

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

**CRIMINAL WRIT PETITION NO.1071 OF 2025**

Amrit Sunil Chopra

.... Petitioner

versus

The State of Maharashtra & Anr.

.... Respondents

.....

- Ms. Usha Tanna a/w Hemal Ganatra a/w Aashita Nair i/b. Usha Tanna & Associates, Advocate for Petitioner.
- Mr. J. P. Yagnik, APP for the State/Respondent.
- Mr. Adab Singh Kapoor a/w Mr. Sachin R. Agawane, Advocate for Respondent No.2.

**CORAM**

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

**RESERVED ON : 16<sup>th</sup> APRIL, 2025**

**PRONOUNCED ON : 28<sup>th</sup> APRIL, 2025**

**ORDER : (PER : SARANG V. KOTWAL, J.)**

1. Heard Ms. Usha Tanna, learned Counsel for the Petitioner, Mr. Adab Singh Kapoor, learned counsel for the Respondent No.2 and Mr. J. P. Yagnik, learned APP for the State.

2. This Petition is filed by the father of a 7 year old daughter praying for issuance of writ in the nature of habeas corpus.

3. The Respondent No.2 is the wife of the Petitioner and the child at present is with her.
4. The brief facts mentioned in the Petition are that the Petitioner and the Respondent No.2 got married on 08/06/2014 at Vashi, Navi Mumbai. The daughter was born on 28/12/2017 and is about 7 years and 4 months old as of today. It is alleged in the Petition that the Respondent No.2 was aloof and distant from the daughter and did not develop proper connection with her. To ease the situation, the Petitioner opted for work from home job in March 2021. The Petition mentions that in September 2024, the Respondent No.2 conceived their second child through IVF. In October 2024, the minor daughter suffered from prolonged infection and the Petitioner and his mother looked after the child. While the Respondent No.2 was away travelling for work purpose, the minor child continued her school and the Petitioner looked after the child. The dispute between the husband and the wife continued. The Respondent No.2 wanted divorce from the Petitioner. On 14/01/2025, the Respondent No.2 took the daughter with her to Kolkata on some

pretext and thereafter never returned back home. The Petitioner received a notice dated 23/01/2025, wherein various allegations were made against the Petitioner that the Petitioner failed to abide by the promise and did not arrange for separate accommodation with all amenities to the same standard which the Respondent No.2 was accustomed to. The Respondent No.2 continued to reside at Kolkata with the daughter. She preferred appropriate proceedings under the Hindu Marriage Act, 1955 and Protection of Women from Domestic Violence Act, 2005, proceedings bearing No.A-305/2025. According to the Petitioner, he arranged for rental apartment. On 05/02/2025, the Petitioner filed the proceedings for divorce and for custody of the child before the Family Court at Bandra, Mumbai.

5. In this background, the present Petition is filed for issuance of writ in the nature of habeas corpus for custody of the daughter.
6. Learned counsel for the Petitioner made the following submissions :

The daughter was wrongfully taken away. Therefore, she is in illegal custody of the Respondent No.2. She restricted him from meeting the daughter. The welfare of the child includes love and affection of the father as well. The father was looking after the child through out. He had even paid the school fees. The Respondent No.2 never looked after the child. The Respondent No.2 is in the advanced stage of her second pregnancy. She is not in a position to look after the child. The learned counsel for the Petitioner relied on certain judgments which are discussed below.

7. Learned counsel for the Respondent No.2 on the other hand submitted that the Respondent No.2 had to leave Mumbai only because of the husband's behaviour. The Respondent No.2 wanted an alternate accommodation for her family. She was accustomed to basic minimum standard of life which was not being provided by the husband. She is now residing in her parent's house. She and the daughter are properly looked after. She is in a position to take care of the daughter. The Respondent No.2 is the biological mother and therefore the custody of the

child cannot be termed as an illegal custody. The present Petition is filed as a counterblast to the legal notice sent by the Respondent No.2 to the Petitioner. The Petitioner has already preferred substantive proceedings before the competent Court and therefore all these questions can be decided by the competent Court. The habeas corpus Petition is not the proper remedy. The Respondent No.2 has filed a reply which is termed as preliminary reply by the Respondent No.2.

8. We have considered the submissions.
9. Learned counsel for the Petitioner relied on the judgment of a Division Bench of this Court in the case of ***Abhijit S. Shingote Vs. State of Maharashtra, as reported in 2024 SCC Online Bom 1288***. It was held by the Division Bench that the habeas corpus Petition is maintainable in view of the observations of the Hon'ble Supreme Court in the case of ***Yashita Sahu Vs. State of Rajasthan, as reported in (2020)3 SCC 67***. It was further observed that the Court must regard the minor's welfare as the first and paramount consideration, and may not take into consideration whether from any other point of view

the father's claim in respect of that custody or upbringing is superior to that of the mother, or the mother's claim is superior to that of the father.

10. In a judgment of another Division Bench of this Court in the case of *Abhay Vs. Neha Joshi and Another, as reported in 2023 SCC Online Bom 1943* also reiterates that the expression "best interest of the child" should always be kept as paramount consideration. It is wide in its connotation.

In *Yashita's* case, it was held that the Courts should decide the issue of the custody only on the basis of what is in the best interest of the child.

11. The Respondent No.2 on the other hand relied on the observations of Hon'ble Supreme Court in the case of *Nithya Anand Raghavan Vs. State (NCT of Delhi) and Another, as reported in (2017) 8 Supreme Court Cases 454*. The relevant paragraph No.47 is as follows :

"47. In a habeas corpus petition as aforesaid, the High Court

must examine at the threshold whether the minor is in lawful or unlawful custody of another person (private respondent named in the writ petition). For considering that issue, in a case such as the present one, it is enough to note that the private respondent was none other than the natural guardian of the minor being her biological mother. Once that fact is ascertained, it can be presumed that the custody of the minor with his/her mother is lawful. In such a case, only in exceptionable situation, the custody of the minor (girl child) may be ordered to be taken away from her mother for being given to any other person including the husband (father of the child), in exercise of writ jurisdiction. Instead, the other parent can be asked to resort to a substantive prescribed remedy for getting custody of the child.”

12. Thus from the analysis of this judgment, it is quite clear that in all such habeas corpus Petitions, the paramount consideration is the welfare of the child and the best interest of the child. In the present case, the daughter is with the mother. The daughter is only 7 years of age. It cannot be said that she is in illegal custody of the mother. The father i.e. the Petitioner has already instituted the divorce proceedings with the prayer for custody of the child as mentioned earlier. It would be the substantial remedy wherein the Court which is seized of that

matter, can decide the question regarding the welfare of the child and the rights of the parties. That Court has the advantage of accepting evidence and deciding the matter on the basis of that evidence. Habeas corpus Petition can be decided only by summary procedure on the basis of the pleadings of the parties. In the present case both the parties have disputed each others claims. Therefore, at this stage, it is not possible to hold that the welfare of the child will be served if the custody is taken away from the mother and is handed over to the Petitioner, who is the father of the child. All these issues will have to be decided by the Court that is already seized of the matter for divorce and custody. Therefore, we are not inclined to pass any order in favour of the Petitioner in this case. The Petition is accordingly dismissed.

**(S. M. MODAK J.)**

**(SARANG V. KOTWAL, J.)**