

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.744 of 2026

Arising Out of PS. Case No.-177 Year-2026 Thana- PHULWARISHARIF District- Patna

Sana Shahin, Wife of Md. Saddam Hussain Ansari Resident of Village-
Hutton Road, Near Rabbania F.P. School, P.S.- Asansol, District- Bardhaman,
(West Bengal). At present Resident of Village- M.R.F. Green Apartment,
Nauhasa, P.S.- Phulwarisharif, Dist.- Patna

... .. Petitioner/s

Versus

1. The State of Bihar through Addl. Chief Secretary, Home Deptt. Govt. of Bihar, Patna
2. The Director General of Police, Govt. of Bihar, Patna.
3. The Dy. Inspector of General, Patna
4. The Senior Superintendent of Police, Patna
5. The Dy. S.P., Phulwarisharif, Patna
6. The S.H.O. Phulwarisharif Police Station, Patna
7. Md. Saddam Hussain Ansari S/o Late Md. Ismail Ansari Resident of Village- Flat No. 301, MRF Apartment, Near Abdul Ghar Masjid, Sir Syed Ahamd Colony, Phulwarisharif, P.S.- Phulwarisarif, District- Patna
8. Kulsum Begum W/o Late Md. Ismail Ansari Resident of Village- Flat No. 301, MRF Apartment, Near Abdul Ghar Masjid, Sir Syed Ahamd Colony, Phulwarisharif, P.S.- Phulwarisarif, District- Patna
9. Md. Sultan Ansari S/o Late Md. Ismail Ansari Resident of Village- Flat No. 301, MRF Apartment, Near Abdul Ghar Masjid, Sir Syed Ahamd Colony, Phulwarisharif, P.S.- Phulwarisarif, District- Patna
10. Bilkiss Khatoon D/o Late Md. Ismail Ansari Resident of Village- Flat No. 301, MRF Apartment, Near Abdul Ghar Masjid, Sir Syed Ahamd Colony, Phulwarisharif, P.S.- Phulwarisarif, District- Patna

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Ranjeet Patel, Adv.
For the Respondent/s : Mr. P.N. Sharma, AC to AG

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

(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

2 09-04-2026

Heard learned counsel for the parties.

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



application :

"1. For issuance of a writ, in the nature of writ of habeas corpus directing the Senior Superintendent of Police, Patna to take the minor daughter from the custody of miscreants, who has illegally detained the minor daughter of the petitioner in their custody.

II. For issuance of the writ of mandamus directing Senior superintendent of Police, Patna to produce the petitioner's minor daughter in the Hon'ble court and be released the minor daughter from the custody of the in-laws and be handed over her. It is further be pleased to take necessary legal steps against husband of the petitioner as well as against in-laws accordance with law.

III. For issuance of any writ/writs, for granting any other relief/ reliefs for which petitioner is found entitled to the facts and circumstances of the present case."

3. By filing the present writ application, the petitioner is seeking custody of her minor daughter, who is presently in the custody of her father.

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 Guardians and Wards Act, 1890.

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 her minor daughter. 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 child.

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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