



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

CRIMINAL WRIT PETITION NO. 616 OF 2024

Dinesh Pralhadrao Rathod -Vs-State of Maharashtra and ors.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. A.M.Tirukh, Adv. for the petitioner/s.
Mr.Amit Madiwale, A.P.P for respondent/s

**CORAM VINAY JOSHI &
MRS. VRUSHALI V. JOSHI, JJ.
DATE : 8th AUGUST, 2024.**

1. Heard.

2. The petitioner-father is seeking writ of habeas corpus alleging that respondent No.3-mother has forcibly taken away minor child namely, Daivik aged two years and nine months from his custody. The couple got married on 16.11.2016, whilst the minor son born on 16.11.2021. Due to matrimonial differences, they have applied to the competent Court at Pune for divorce by mutual consent. It is stated that the said proceedings is still pending.

3. It is the petitioner's contention that in the joint petition for divorce, the wife has agreed/consented that the custody of minor Daivik is with his father and which shall be continued. It is submitted that during the pendency of the said application, both stayed at Pune and in the third week of the month May, 2024 petitioner-father returned to his place, Akola with minor. On such

a background, the wife has filed an application seeking search warrant in terms of Section 100 of the Bhartiya Nagrik Suraksha Sanhita, 2023 (BNSS) before the Sub-Divisional Magistrate, Pusad, who in turn issued the search warrant and on production of child custody was handed over to the respondent No.3-mother.

4. Particularly, it is argued that as per terms of settlement, the custody shall be with the father as well as the pleading discloses that the minor's custody was with the father. It is submitted that though the respondent No.3 wife took custody from the Court of Sub Divisional Magistrate, however, she did not take child to her place of residence at Pune but left the minor at the house of her ailing mother at Pusad. According to the petitioner, there is nobody to look after the minor and minor's welfare is under jeopardy.

5. Issue notice to the respondent No.3, returnable on **19.08.2024**.

6. Learned APP waives service of notice for respondent Nos.1,2 and 4.

7. In addition to usual mode of service, service through private mode is permitted.

JUDGE

JUDGE