IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION (HABEAS CORPUS) NO. 12282 of 2026

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KATHAN BHAGIRATH NAYAK
Versus
STATE OF GUJARAT & ORS.

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Appearance:
MR.ASHISH N PANDYA(9802) for the Applicant(s) No. 1
MR BHARATKUMAR H OZA(12150) for the Respondent(s) No. 4
MR ASHISH N. CHAUDHARY, ADVOCATE FOR MR JIGAR B OZA(11654) for the Respondent(s) No. 4
MR L B DABHI, APP for the Respondent(s) No. 1

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CORAM: **HONOURABLE MR. JUSTICE ILESH J. VORA**
and
HONOURABLE MR. JUSTICE R. T. VACHHANI

Date : 27/10/2026

ORAL ORDER
(PER : HONOURABLE MR. JUSTICE ILESH J. VORA)

1. The petitioner/husband – Kathan Bhagirath Nayak, being a father of corpus – daughter aged about 6 years, has invoked the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, seeking a writ of Habeas Corpus for production and custody of minor daughter, presently residing with respondent no.4 Pooja Swami, who is the mother of the child, inter alia alleging that the corpus is in illegal confinement of the mother – respondent no.4 at Village Karad, Dist.: Satara, Maharashtra.

2. We have heard learned counsel Mr. Ashish N. Pandya and Mr. Ashish N. Chaudhary for Mr. Jigar B. Oza for the respective parties.

3. Brief facts giving rise to file present petition are stated to be as under:

(i) The petitioner and respondent no.4 got married on 25.06.2019 and

thereafter, they resided at Ahmedabad. Out of the wedlock, two daughters were borne out. Due to matrimonial discord, the parties are residing separately. The petitioner being a Dental Surgeon, settled in Ahmedabad and presently, working as a Doctor at Godhra, whereas the respondent – wife, after the dispute, living at her parental home – Karad, Dist.: Satara, Maharashtra. The elder daughter A aged about 6 years, at the time of separation on account of matrimonial discord, was remained with the petitioner husband and younger daughter was with the wife respondent.

(ii) Both the parties have filed an application for permanent custody of elder daughter A under the provision of Guardians and Wards Act, 1890 before the Family Court at Ahmedabad as well as Court at Karad, Maharashtra.

(iii) The respondent wife, thereafter, filed a complaint no.79 of 2025 under the provision of Domestic Violence Act and pending the complaint vide Exh.38, sought interim custody of the elder daughter A, invoking Section 21 of the DV Act, 2005. The Court at Karad, vide its order dated 30.04.2026 was pleased to reject the application. On appeal, the Sessions Court vide its judgment dated 20.05.2026, while partly allowing the appeal, set aside the order of the Karad Court and granted temporary custody of the elder daughter A for the period from 23.05.2026 to 30.05.2026 to the respondent wife and further directed to handover the custody on 31.05.2026 to the husband petitioner at Ahmedabad. The petitioner husband pursuant to the order of the Sessions Court, handed over the custody of the corpus elder daughter A to the respondent wife.

However, she failed to return the custody of the child to the petitioner husband at Ahmedabad.

4. In such circumstances, it is submitted that the wife has illegally confined the corpus and in willful defiance to the order dated 20.05.2026 passed by the learned Court of Sessions, Karad, Satara District, Maharashtra and refused to comply with the directions of the Court. With a view to non-compliance of the order, just a day before handing over the child to the petitioner, an FIR on 29.05.2026, came to be registered at Karad, alleging that the child was assaulted by the husband and his family members on 23.05.2026 and therefore, by preferring this petition for habeas corpus, the necessary direction is being sought to produce the child before this Court and further seeks a direction of her custody in terms of order passed by the Sessions Court, Karad.

5. Mr. Ashish N. Pandya, learned counsel appearing for the petitioner - husband, made the following submissions:

(i) That, the custody of the minor daughter was given by the Sessions Court, Karad, District: Satara, Maharashtra for a limited period with a specific direction to handover the custody to the father after completion of the said period. However, in willful defiance to the order, the wife-respondent refused to handover the custody and the mother’s deliberate non-compliance with the court’s custody order is significant circumstance for exercising discretion in favour of the applicant-husband as after lapse of specific period, the custody cannot be said to be a lawful custody and same is regarded as

unauthorized or contrary to the subsisting judicial order.

(ii) That, instead of handing over the child back to the husband, the wife hatched a conspiracy and with a clear malice in her mind, got registered an FIR on 29.05.2026 just a day before the completion of time to handover the child to the petitioner. It is relevant to note that, in the FIR, it is alleged that the child was assaulted by the father and his family members on 23.05.2026. However, she did not approach the police station on the same day which shows that the FIR is nothing but a sinister design by the wife so as to create an atmosphere to defy the order of the Sessions Court, Karad and frustrate the husband's rightful and legal custody of the child.

(iii) That, once by judicial order the custody of the child handed over to the mother for a limited period, then, neither the Karad Police, nor Child Welfare Committee, Satara are competent authority to adjudicate any matter related to the child in question without the permission/order of the Family Court, Ahmedabad under whose jurisdiction, the child ordinarily resides and a custody petition under Guardian and Wards Act is pending for its adjudication.

(iv) That, the mother had an occasion to meet the corpus on various occasions for visitation such as 30.09.2025, 18.10.2025, 09.02.2026 to 18.02.2026. During those visitation and temporary custody periods, the mother did not file any complaint regarding assault and harassment meted out to the child. Thus, in order to get custody, she created a false narrative

and with the help of police and others, she keeps continue the custody of the child illegally and the same is nothing, but an illegal confinement of the child by the mother.

(v) That, the petitioner-husband is highly qualified Dental Surgeon and his father is also a Doctor and therefore, the allegation of harassment to the child cannot be accepted and same is alleged to deprive the husband the custody of the child and to scuttle the legal process.

(vi) That, the corpus – daughter was happy in the family environment of the husband and now, due to illegal confinement of her, the daughter is deprived of her academic classes as she is studying in Class – Senior K.G. at Ahmedabad School and she is very good in her studies and excelled academically well in her school at Ahmedabad and she also enrolled in various Co-curricular activities and classes at Ahmedabad like dance classes, drawing classes and abacus classes. The husband and his family members sent the daughter to the picnic organized by the school and lastly, on 30.03.2026, her half yearly birthday was celebrated with full joyous and she was used to taken at the play zone, metro rides, temples, scooter rides etc. which facts demonstrates that she was happy with the petitioner – father and his family and considering the attending circumstances, it could be inferred that the husband and his family members never committed any act of cruelty as alleged.

6. In such circumstances, Mr. Pandya, learned counsel appearing for

the petitioner-husband submitted that, if the child would continue in the custody of the mother, then, she would face a language and food problem because she is not accustomed by Marathi food and culture as compared to Gujarati environment. Thus, therefore, when the mother – respondent has deliberately retained the child contrary to the subsisting order of the court, her custody has now become unauthorized and having regard to the welfare of the child, the custody with the mother certainly can be characterized as illegal and unauthorized.

7. Thus, it was submitted that, case is made out for exercising extraordinary jurisdiction of this Court for issuance of necessary directions to handover the custody to the petitioner and therefore, the necessary direction may be issued, as prayed for against the mother-respondent.

8. Opposing the prayer, Mr. Ashish N. Chaudhary, learned counsel appearing for and on behalf of the respondent – mother herein submitted that, from 23.05.2026, the custody of the minor daughter is with the mother and during the interaction with the daughter, it was revealed that, the daughter was crying on 26.05.2026 and told her mother that she like her company and in the company of her father, she was locked in the house and she was scolded by father and others and lastly, her father slapped and scolded her. Thus, during the custody with the father, the minor corpus was kept under metal pressure and created fear in her mind and subjected the minor to mental and physical cruelty. Thus, the mother compelled to lodge an FIR with Karad Police Station on 29.05.2026 under Section 75 of The J.J. Act, 2015, Section 115(2), 127(2), 351(2)

and 3(5) of the BNS, 2023. The corpus daughter was brought before the Child Welfare Committee, Karad. The mother had informed to the Judicial Magistrate Court, Karad about the cruelty meted out to her at the instance of father and others and therefore, considering these subsequent events, the mother's custody of the daughter for all purpose cannot be said to be unauthorized and/or illegal. It was further submitted that, it was the husband who had raised the legal contention before the Supreme Court in a Special Leave Petition arising out of the order passed by the High Court of Judicature at Bombay in Writ Petition No.21439 of 2024, that the power of High Court in granting the writ of habeas corpus in child custody matter, is qualified only in cases where the detention of a minor by a person who is not entitled to his legal custody.

9. In such circumstances, it was submitted that, instead of availing appropriate remedy before the Sessions Court, Satara for non-compliance of the order of before the Family Court where the custody matter is pending, the petitioner husband with a view to harass the wife, has preferred this Habeas Corpus application and therefore, the petition is misconceived and amounts to an attempt to bypass the statutory remedies available.

10. Lastly, it was submitted that, the custody of the daughter with the mother is lawful and in her best interest and cannot be termed as illegal detention so as to justify the issuance of writ of habeas corpus and therefore, it is prayed that, no case is made out for exercising extraordinary jurisdiction of this Court.

11. We have considered the submissions made by learned counsel appearing for the respective parties and carefully perused the material on record.

12. It is not in dispute that, since the order passed by the Sessions Court, Karad, the minor daughter aged about 6 years, is presently residing with mother at Karad, Satara. We have interacted with the child in the chamber. The minor daughter aged about 6 years, has expressed her desire and wish that she is happy with her mother and does not wish to reside with the father. Admittedly, the dispute a custody battle between the parents. The record indicates that on 06.10.2026, the Coordinate Bench of this Court had interacted with the corpus and noticed that, the corpus was having strong reservation against the petitioner father. It is not in dispute that the order granting one week's custody and directing the mother to handover the daughter to the father was passed by Additional Sessions Judge, Karad. In that view of the matter, the petitioner father should have approached the court concerned for enforcement or appropriate proceedings instead of invoking jurisdiction of this Court under Article 226/227 of The Constitution of India. It is settled position of law that, the custody with natural guardian, particularly the mother cannot ordinarily be termed "illegal" so as to justify the issuance of writ of habeas corpus.

13. We may profitably refer to and rely on case of ***Sarita Sharma Vs. Sushil Sharma, (2000) 3 SCC 14***, wherein, considering the all the aspect relating to the welfare of the children, the Supreme Court while dismissing the writ petition, observed as under:

> *when the minor child is in custody of the mother, such custody cannot be considered unlawful merely because the father seeks custody, and it was not proper for the High Court to have allowed the Habeas Corpus writ application and directed the appellant to handover custody of the children to the respondent and permit him to take them away to USA. What would be in the interest of children requires a full and thorough enquiry and therefore, the High Court should have directed the respondents to initiate appropriate proceedings in which such an enquiry can be held.*

14. In the judgment of ***Tejaswini Goud Vs. Shekhar Jagdishprasad Tiwari, (2019) 7 SCC 42***, the Supreme Court reiterated that writ of habeas corpus in child custody matter is maintainable only where the custody is unlawful or without authority of law. Even in such cases, the Court must be guided by the paramount consideration of welfare of the child rather than the legal rights of the parties. The Supreme Court further held that, in child custody matters, the ordinary remedy lies only under the Hindu Minority and Guardianship Act, 1956 or the Guardians and Wards Act, 1890. If the court believes that the matter requires a thorough examination of facts, it may choose not to use its extra ordinary jurisdiction and instead instruct the parties to seek relief before a Civil Court. Only in rare and exceptional circumstances, the court will decide custody rights through its extra ordinary jurisdiction. The relevant paras, 19 and 20 reads as under:

> *"19. Habeas corpus proceedings is not to justify or examine the legality of the custody. Habeas corpus proceedings is a medium through which the custody of the child is addressed to the discretion of the court. Habeas corpus is a prerogative writ*

which is an extraordinary remedy and the writ is issued where in the circumstances of the particular case, ordinary remedy provided by the law is either not available or is ineffective; otherwise, a writ will not be issued. 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. In view of the pronouncement on the issue in question by the Supreme Court and the High Courts, in our view, 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.

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 Guardian and Wards Act and the exercise of powers by a writ court which is of 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."

15. Again, in ***Kanika Goel Vs. State of Delhi, (2018) 9 SCC 578***, the

Supreme Court held *that in petition seeking the writ of Habeas Corpus, the High Court must examine at the threshold whether the minor is in lawful custody of another person (private respondent). Whether the custody is with the mother, the Court may not make any further enquiry or resort to a summary or elaborate enquiry to determine the welfare of the child*.

16. Reverting back to the facts of the present case, the petitioner father though residing in Ahmedabad, but he is serving at the remote area of Gujarat i.e. at Godhara far away at the distance of 250 kilometers from Ahmedabad and in his absence, the minor daughter was in care of her grandparents, whereas, presently, the minor is with her mother and considering her age and other attending circumstances, as referred above, the mother has kept custody of the minor daughter beyond statutory time limit as directed by the Sessions Court, Karad. However, the fact remains that the petitioner father till date, not filed any application, raising grievance about the custody of the child with the mother before any Court of Karad, Satara, nor filed any application before the Family Court, Ahmedabad or Karad. Admittedly, both the parties have filed a custody application under Guardians and Wards Act, 1890 and same are pending at different Family Courts i.e. Karad and Ahmedabad. In such circumstances, in our opinion, the petitioner husband should pursue ordinary statutory remedy before the Competent Court instead of directly approaching this Court seeking an extraordinary remedy under Article 226/227 of The Constitution of India.

17. For the aforementioned reasons, in the facts of the present case, we deem it fit not to exercise our extra ordinary jurisdiction. It is open to the

parties to avail alternative remedies in accordance with law. We further make it clear that, we have not examined or expressed any opinion on the rival claims of the parties regarding permanent or interim custody of the minor child.

18. Accordingly, this petition stands dismissed at the admission stage.

(ILESH J. VORA,J)

(R. T. VACHHANI, J)

TAUSIF SAIYED

Original copy of this order has been signed by the Hon'ble Judges.
Digitally signed by: TAUSIFAHMED SAIYED(HC01401), PRIVATE SECRETARY, at High Court of Gujarat on 27/10/2026 15:16:06