

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 1500 OF 2024

Datta Balasaheb Awate

..Petitioner

Versus

Dhanvi Datta Awate & Anr.

..Respondents

Ms. Prabha Badadare a/w. Omkar Nagvekar for Petitioner.

Mr. Nitin P. Deshpande (appeared through V.C.) a/w. Kanchan Phatak for Respondent No.1.

Mr. Arfan Sait, APP for State/Respondent.

**CORAM : SARANG V. KOTWAL &
S. M. MODAK, JJ.**

DATE : 8 JANUARY 2025

PC :

1. This is a petition for writ of *habeas corpus* filed by the father of two young children. The children are twins; a son and a daughter. They are five year old. The allegations are that, they are illegally detained by their natural mother i.e. the Respondent No.1.

2. Learned counsel for the Petitioner could not point out as to how custody of the children with their natural mother becomes illegal custody and how it can be said that it is illegal detention. He could not point out how writ of *habeas corpus* could be issued

in this case. The only contention which the learned counsel for the petitioner raised is that the petitioner was given the notice dated 23.03.2024 U/s.149 of the Cr.p.c. by the P.S.I. Sangvi police station.

3. It is pertinent to note that the Petitioner has not approached any civil forum for seeking custody of their children. The petitioner has only filed a petition for restitution of conjugal rights, however, no proceedings are preferred before any civil forum for custody of the children. In this view of the matter, the writ of *habeas corpus* cannot be issued. The children's custody cannot be said to be illegal. Therefore, we are inclined to dismiss this writ petition. It has also to be considered that the Respondent No.1 who is wife of the Petitioner and who is looking after their children had to approach this Court to contest this petition by engaging an advocate and had to incur the expenses. Therefore, we are inclined to impose some cost on the petitioner which will have to be paid to the Respondent No.1.

4. Hence, the following order:

ORDER

- i) The writ petition is dismissed.
- ii) The Petitioner shall pay cost of Rs.25000/- (Rupees Twenty Five Thousand only) to the Respondent No.1 within a period four weeks from today.

(S. M. MODAK, J.)

(SARANG V. KOTWAL, J.)