

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.558 of 2026

Manish Kumar Mani S/O Sh. Chandra Kumar Jha Resident of Village-Prasad, P.S- Madhepur, District- Madhubani, Bihar- 847408.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Home, Govt. of Bihar, Patna Bihar
2. The Director General of Police, Government of Bihar, Patna Bihar
3. The Superintendent of Police, Madhubani Bihar
4. The Station House Officer (SHO) P.S Bheja, Distt.- Madhubani
5. Sonam Jha W/O Shri Manish Kumar Mani D/O Shri Amodh Mishra, R/O Village and Post- Rahua, P.S- Bheja, Distt.- Madhubani, Bihar- 847408.
6. Vipul Kumar Mishra S/O Amodh Mishra R/O Village and Post- Rahua, P.S- Bheja, Distt.- Madhubani, Bihar- 847408.
7. Mamta Mishra W/O Sh. Amodh Mishra R/O Village and Post- Rahua, P.S- Bheja, Distt.- Madhubani, Bihar- 847408.
8. Amodh Mishra R/O Village and Post- Rahua, P.S- Bheja, Distt.- Madhubani, Bihar- 847408.
9. Vishwash Kumar Mishra R/O Village and Post- Rahua, P.S- Bheja, Distt.- Madhubani, Bihar- 847408.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Rakesh Kumar Singh, Adv.
For the Respondent/s : Mr. Amish Kumar, AC to AG.

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
and
HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

2 19-03-2026 Heard learned counsel for the parties.

2. Following are the relief(s) sought in the present
application :

*"(i) For directing the Respondents to
forthwith hand over the custody of the minor
children, namely Manash Kumar Jha and Astuti
Jha, to the Petitioner.*



(ii) For passing an order granting the Petitioner regular, structured, and meaningful visitation/access rights to the minor children, including but not limited to: (i) every alternate weekend (Saturday and Sunday) (ii) one week during every school vacation period; (iii) daily telephonic/video interaction for a minimum period of thirty (30) minutes; and (iv) overnight visits at least twice a month;

(iii) For Custody, Visitation, and Protection of the welfare of his minor children, who have been unlawfully and illegally withheld by the Respondents for a continuous period of more than two (2) years.

(iv) For directing the Respondent to cease and desist from alienating the minor children from the Petitioner, and from making any derogatory, false, or defamatory statements about the Petitioner in the presence of the minor children;

(v) For directing that a psychological and welfare assessment be conducted on the minor children by a competent child psychologist / child welfare expert appointed by this Hon'ble Court, and that a report be submitted within a period of four (4) weeks, to determine the current emotional and psychological condition of the minor children and the impact of the prolonged separation from their father."

3. By filing the present writ application, the petitioner is seeking custody of his children, who are presently in the custody of their mother.

4. Considering the facts and circumstances of the case, this Court is of the opinion that the dispute raised involves adjudication of custody rights. Such issues are appropriately to be examined by the competent Family Court under the



provisions of the Hindu Minority and Guardianship Act, 1956 or Guardians and Wards Act, 1890 as the case may be.

5. At this juncture, it would be relevant to take note of the Hon'ble Supreme Court's decision in **Tejaswini Gaud v. Shekhar Jagdish Prasad Tewari**, reported in **(2019) 7 SCC 42**, wherein the court made the following observations:

"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."

6. Further, in **Nirmala v. Kulwant Singh**, reported in **(2024) 10 SCC 595**, the Hon'ble Supreme Court agreed with the view in **Tejaswini Gaud** (supra), and observed as under:



"23. It can thus be seen that this Court in Tejaswini Gaud case has held that the habeas corpus is a prerogative writ which is an extraordinary remedy. It has been held that recourse to such a remedy should not be permitted unless the ordinary remedy provided by the law is either not available or is ineffective. It has been held that in child custody matters, the power of the High Court in granting the writ is qualified only in cases where the detention of a minor by a person who is not entitled to his legal custody. It has further been held that 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.

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30. We are of the considered view that in the peculiar facts and circumstances of the case, the High Court ought not to have entertained the habeas corpus petition under Article 226 of the Constitution of India. Since a detailed enquiry including the welfare of the minor child and his preference would have been involved, such an exercise could be done only in a proceeding under the provisions of the Guardians and Wards Act, 1890."

7. Considering the nature of dispute and the discussions made hereinabove, the petitioner is at liberty to approach the Family Court seeking custody of his children. If any such application is made before the Family Court, the Family Court shall consider the same and pass an appropriate



order in accordance with law after taking the necessary evidence and the statement of the children.

8. With the aforesaid liberty, the present application stands disposed of.

9. Pending application(s), if any, shall also stand disposed of.

(Sudhir Singh, J)

(Shailendra Singh, J)

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