



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

902 CRIMINAL WRIT PETITION NO.1324 OF 2025

Ganesh Balu Malkar,
Age 25 yrs., Occ. Business,
R/o Kendhali, Tq. Mantha,
Dist. Jalna.

... Petitioner

... Versus ...

- 1 The State of Maharashtra
Through its Secretary,
Home Department, Mantralaya,
Mumbai – 32.
- 2 The Superintendent of Police,
Jalna, Tq. & Dist. Jalna.
- 3 The Police Inspector,
Police Station, Mantha,
Tq. Mantha, Dist. Jalna.

... Respondents

...

Mr. P.P. More, Advocate for petitioner

Mrs. Priya R. Bharaswadkar, APP for respondent Nos.1 to 3

...

CORAM : SMT. VIBHA KANKANWADI &
HITEN S. VENEGAVKAR, JJ.

DATE : 19th SEPTEMBER, 2025

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

. Present petition has been filed for issuing writ of *Habeas Corpus* and to issue directions to respondents to produce detained girl before this Court.

2 Learned Advocate for petitioner submits that the girl's age is more than 18 years and upon her own decision she as well as petitioner got married at Alankapuri Mangal Karyalaya on 28.03.2024. Therefore, now, said girl is legally wedded wife of petitioner. Thereafter, on 01.04.2024 the petitioner and his wife returned to Mantha and gave statement to Police Station, Mantha stating that she is major and has performed the marriage. She resided with the petitioner for about 13 days and according to petitioner, parents and relatives of girl had taken her forcibly from the custody of petitioner. It is stated that on the contrary parents of girl forced her to file First Information Report on 13.04.2024 under Section 376, 376(2)(n), 366, 354(D), 504 read with Section 34 of the Indian Penal Code, 1860 and under Section 12 of the Protection of Children from Sexual Offences Act, 2012. According to learned Advocate for petitioner, the provisions of POCSO Act will not come into play, in view of the fact that the girl is major. Time and again, the petitioner had approached and tried to contact his wife and also

gave an application to respondent No.3 – Police Inspector, Police Station, Mantha on 24.03.2025 to free his wife, but no action has been taken. Present petitioner had filed Criminal Writ Petition No.447 of 2025 before this Court for issuing writ of Habeas Corpus, however, by order dated 01.04.2025 the said Writ Petition was dismissed, considering the disputed question of fact when the girl has lodged First Information Report. It is then stated that now criminal case bearing Special Case No.408/2024 was filed after the investigation. In that case the victim, her father and four witnesses including Doctor, Panch and Investigating Officer have been examined. Learned Advocate for petitioner submits that in the cross-examination victim had stated that she had attained the age of 18 years and left the house in March, 2024, then performed the marriage with petitioner. It has also come on record that before the police the parents were forcing her to return to parental house, but she refused and went along with present petitioner from Police Station. Parents are time and again pressurizing her to return to parental home, but she has refused. The cousin had taken her from clinic by misrepresentation to meet her parents and then she was forced to lodge the report. Even the father of victim is admitting that now he is aware about the marriage between victim and petitioner. By Judgment and order dated 19.08.2025 learned Special Judge, Jalna has acquitted the petitioner. Still the girl has not come to resume the company of petitioner and, therefore,

writ of *habeas corpus* is required to be issued.

3 Learned APP waives notice for respondent Nos.1 to 3.

4 It will not be out of place to mention here that petitioner had already approached this Court by filing Criminal Writ Petition No.447 of 2025 for issuing writ of *habeas corpus*. On 01.04.2025 by a detailed order the same was rejected. The girl had then lodged First Information Report stating that petitioner has committed offence against her, which was considered as disputed questions of facts. Now, in view of the acquittal the petitioner wants to impress that it is now not in disputed question of fact. However, we would say that if at all now even after the pronouncement of Judgment the girl is not returning to the husband, then the husband will have to take the legal options available to him. It cannot be stated that the girl is still detained. After the acquittal the petitioner has not issued any legal notice to wife for resumption of cohabitation nor filed petition for restitution of conjugal rights. Acquittal cannot be then taken as the fact of alleged detention of the girl. When efficacious alternative remedy is available, writ cannot be issued. Writ Petition, therefore, stands dismissed.

(HITEN S. VENEGAVKAR, J.)

(SMT. VIBHA KANKANWADI, J.)

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