

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

WRIT PETITION NO. 1785 OF 2024

Varsha Rahul Prajapati

} *..Petitioner*

: Versus :

The State of Maharashtra & Ors.

} *..Respondents*

Ms. Kalpana Rajput, for the Petitioner.

Ms. P. P. Shinde, AGP, for the Respondent-State.

Ms. Shaikh Mehtab Nazia, for the Respondent No.2.

Ms. Surekha Shinde, PSI, Achole Police Station is present in Court.

Coram: *Sandeep V. Marne &
Dr. Neela Gokhale, JJ.
(Vacation Court)*

Dated: *15th May 2024.*

P.C. :

1. The Petitioner seeks a writ of Habeas Corpus for the production and release of minor son 'Jenil', who according to the Petitioner, is illegally and wrongfully detained by the Respondent No.2. The Petitioner is the biological mother of the minor son and the Respondent No.2 is his father.
2. By order dated 7th May 2024, this Court directed the Respondent No.2, who was personally present in the Court on that date, to produce minor son 'Jenil' in Court today. The order also records the admission of Respondent No.2 that 'Jenil' is in his custody.

3. It is the case of the Petitioner that the marriage between the parties took place on 15th February 2015 as per Hindu rites and ceremonies. Minor son 'Jenil' was born on 10th April 2018. During their stay together at Nalasopara, Mumbai, their minor son was admitted and enrolled in a pre-school namely 'Smart Kids Pre-School', Nalasopara (E). It is the further case of the Petitioner that there is a matrimonial discord between the parties leading to the Petitioner lodging a police complaint against the Respondent No.2 at the Achole Police Station, Palghar. On 18th January 2024, when she came home from work, she found that the Respondent No.2 and minor son Jenil were missing from home. She learnt thereafter, that the Respondent No. 2 had taken away minor son 'Jenil' to their native place. She repeatedly requested the Respondents No.2 and 3 to 5, the relatives of Respondent No.2 to return the minor son. However, she was not permitted to even meet him. She says that her son was not being permitted to attend school and she was not aware of his whereabouts except that he is somewhere in the native place of Respondent No.2

4. In compliance with the order dated 7th May 2024 passed by this Court, the Respondent No.2 has produced minor child 'Jenil' before this Court today. Ms. Rajput, counsel for the Petitioner states that the Petitioner is the biological mother of minor child 'Jenil' and the child cannot be deprived of her society and comfort. Her minor son has been taken away without her knowledge and consent and she is kept unaware of his whereabouts. She also states that the child was always in the care and custody of the Petitioner since both the parties were residing together at Nalasopara and he is extremely attached to his mother. The child is likely to suffer trauma of the separation with his mother. Hence, the Petitioner has filed the present petition.

5. Ms. Nazia, learned counsel appearing for the Respondent No.2 states that the child is with his father and has not been illegally detained. She also states that the Respondent No.2 has relocated to Gujarat with the child on account of the matrimonial discord between the parties.

6. We have interacted with minor child 'Jenil'. At first he was reluctant to even speak to his mother or look at her. However, after spending some time with the Petitioner in our chambers, we find that the child was also comfortable with the Petitioner.

7. We are conscious that the question of custody of minor child 'Jenil' cannot be decided by this Court in the present proceedings and that Jenil is presently in the care of the Respondent No.2, his father who is also his natural guardian. Thus, it cannot be said that the child is illegally detained by the Respondent No.2. Nevertheless, *prima-facie* it is seen that the Respondent No.2 clandestinely and surreptitiously left the matrimonial home taking Jenil along with him, without informing the Petitioner. It is quite natural for the Petitioner mother to be anxious and worried about the well-being of her child, especially when she was unable to trace his whereabouts, prompting her to file the present petition.

8. It cannot be disputed that both the parents may have a right for custody of their children, but the said question is to be considered and decided after adducing evidence by the parties and after following due procedure in appropriate proceedings in a jurisdictionally competent Court. Although allegations and counter allegations have been made by the parties against each other, we do not propose to go into them as doing so may cause prejudice to the rights of the parties in proceedings that they may wish to initiate. However, having considered the aforesaid peculiar facts and in the

welfare and well-being of minor child 'Jenil', purely as an interim arrangement, we pass the following order.

ORDER

- (i) The Respondent No.2 shall allow access rights of minor child Jenil to the Petitioner from 16th May 2024 till 20th May 2024.
- (ii) The Petitioner is allowed to take minor child Jenil to her house today till 20th May 2024 and shall return his custody to the Respondent No.2 at 12:00 noon on 20th May 2024. The Respondent can then take the child back with him to Gujarat.
- (iii) The Petitioner is allowed access rights to Jenil on the second Saturday of every month from June 2024. The Respondent No.2 shall reach the child at the place of residence of Petitioner on Friday evening by 6:00 p.m. and pick him up on Sunday evening at 5.00 p.m.
- (iv) The above arrangements will continue till such time that the Petitioner initiates appropriate proceedings for custody/access rights in respect of the minor child 'Jenil'.
- (v) In the event that the Petitioner fails to take appropriate custody proceedings before the jurisdictionally competent Court within eight weeks from the date of this order, the interim arrangement, as above, shall cease.

9. The petition is disposed of accordingly. There will be no order as to costs.

[Dr. Neela Gokhale, J.]

[Sandeep V. Marne, J.]