



**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.1870 OF 2024

Suvarna Bhaurao Bagul
Age 33 years, Occ. Household,
R/o Plot No.7, Mira Nagar
New Prakash Road,
Shahada, Dist. Nandurbar

... PETITIONER

VERSUS

1. The State of Maharashtra
through its Chief Secretary,
Home Department, Mantralaya,
Mumbai
(Copy to be served upon the
Government Pleader of High
Court of Bombay, Bench at
Aurangabad)
2. The Inspector General of Police,
Office at : Nashik Parikshetra,
MohanNagar, Nashik
Maharashtra 422 001
3. The Superintendent of Police
of Nandurbar at S.P. Office,
Dist. Nandurbar
4. Senior Police Inspector,
Police Station, Shahada,
Dist. Nandurbar
5. Nilesh s/o Ashok Jagdale,
Age 36 years, Occ. Business of Wafers,

R/o Plot No.13, Udaynagar,
Makhmalabad Road,
Panchwati, Nashik

6. Ashok Popat Jagdale,
Age 63 years, Occ. Retired,
R/o Plot No.13, Udaynagar,
Makhmalabad Road,
Panchwati, Nashik
7. Vandana Ashok Jagdale,
Age 55 years, Occ. Household
R/o Plot No.13, Udaynagar,
Makhmalabad Road,
Panchwati, Nashik
8. Shailesh s/o Ashok Jagdale,
Age 34 years, Occ. Private Service,
R/o Plot No.13, Udaynagar,
Makhmalabad Road,
Panchwati, Nashik
9. Ashwini Ashok Jagdale
Age 33 years, Occ. Household
R/o Plot No.13, Udaynagar,
Makhmalabad Road,
Panchwati, Nashik
10. Archana w/o Shailesh Jagdale,
Age 30 years, Occ. Household
R/o Plot No.13, Udaynagar,
Makhmalabad Road,
Panchwati, Nashik

... RESPONDENTS

.....
Mr. Zia-ul-Mustafa, Advocate with
Mr. Tabrezuddin Quadri, Advocate for petitioner
Mr. S.J. Salgare, A.P.P. for respondent Nos.1 to 4
Respondent No.5 present in person
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**CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ.**

Date of reserving judgment : 3rd February, 2025

Date of pronouncing judgment : 18th February, 2025

J U D G M E N T (PER : R.G. AVACHAT, J.) :

This petition, for a writ of habeas corpus, has been moved by the mother of a girl child, “Rahee”. The respondent No.5 is the husband of the petitioner and father of “Rahee”. Due to matrimonial discord, both, the petitioner and respondent No.5 have been residing separately. The petitioner claims to have obtained a decree of dissolution of marriage. According to the respondent No.5, the decree has been passed ex-parte and is under challenge in appeal. Be that as it may.

2. It appears that, the parents are bitterly fighting against each other, over the custody of their girl, “Rahee”. The Civil/ Family Court had passed the order, directing the respondent No.5 – father to give custody of Rahee to the petitioner – mother. It was way back when Rahee was around two and half years of age. Since the order was not complied

with, it appears that, the petitioner moved this Court by filing similar Writ Petition.

3. The Division Bench of this Court, vide its order dated August 17, 2022, ensured that the custody of the girl child was handed over to the mother – petitioner. Since then Rahee was in custody of her mother – petitioner. According to the petitioner, thereafter the respondent No.5 forcibly took the custody of the girl child. A crime was, therefore, registered against him. The mother – petitioner again filed Writ Petition for the similar relief (habeas corpus), being Criminal Writ Petition No.995/2023. This Court, vide order dated August 3, 2023, disposed of the said Writ Petition since some arrangement/ settlement was worked out.

4. The respondent – father again forcibly took the custody of Rahee and, therefore, the petitioner has filed the present petition.

5. A notice was issued. The respondent No.5 – father appeared. He obtained permission to appear and plead as a party-in-person. He filed his say-cum-affidavit, raising various objections. According to him, the petitioner – wife initiated

number of criminal and civil proceeding only with a view to harass him. The father of the petitioner was retired member of a Constabulary. The police officer of Shahada Police Station, therefore, took side of the petitioner. He even did not allow the petitioner to meet his child, "Rahee" despite this Court's order. He would further submit that, Rahee was reluctant to join her mother. Rahee has a fright of police uniform. The police officials forcibly removed Rahee from his custody. The petitioner has made very many false and incorrect statements on affidavit. She is, therefore, proposed to be prosecuted therefor. He would further submit that the petitioner returns home late. Rahee is happy in his custody. He takes all her care and she has been admitted to Pre-Primary/ Nursery School at Nashik. If the petition is allowed, it would not be in the best of interest of Rahee. He, therefore, urged for rejection of the petition. We have also perused other averments in his affidavit.

6. We have considered the matter and the submissions made on behalf of the petitioner and written say filed by the respondent. We can understand the plight of the respondent father. It appears that, he too has equal affection

and love for his daughter, “Rahee”. There was an order passed by the competent Civil/ Family Court, directing the father to hand over the custody of Rahee to the petitioner – mother. Since the order was not obeyed, this Court was required to intervene in the matter, in Criminal Writ Petition No.957/2022. The Division Bench of this Court, on August 17, 2022, ensured that the custody of Rahee was handed over from father to mother. Since then Rahee was in the custody of the petitioner. The respondent – father did not place on record any order of any competent Court indicating him to have obtained custody of Rahee pursuant to judicial order. Meaning thereby, the respondent – father took law into his own hands and got the custody of his daughter. The petitioner was again required to move this Court. It was Criminal Writ Petition No.995/2023. This Court, vide order dated August 3, 2023, disposed of the said Writ Petition in terms of the following order, to which one of us (R.G. Avachat, J.) was a party :

The child has been brought before this Court. Her father has also been produced from jail. His ex-wife (petitioner/child’s mother) is also before us. It appears that the father had taken custody of the child unauthorisedly, inspite of there have been directions of the Court for giving the child into the custody of the mother. Based on the FIR registered against the

father and his brother, for kidnapping of his own child, the father came to be arrested. The brother is said to have filed an application for anticipatory bail.

2. A temporary arrangement, with the consent of the parties, has now been arrived at. It has now been agreed that the child is to be given in the custody of the father for today, till 04:00 p.m. Thereafter, the child shall be given into the custody of the mother (petitioner).

3. The petitioner - ex-wife agreed to allow the father of the child to talk with the child everyday between 07.00 p.m. and 08.00 p.m., through Video Call on cell phone No.9370593121 (mobile number of petitioner/mother of child). It has also been agreed between the parties that the father of the child would have access to the child once a week for one hour, between 12.00 noon and 01.00 p.m., at Shahada Police Station. This arrangement to continue until further orders or till the father gets visiting rights or even custody of the child, if any, from the competent Civil Court.

4. The petitioner has also agreed to give 'no-objection' to grant bail to the father of the child, i.e. ex-husband of the petitioner, and his brother in the crime registered against them for kidnapping of the child.

5. Learned counsel for the father and the brother may rely on this order in the Bail Application/ Anticipatory Bail Application, if any. Hopefully, they may be granted bail by the courts concern.

6. The petitioner (mother of child) is at liberty to move this Court for withdrawal of this order regarding access to the child by its father. Needless to mention, if any ground is made out, the order may be recalled.

7. In view of the above, the petition stands disposed of.”

7. It is the grievance of the respondent – father that, in terms of the arrangement, he would visit Shahada to have an access/ visit to his daughter, “Rahee”. The petitioner’s father being retired police official, the officials of Shahada Police Station did not co-operate in implementation of this order. The record indicates, the respondent again obtained the custody of Rahee, necessarily without having recourse to any judicial proceeding or approaching this Court for modification of the order dated August 3, 2023. At the cost of repetition, it is observed that, we can understand his plight and affection and love towards his girl child. He, however, took law into his own hands for taking custody of Rahee.

8. During the pendency of this petition, following development took place :

- (1) Notice was issued,
- (2) The respondent – father appeared in the matter,
- (3) On the directions of this Court, dated December 9, 2024, he produced Rahee before this Court on 16/12/2024.

9. In our order dated 16/12/2024, we observed as follows :

“Respondent no.5 (father) appeared in person before us with the girl child – Rahi. We entertained the matter in the chamber. The petitioner (mother) along with her Advocate was also present.

2. We inquired with the girl child – Rahi, who appears to be around or little over 5 years of age. She was stuck to her father. She was even reluctant to join her mother (petitioner) for a while. The petitioner (mother) requested that the girl child be given to her, at least, for half an hour and a meeting may be arranged outside the court premises. Respondent no.5 (father) agrees.

3. In view of the above, the parties are directed to meet at the garden area just behind the Annex building of this Court. Two Police Constables with one Lady Police Constable have also been deputed to see that the parties would not indulge in a quarrel or even fight. The petitioner (mother) undertakes to hand over the girl child to respondent no.5 (father) after half an hour.

4. It was also agreed between the parties that the petitioner (mother) would call on the cell phone of respondent no.5 (father) everyday, during 07.30 p.m. and 08.00 p.m., until the next date and he will allow the girl child – Rahi to talk to her mother (petitioner).

5. With the above understanding, the parties left with the girl child from the Chamber of this Court.

6. With the consent of the parties, the matter is adjourned to 08.01.2025.”

10. Thereafter again the respondent – father appeared before us with Rahee. We entertained the matter in the Chamber. Rahee was given into temporary custody of the petitioner. She joined the petitioner without hesitation. For about one and half hour she was with the petitioner – mother in the Chamber of this Court during office hours. Needless to mention, the Court was engaged in judicial work in the Court Room.

11. On the next date of the matter, the respondent – father consciously did not produce Rahee before us. According to him, Rahee refused to come.

12. We have all the sympathy for the respondent – father since he appears to have equal love and affection towards his daughter. He has, however, taken custody of Rahee without recourse to legal proceeding. With a view to uphold the rule of law, it is necessary to pass the order restoring the status-quo ante, dated August 3, 2023. We, therefore, allow this Writ Petition in terms of the following order:-

ORDER

(i) The respondent No.5 is granted four days time to hand over custody of the girl child, "Rahee" to the petitioner, failing which, we request the Commissioner of Police, Nashik to depute a lady Police Officer in the rank of Police Inspector or above, to make search for the child "Rahee", take her into custody from the respondent No.5 – father and hand over the custody of Rahee to the petitioner – mother by producing her before the Family Court, Nashik and report compliance.

(ii) The lady police officer and her team who would be executing this order, shall be clad in Civil dress (not police uniform).

(iii) We are required to pass such order since Rahee is around 5 years of age. Travel time from Nashik to Aurangabad is more. She has a fright of police uniform. We, therefore, request the concerned Police Officer to comply this order in the presence of the Principal Judge, Family Court, Nashik and report compliance.

(iv) The Family Court, Nashik to report us the compliance of this order.

(v) Needless to mention, the petitioner – wife would continue to give respondent – husband access to Rahee in terms of the arrangement made vide order dated August 3, 2023.

(vi) In the order dated August 3, 2023, instead of “Shahada Police Station”, it be read as “the Court of Civil Judge, Senior Division, Shahada”.

(vii) The respondent – father may move the appropriate Court for custody of Rahee. The said Court would decide any such proceeding, uninfluenced by the orders of this Court.

(viii) For all practical purposes, this proceeding stands disposed of.

(ix) For any breach of the order dated August 3, 2023 or for obtaining exclusive custody of Rahee, the respondent – father may move the competent Civil/ Family Court.

(NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)

fmp/-