

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

CRIMINAL WRIT PETITION NO. 390 OF 2023

- | | | |
|--|---|----------------|
| 1. Puja w/o Chetan Pitthalwar
Aged about 20 years, Occupation-Nil,
R/o. Near Shani Mandir, Arni,
District – Yavatmal. | } | ... Petitioner |
|--|---|----------------|

Versus

- | | | |
|---|---|-----------------|
| 1. State of Maharashtra,
Through Police Station Digras,
District – Yavatmal. | } | |
| 2. Chetan s/o Prakash Pittalwar
Aged about 25 years, Occupation-Labourer,
R/o. Sambhaji Nagar, Digras,
Tah. Digras, District – Yavatmal. | } | ... Respondents |

Mr. I.V. Tambi, Advocate for petitioner.

Mr. V.A.Thakare, APP for respondent No.1.

Mr. P.V. Navlani, Advocate (appointed) for respondent No.2.

**CORAM : VINAY JOSHI, AND
VALMIKI SA MENEZES, JJ.**

DATE : 22.06.2023.

ORAL JUDGMENT: (PER: Vinay Joshi,J)

Rule. Rule made returnable forthwith. Heard finally
by consent of both the learned counsel for the parties.

(2) This is mother's petition seeking writ of habeas corpus alleging that respondent No.2 i.e. her husband (father of child) has forcibly taken away a minor female child aged 15 months from her custody. It is contended that the child is milk sucking who has wrongfully detained by the father. The petitioner has also expressed that there may be life threat to the minor and thus, she seeks intervention of this Court.

(3) On the other hand, learned counsel appearing for respondent No.2 (father) has denied the allegations about taking forceful custody of the child. He would submit that the petitioner along with child girl were living with him, but she herself by abandoning the child, left the place and started to reside with her parents. Therefore, his custody of child cannot be termed as an illegal detention.

(4) By intervention of this Court, we have directed to the husband to handover temporary custody of a child to petitioner-mother only on account of the very tender age of child, its gender and need of mother at such age.

(5) We have been taken through the following decisions of the Hon'ble Apex Court, in the cases of *Syed Saleemuddin Vs. Dr. Rukhsana and Ors.*, (2001) 5 SCC 247, *Nithya Anand Raghavan Vs. State (NCT of Delhi) and anr.*, (2017) 8 SCC 454, *Tejaswini Gaud and Ors. Vs. Shekhar Jagdish Prasad Tewari and Ors.*, (2019) 7 SCC 42, *Rajeswari Chandrasekar Ganesh Vs. State of Tamil Nadu and Ors.*, 2022 SCC OnLine SC 885, *Abhinav Gyan Vs. State of Maharashtra and anr.*, 2022 SCC OnLine Bom 2958, wherein in somewhat similar line, it has been expressed that habeas corpus proceedings are not to justify or examine the legality of the custody and the said matter shall be left to the competent Civil Court exercising jurisdiction under Hindu Minority and Guardianship Act, 1956. Moreover, a writ of habeas corpus is not a remedy to seek a custody in ordinary course as one has to apply under Section 6 of the Hindu Minority and Guardianship Act, 1956, for its redressal.

(6) We are not inclined to express anything about the truthfulness of rival contentions. However, considering the peculiar facts of this case that the female child is merely 15 months of age with the allegation that husband is alcoholic, we permit petitioner-wife to

retain the custody of the child purely on temporary basis, till her custody application would be decided by the Court of competent jurisdiction. However, in order to prevail such interim arrangement forever, we direct the petitioner to approach the competent Court under the Hindu Minority and Guardianship Act, within three weeks from today, and also seek for interim custody of child.

(7) If the interim application for custody is filed, the same shall be disposed within three weeks thereafter. The interim arrangement, which we have made, would be continued until disposal of interim application, if any.

(8) Petition stands disposed in above terms.

(9) We quantify the Advocate fee of Mr. Navlani, to the tune of Rs.10,000/- and direct the Secretary, High Court Legal Services Sub-Committee, Nagpur, to comply it accordingly.

[VALMIKI SA MENEZES, J.]

[VINAY JOSHI, J.]