

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 4598 OF 2025

- | | | | |
|----|---------------------------------------|---|----------------|
| 1. | Sandip Baburao Naikwadi |] | |
| | Age 40 years, Occupation Agriculture, |] | |
| | R/at – Charan, Taluka – Shirala, |] | |
| | District – Sangli. |] | ... Petitioner |

Versus

- | | | | |
|----|--------------------------------------|---|-----------------|
| 1. | The State of Maharashtra |] | |
| | Dy. Commissioner of Police, Byculla. |] | |
| 2. | The Senior Police Inspector |] | |
| | Police Station, Byculla, Mumbai. |] | |
| 3. | Tejaswini Sandip Naikwadi |] | |
| | Age about 31 years, Occ. Service, |] | |
| | R/o. C/o. Shri Tanaji Ganga Patil, |] | |
| | 5/375, Parijat Building, |] | |
| | Bapurao Jagtap Marg, Sunder Galli, |] | |
| | Jacob Circle, Byculla, Mumbai. |] | ... Respondents |

Mr. Shivprasad Gaikwad a/w. Mr. Umesh H. Pawar for the Petitioner.
Mrs. S.N. Deshmukh, A.P.P. for the Respondent-State.

Coram : M. S. Karnik &
Ajit B. Kadethankar, JJ.

Date : 17th November 2025.

ORAL ORDER (Per : Ajit B. Kadethankar, J.)

1. The Petitioner seeks writ of *habeas corpus* for production of his son -Master Swaraj Sandip Naikwadi, aged about 10 years and 4 months before this Court. A further direction is also prayed to handover the custody of his son on such terms as this Court deem fit.

1.1 As we have expressed our view that writ of *habeas corpus* wont be issued in the peculiar facts of the present case, we are disposing this Writ Petition at the admission stage and for which, there is no need to issue notice to the Respondent No.3.

2. Mr. Gaikwad, learned counsel for the Petitioner would submit that a matrimonial dispute concerning custody of minor son is pending in between Petitioner and the Respondent No.3. That, the Petitioner and Respondent No.3 married with each other as per the Hindu Rights and Rituals on 2nd July 2014 and are blessed with a son namely, Master Swaraj. He would submit that subsequently there occurred an unfortunate marital discord in between the Petitioner and the Respondent No.3.

3. He would further submitted that both the parties even executed a Memorandum of Understanding about divorce in the present of some witnesses. He would submit that as per the arrangement, master Swaraj resides with the Petitioner.

4. Mr. Gaikwad, learned counsel would submit that the Respondent No.3 filed Civil M.A. No. 12 of 2024 under Section 25 of the Guardians and Wards Act, 1890 in the Court of learned District Judge at Islampur.
5. He would further submit that vide order dated 8th August 2024 the learned District Judge, Islampur granted visiting rights to the Respondent No.3 for every Sunday between 10:00 a.m. to 11:00 a.m..
6. Mr. Gaikwad, learned counsel submits that in Civil M.A. No. 12 of 2024 the Respondent No.3 filed application Exh-16 seeking temporary custody of Master Swaraj during summer vacation.
7. Learned District Judge, Islampur granted temporary custody of Master Swaraj to the Respondent No.3 for the period between 15th May 2025 to 5th June 2025. On the birthday of Master Swaraj i.e. on 28th May 2025, the Respondent No.3 was directed to bring Master Swaraj to Petitioner's house for birthday celebration.
8. Mr. Patil, Ld. Counsel submits that despite the order passed by the learned District Judge, Islampur defining the limit of temporary custody vide order dated 13th May 2025, the Respondent No.3 did not handover custody of Master Swaraj to the Petitioner even after lapse of the said period. Instead, the Respondent No.3 filed another application to extend the period of custody.

9. Thereafter, the Respondent No.3 consistently avoided the proceedings before the learned District Judge on this or that count, and did not handover custody of Master Swaraj to the Petitioner.

10. The Petitioner was therefore constrained to file an application under Section 10 of the Contempt of Courts Act, 1971, before the Id. District Judge for taking action against the R.No.3 for the disobedience of order dated 13th May 2025.

11. It is further submitted that just to avoid handover of custody of the son to the Petitioner, the R.No. 3 filed Misc. Civil Application No. 325 of 2025 in this Court seeking transfer of Civil M.A. No. 12 of 2024 to the Family Court at Mumbai.

12. In the Transfer Proceeding, the R.No.3 even prayed for stay to the proceedings in Civil M.A. No. 12 of 2024.

13. Mr. Gaikwad, learned counsel would submit that the Petitioner is infact wretched of the notorious activities of the Respondent No.3, which are evident from the record. He would submit that neither directions are issued to the R.No. 3 to handover the custody of his son to him by the Ld. District Judge, nor the Contempt proceedings are set in motion. He would further submit that the minor son of the Petitioner i.e. Master Swaraj is not seen since after 5th June 2025 and hence, present Petition is filed to seek the writ of *habeas corpus*.

13.1 Mr. Gaikwad submits that the Petitioner is panic to see his son, and that he had no option than to prefer this writ petition for his legitimate right.

13.2 He would submit that the illegality committed by the R.No. 3 in not restoring back custody of Swaraj to him, and also the delay by the Ld. District Judge in calling upon the R.No. 3 to restore custody of Swaraj to the Petitioner, have resulted into educational loss of his son.

14. We find that apparently this is an issue of custody of a minor. The issue has arisen due to a marital discord in between the Petitioner and the Respondent No.3. The proceedings under Guardians and Wards Act, 1890 are pending before the learned District Judge, Islampur vide Civil M.A. No. 12 of 2024.

15. The Petitioner contends that the Respondent No.3 is in utter violation of the order dated 13th May 2025 passed by the learned District Judge, Islampur granting custody of the minor son to her only for period during 15th May 2025 to 5th June 2025.

16. The further proceedings as narrated by the Petitioner would show that both the parties are claiming custody of their minor son Swaraj.

17. The Petitioner is insisting the Ld. District Judge to direct the R.No. 3 to handover back custody of his minor son to him in view of lapse of the temporary custody period, and has also filed Contempt proceedings.

18. From the pleadings it is seen that the Respondent No.3 has approached this Court seeking transfer of her matter to Mumbai, praying *inter alia* to stay the custody proceedings pending in the District Court.

19. In view of this we do not find that writ of *habeas corpus* could be issued in the given sets of facts.

20. Mr. Gaikwad, learned counsel for the Petitioner relies upon a Judgment rendered by the Hon'ble Supreme Court in the case of ***Tejaswini Gaud & Others Vs. Shekhar Jagdish Prasad Tewari & Others***¹, and contends that even in such case writ of *habeas corpus* can be issued. The Hon. Supreme Court has held in the cited case that even in the case of custody of a minor, in the peculiar exceptional circumstances a writ of *habeas corpus* could be issued. However with due respect, we find that the facts of the cited case and the case in hand differ from each other.

21. We find that although no exceptional case could be seen to exercise extraordinary jurisdiction to issue a writ of *habeas corpus*, we observe that the ld. District Judge, Islampur, must look into seriously for scrupulous compliance of his own order dated 13th May 2025.

22. It must be born in mind that compliance of a judicial order, must be paid highest regard and priority.

1 (2019) 7 SCC 42

23. In view of this, we dispose of this Writ Petition by giving liberty to the Petitioner to persuade the Id. District Judge, Islampur for meticulous compliance of the order dated 13th May 2025 passed in C.M.A. No. 12 of 2024.

24. There could be no disagreement that the Id. District Judge, is expected to pass adequate orders keeping in mind the earlier orders passed by him / her, in respect of the custody of Master Swaraj.

25. We make it clear that we have not made any observation on merits or rights of either party to retain custody of the Master Swaraj.

26. Writ Petition is disposed of accordingly.

[Ajit B. Kadethankar, J.]

[M. S. Karnik, J.]

OMKAR
SHIVAHAR
KUMBHAKARN

Digitally signed
by OMKAR
SHIVAHAR
KUMBHAKARN
Date:
2025.11.18
14:11:27
+0530