

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1724 OF 2024

Mehjbeen F. Kadri

.. Petitioner

Versus

1. State of Maharashtra

2. Mr. Faheed M. Kadri

3. Mohmood H. Kadri

4. Quratulaim M. Kadri

5. Senior Inspector of Police,
Byculla Police Station

6. Senior Inspector of Police,
Bandra Police Station

...Respondents

**Mr.Vishal V. Rankhambe and Ms.Aparna V. Rankhambe, Advocates
for Petitioner.**

Ms.Prajakta P. Shinde, , APP for Respondent No.1, 5 & 6.

**Mr.Ifran A.A. Ansari a/w. Mr.Abdul Kalam Ansari and Mr.Sampat
Mohite, Advocate for Respondent Nos.2 to 4.**

**CORAM : N.R. BORKAR &
SOMASEKHAR SUNDARESAN, JJ.**

**Date : May 30, 2024.
(VACATION COURT)**

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ORDER:

1. This petition seeks a writ of habeas corpus seeking a direction to produce the minor daughter of the Petitioner who is under the custody of the father, Respondent No.2.
2. On 29th May, 2024, Learned Counsel appearing for Respondent No.2, the father of the child, confirmed that the child was indeed with him. He claimed that the child does not desire to reside with the mother. We had observed that, *prima-facie*, the child was being held on to as collateral for efforts by the husband make his wife return to the household. To demonstrate his *bona fides*, we had directed Respondent No.2 to remain present with child, in Chambers today.
3. Today, the Petitioner and Respondent No.2 appeared before us along with their respective Counsel. The eight year old daughter had also been brought to our Chambers along with a 16 year old son of the couple. We interviewed each of the Petitioner and Respondent No.2 separately also engaged with the 16 year son individually to get a sense of the matters at hand.
4. It is evident that each of the husband and wife has grievances

against the other. The husband is keen to force his wife to return to his household, whereas the wife is reluctant to cohabit with her husband for a variety of reasons. The parties are free to take up such proceedings as may be advised in relation to their matrimonial disputes. However, considering that a mother is being denied access to a girl child whose continuance in the household, is, for the mother, is a matter of great anxiety and concern. We note that within the scope of a habeas corpus petition, there are limited options before us.

5. Without opining on any facets or merits, upon deliberation, we have put it to the parties to engage in mediation for which purpose, we would request Justice Akil Kureshi, Former Chief Justice of Rajasthan High Court and the Former Judge of this very Court to listen to the parties and attempt a resolution of their differences over a period of 60 days. We make it clear that the resolution would not mean that an amicable outcome has to be cohabitation, and resolution could even constitute an amicable manner of separation of the husband and wife, keeping the best interest of the children at the forefront. We believe that if the parties present their respective positions before the Learned Mediator, there would be some scope for working out an arrangement without further anxiety on the part of these two parties.

6. In the interregnum, while such efforts at working out a resolution is being attempted, the husband has committed to this Court that he shall drop the daughter at 5:00 p.m. on every Saturday to the current place of residence of the wife (at Byculla) and pick her up at 5:00 p.m. on Sunday from the same place. Only for the immediately impending weekend, i.e., June 1, 2024, owing to pre-existing engagements, the daughter shall be dropped to the residence of the wife by 11:00 a.m. on Sunday, June 2, 2024, to be picked up by 5:00 p.m. on the same day. Thereafter, the mother shall have overnight weekend access to the child in the manner set-forth above.

7. We take on record the consent and commitment of both sides to the aforesaid arrangement proposed by us and such commitments shall be treated as undertakings given to the Court. The parties shall in good faith come clean within a privileged environment with the Learned Mediator about their respective concerns and anxieties and put in their best efforts to take an amicable resolution either by an amicable separation or by an amicable cohabitation. The Learned Mediator is requested to file a report by July 31, 2024. Should the parties feel that the said period needs to be extended further by reason of any mutual confidence-building efforts before the Learned Mediator, they shall be at

liberty to seek an extension of the deadline by a joint application to this Court.

8. Having put the aforesaid framework in place, this petition is stood over to August, 7, 2024 for further consideration by the regular Court.

9. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[SOMASEKHAR SUNDARESAN, J.]

[N.R. BORKAR, J.]