rights were extended by two hours for 05/08/2022, as the said day happened to be the birthday of the petitioner. The material on record assures us that the minor child is positively disposed towards the petitioner and that after revival of contact virtually and physically, the interaction has been regular and it is not as if the minor child has been averse to the presence of and contact with the petitioner. This is also a significant aspect while determining best interests and welfare of the child.

73. Having applied the position of law referred to hereinabove to the facts of the present case, we are inclined to allow the writ petition, *albeit* with specific directions and conditions to be imposed upon the petitioner, so as to ensure that the best interest and welfare of the child is ensured and the respondent No.2 is not put to any inconvenience or harassment and at the same time, given the circumstances, the minor child is able to have contact and presence of both his parents during the progress of the legal proceedings initiated by the parents against each other. We expect the petitioner and respondent No.2 to also keep the best interests and welfare of their only child as the paramount consideration while pursuing the legal proceedings.

74. In view of the above, the writ petition is allowed in the following terms:

(1) The respondent No.2 shall return the minor child to the jurisdiction of the Superior Court, Arizona (USA), within a period of eight weeks from today. She shall accompany the minor child to the USA. A relative of the respondent no.2 may accompany her, if she so desires.

(2) If the visa of respondent No.2 has already expired, she shall apply for such visa to travel to USA with the minor child within two weeks

from today and the concerned authorities to whom the application is made may keep in mind the observations made by this Court in the present judgment, in the best interest of the child, who is a citizen of USA, while considering grant of visa to the respondent No.2 at the earliest. The same shall apply to the relative of the respondent no.2, who wishes to accompany her and the minor child to the USA.

(3) The petitioner shall bear expenses of travel of the respondent No.2 and the minor child to the USA. If the respondent No.2 desires that one of her family members or relatives should accompany her to the USA, she shall specify the same to the petitioner, who shall bear the expenses of the travel of such one family member/relative of the respondent No.2 also.

(4) The petitioner shall arrange for reasonable accommodation of the respondent No.2 and the minor child, as also one relative as specified hereinabove, in a place within the jurisdiction of Superior Court at Arizona (USA), if the respondent No.2 along with the minor child and one relative refuse to stay with the petitioner in the house that was jointly purchased by the petitioner and respondent No.2 in Arizona (USA).

(5) The petitioner shall arrange for basic expenses of the respondent

No.2 and the minor child and one relative, if any, till the legal proceedings in USA culminate or the parties settle their differences.

(6) The petitioner and respondent No.2 shall abide by the directions given by the Superior Court at Arizona (USA) in the temporary order dated 09/09/2021, including the direction of shared equal parenting time schedule.

(7) Needless to say, the petitioner and respondent No.2 would be at liberty to apply to the Superior Court at Arizona (USA), for appropriate modification of the said order.

(8) The parties shall co-operate with each other and the concerned Court for swift disposal of the legal proceedings, in the best interests and welfare of the minor child.

(9) In the event the respondent no.2 is not willing to go the USA with the minor child, she shall intimate the same to the petitioner within 4 weeks and thereupon the respondent no.2 shall hand over the custody of the minor child to the petitioner. The petitioner shall then take the minor child to the jurisdiction of the Superior Court at Arizona (USA). In such a situation, the petitioner shall ensure that the respondent no.2 has contact with the minor child every alternate day by

video conferencing/video calls for at least 40 minutes. The parties may mutually agree for such contact between the respondent no.2 and the minor child even more frequently.

75. We hope and trust that the petitioner and respondent No.2 will not allow the differences between them to create any difficulty for the minor child and that they would also keep the best interests and welfare of the child uppermost in their minds.

76. Needless to say, till the above directions are complied with, the respondent no.2 shall continue to provide facility for contact of the petitioner with minor child by video conferencing/video calls, as was being done during the pendency of the writ petition under the orders of this Court.

77. The writ petition is allowed and disposed of in above terms. No costs. Pending applications, if any stand disposed of.

78. Rule is made absolute in above terms.

JUDGE

JUDGE