



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

**CRIMINAL WRIT PETITION NO.1566 OF 2025**

Shubhangi w/o Ganesh Yadav,  
Age : 30 years, Occu.: Household,  
R/o.: Kadepur, Tq. Kadegaon,  
District : Sangali.  
At present C/o. Kamalkar Rao  
Yashwantrao Jadhav,  
Muslewadi, Tq. Renapur,  
District : Latur, Maharashtra

.... APPLICANT  
(Original Petitioner)

**VERSUS**

1. The State of Maharashtra through  
The Superintendent of Police,  
Office of the Superintendent of Police,  
Latur, District : Latur

2. Police Inspector, Police Station Renapur,  
Taluka : Renapur, District : Latur,

3. Ganesh s/o Shivaji Yadav,  
Age : 38 yeas, Occu.: Service,  
R/o.: At present Kadepur,  
Tq. Kadegaon, District : Sangli

.... RESPONDENTS

....  
Ms. Poonam V. Bodke Patil, Advocate for the Petitioner  
Mr. P. S. Patil, APP for Respondent Nos.1 & 2

....

**CORAM : SANDIPKUMAR C. MORE AND  
Y. G. KHOBRAGADE, JJ.**

**RESERVED ON :13/11/2025**

**PRONOUNCED ON: 18/11/2025**

**JUDGMENT : (Per : Sandipkumar C. More, J.)**

1. **Rule.** Rule made returnable forthwith.
2. Learned AGP waives service for the respondent Nos.1 & 2-State. Heard finally by consent of the parties.
3. The present petition is filed under Article 226 of the Constitution of India seeking issuance of a writ of habeas corpus, directing respondent Nos. 1 and 2 to produce the petitioner's minor son, Abhir, and daughter, Abhira @ Aarya, from the custody of respondent No. 3 (the father).
4. The petitioner is the wife of respondent No.3, with whom her marriage was solemnized on 30/08/2020. After the marriage, the petitioner started residing in the house of respondent No.3 at village Kadepur, Taluka Kadegaon, District Sangli. However, respondent No.3 and his family members subjected her to cruelty. Out of the said wedlock, the petitioner has a son, Abhir, born on 27/02/2022, and a daughter, Abhira @ Aarya, born on 17/11/2023. Ultimately, on 02/06/2025, respondent No.3 allegedly mercilessly assaulted the petitioner and drove her out of the matrimonial home after removing her ornaments and taking away the minor children. Since 02/06/2025, the petitioner is

residing at her parental home at Muslewadi, Taluka Ranapur, District Latur.

5. The petitioner thereafter filed Civil Miscellaneous Application No.156 of 2025 before the learned District Judge, Latur, seeking custody and guardianship of her minor children - both below five years of age under Section 25 of the Guardians and Wards Act, 1890 as well as Section 6 of the Hindu Minority and Guardianship Act, 1956. Respondent No. 3 raised an objection to the said application on the ground of territorial jurisdiction contending that the ordinary residence of the minors is at village Kadepur, Taluka Kadegaon, District Sangli. The learned District Judge, Latur, upheld the objection of respondent No. 3 at (Exhibit-15) and held that the application was not maintainable in view of Section 9 of the Guardians and Wards Act, 1890.

Being aggrieved by the orders below Exhibit-15 and Exhibit-1 dated 18/09/2025, the petitioner has filed Civil Revision (Stamp) Application No.33100 of 2025, which is to be circulated before the learned Single Bench of this Court. The learned counsel for the petitioner has also relied upon the following judgments.

**A) Pravin Nathalal Parghi vs. The State of Maharashtra and others in Writ Petition**

***No.2374 of 2025 dated 04/09/2025 of this court.***

- B) Veena Kapoor vs. Varinder Kumar Kapoor, 1982 AIR(SC) 792;***
- C) Sadaf Naaz vs. Shashi Kumar Mishra and others, in W.P. (CRL)4002/2024 & CRL.M.A. 38615/2024 dated 20/12/2024 of Delhi High Court and***
- D) Smt. Sarabjit wd/o Sh. Mukesh Kumar vs. Sh. Piara Lal and another, AIR 2005 Punjab and Haryana 237.***

6. On the contrary, the learned APP, by placing reliance on the order passed by the learned District Judge, Latur, below Exhibit-15 in Civil Miscellaneous Application No.156 of 2025, raised a similar objection and contended that the present petition ought to have been filed before the Kolhapur Circuit Bench of this Court as the minors are residing in Sangli District, which falls under the territorial jurisdiction of that Bench. He further objected to the maintainability of this petition on the ground that a writ of habeas corpus seeking custody of minor children is not maintainable when the children are in the custody of their natural guardian i.e. their father. He also relied upon the judgment in case of ***Tejaswani***

***Gaud and Others vs. Shekhar Jagdish Prasad Tewari and Others, (2019) 7 SCC 42.***

7. Admittedly, the minor children are in the custody of their father, who is also their natural guardian. However, according to the learned counsel for the petitioner, under Section 6 of the Hindu Minority and Guardianship Act, 1956, a child below five years of age is presumed to ordinarily reside with the mother and therefore, even though the father is the natural guardian, the custody of children below five years should ordinarily remain with the mother. In support of this contention, reliance is placed on the judgment in case of ***Smt. Sarabjit w/o Sh. Mukesh Kumar*** (supra). There is no dispute that both minor children are below the age of five years. However, the learned APP, by placing reliance on the judgment of the Hon'ble Supreme Court in case of ***Tejaswani Gaud and Others*** (supra), has contended otherwise, wherein it has been observed as follows:

*“19. Habeas corpus proceedings is not to justify or examine the legality of the custody. Habeas corpus proceedings is a medium through which the custody of the child is addressed to the discretion of the court. Habeas corpus is a prerogative writ which is an extraordinary remedy and the writ is issued*

*where in the circumstances of the particular case, ordinary remedy provided by the law is either not available or is ineffective; otherwise a writ will not be issued. In child custody matters, the power of the High Court in granting the writ is qualified only in cases where the detention of minor by a person who is entitled to his legal custody. In view of the pronouncement on the issue in question by the Supreme Court and the High Courts, in our view in child custody matters, the writ of habeas corpus is maintainable where it is proved that the detention of a minor child by a parent or others was illegal and without any authority of law.*

20. *In child custody matters, the ordinary remedy lies only under the Hindu Minority and Guardianship Act or the Guardians and Wards Act as the case may be. In cases arising out of the proceedings under the Guardians and Wards Act, the jurisdiction of the court is determined by whether the minor ordinarily resides within the area on which the court exercises such jurisdiction. There are significant differences between the enquiry under the Guardians and Wards Act and the exercise of powers by a writ court which is summary in nature. What is important is the welfare of the child. In the writ court, rights are determined only on the basis of affidavits. Where the court is of the view that a detailed enquiry is required, the court may decline to exercise the*

*extraordinary jurisdiction and direct the parties to approach the civil court. It is only in exceptional cases, the rights of the parties to the custody of the minor will be determined in exercise of extraordinary jurisdiction on a petition for habeas corpus.*

21. *In the present case, the appellants are the sisters and brother of the mother Zalam who do not have any authority of law to have the custody of the minor child. Whereas as per Section 6 of the Hindu Minority and Guardianship Act, the first respondent father is a natural guardian of the minor child and is having the legal right to claim the custody of the child. The entitlement of father to the custody of child is not disputed and the child being a minor aged 1& ½ years cannot express its intelligent preferences. Hence, in our considered view, in the facts and circumstances of this case, the father, being the natural guardian, was justified in invoking the extraordinary remedy seeking custody of the child under Article 226 of the Constitution of India.”*

Accordingly, the learned APP submits that the present writ petition is not maintainable and the question of custody has to be decided by the competent court.

8. As against this, the learned counsel for the petitioner relied on the judgment of the Hon'ble Apex Court in case of ***Veena Kapoor*** (supra), wherein the Supreme Court condemned the order of the Punjab and Haryana High Court who had dismissed the mother's petition seeking custody of the child from the respondent-husband on the ground that the father's custody was legal. The learned counsel for the petitioner also placed reliance on the judgment of the Coordinate Bench of this Court (Principal Seat) in ***Writ Petition No. 2374 of 2025, Pravin Parghi vs. State of Maharashtra and Others*** (supra). According to her, in that case this Court exercised jurisdiction under Article 226 and allowed the writ of habeas corpus. She pointed out that this Court in the said case, had considered both ***Tejaswani Gaud and Others*** (supra) and ***Veena Kapoor*** (supra) and then awarded custody of minor to his own father. She therefore contends that a similar order can be passed in the present petition, directing respondent No. 3 to hand over custody of the minor children to the petitioner despite the pendency of the petitioner's revision application.

9. As regards maintainability of the present writ petition, the Hon'ble Supreme Court in case of ***Tejaswani Gaud and Others*** (supra) has already observed that the father, being the natural

guardian in that case, was justified in invoking the extraordinary remedy under Article 226 of the Constitution of India for seeking custody of the child. Moreover, this court has also taken a view in case of **Pravin Nathalal Parghi** (supra) that in a battle for seeking custody of minor children, the writ of habeas corpus can be issued. However, it is extremely important to note that in case of **Tejaswani Gaud and Others** (supra), the Hon'ble Supreme Court specifically observed that a petition for issuance of a writ of habeas corpus for custody of a minor child is maintainable only when the child is detained by a person not entitled to legal custody. It was further held that such an extraordinary remedy can be granted only in exceptional circumstances where the ordinary remedy provided by law is either unavailable or ineffective. Since the exercise of writ jurisdiction is summary in nature, where the Court is of the view that a detailed inquiry is required, it may direct the parties to approach the competent civil court.

10. It is important to note that in case of **Tejaswani Gaud and Others** (supra), Tejaswani was in fact the aunt of the minor and the Hon'ble Supreme Court directed her to hand over the custody of the child to the first respondent - his father. Similarly, in case of **Pravin Nathalal Parghi** (supra), the petitioner was the biological

father of five year old twins, one of whom was in the custody of the mother and sisters. In both these cases, the persons holding custody of the minors were not legally entitled to retain such custody. Therefore, considering the custody sought by the natural guardian - the father in both cases, the writ of habeas corpus was issued in view of the extraordinary circumstances and considering the legal provisions to that effect.

11. However, in the present case, the mother is seeking custody of the minors from her husband, who is also their natural guardian. The learned counsel for the petitioner interpreted the expression 'ordinary residence of minors' in light of the judgment of the Punjab and Haryana High Court in case of ***Tejbir Singh vs. Baljit Kaur*** (C.R. No. 7257 of 2018, decided on 02/11/2018) as well as Section 6 of the Hindu Minority and Guardianship Act, 1956. Admittedly, under the proviso to Section 6(a) of the said Act, the custody of a minor who has not attained the age of five years shall ordinarily be with the mother and therefore, according to the petitioner, the ordinary place of residence of such minors should be treated as the place where the mother resides. However, the learned District Judge, Latur, while passing the order at Exhibit-15 in the petitioner's custody application, considered the said judgment and

rejected this contention. Against that order, a civil revision application is already pending before this Court.

12. Further, it is extremely important to note that the Hon'ble Apex Court in case of **Tejaswani Gaud and Others** (supra) has observed consistently with its earlier observations that child custody matters require a detailed inquiry with the welfare of the child being the paramount consideration. Therefore, where such detailed inquiry is necessary, the writ court may decline to exercise its extraordinary jurisdiction and may direct the parties to approach the civil court. A similar view was taken by the Hon'ble Supreme Court in case of **Veena Kapoor** (supra), wherein it held that the High Court had erred in dismissing the mother's petition solely on the ground that the child's custody with the father was legal. However, it is equally significant to note that even in that case, despite making such observations, the Hon'ble Apex Court ultimately relegated the parties to the concerned District Judge, Chandigarh, to decide the issue after considering the welfare of the minor. Thus, even the Supreme Court declined to issue a writ of habeas corpus and directed the parties to approach the appropriate district court, observing that in matters of child

custody the paramount consideration is the welfare of the minor, which necessitates a detailed inquiry.

13. In the instant case, the matter is in respect of custody of minors between the mother and the father. Admittedly, both minors are below the age of five years and the mother had already filed an appropriate application under the provisions of the Guardians and Wards Act, 1890 as well as the Hindu Minority and Guardianship Act, 1956, before the District Judge, Latur. The said application is rejected on the ground of territorial jurisdiction, against which a civil revision application is already pending before this Court. Consequently, the grievance regarding the custody of the minor children of the petitioner - mother is to be adjudicated in the said revision application itself. Under these circumstances, the judgments in case of **Tejaswani Gaud and Others** (supra) and **Pravin Nathalal Parghi** (supra), which did not involve disputes between the mother and the father, are not applicable to the instant case. The dispute in respect of the custody of the minor children between the petitioner and respondent No.3 is already pending under the appropriate provisions of law. Therefore, in these circumstances, we deem it appropriate not to exercise the writ jurisdiction for the issuance of a writ of habeas corpus in the

present matter. Accordingly, the present writ petition stands dismissed. The Rule is discharged.

**( Y. G. KHOBRADE, J.)**

**( SANDIPKUMAR C. MORE, J.)**

VS Maind/-