

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 371 OF 2026

Shamik Haresh Hirani)
Hindu, Indian Inhabitant,)
Age 34 years, Occupation – Self employed)
Residing at 801, Rudraksh Co-op. Hsg. Society)
Nariman Road, Opp. Nariman Tower)
Vile Parle (East), Mumbai – 400 057)
Mobile : + 91 7045897796)
Email : shamikhareshhirani#gmail.com)...Petitioner

Versus

1. The State of Maharashtra)
Through Sr. Police Inspector)
Borivali Police Station)
(Notice to be served on A.P.P.)
High Court, Mumbai))

2. Richita Shamik Hirani)
Nee Richita Pravin Shah)
Age 34 years, Occupation – Service)
Hindu, Indian Inhabitant of Mumbai)
Residing at 801, Goyal Plaza)
Carter Road No.4, Borivali (East))
Mumbai – 400 066.)
Email : drichitashah@gmail.com)
Mobile # 91 9820658744)

3. Lata Pravin Shah)
Age 55 years, Occupation – Housewife)
Residing at 801, Goyal Plaza)

Carter Road No.4, Borivali (East)	)
Mumbai – 400 066.	)
4. Pravin Thanmal Shah	)
Age 58 years, Civil Contractor	)
Residing at 801, Goyal Plaza	)
Carter Road No.4, Borivali (East)	)
Mumbai – 400 066.	)
5. Sandeep Mehta	)
Age 50 years, Occupation – Business	)
Residing at : The Nest Building,	)
4 th Floor, Plot No.21, Gulmohar Road	)
MHADA Colony, Andheri (West),	)
Mumbai – 400 049.	)
Mobile : 9930222020	)
6. Witty World (Witty Kids)	)
International School	)
Through its Principal, having its address	)
at Block – 7, Phase 2, Kanti Park Layout	)
Kanit Park Road, Borivali (West)	)
Mumbai – 400 092.	)
7. ‘H’	)
Age 4 years, Occupation – Nil	)
residing at 801, Rudraksh Co-op.	)
Hsg.Society, Nariman Road,	)
Opp. Nariman Tower	)
Vile Parle (East), Mumbai – 400 057.	)...Respondents

Ms. Firoza Daruwala a/w Ms. Prabha Badadare & Ms. Khushi Desai
for the Petitioner.

Ms. Supriya Kak, A.P.P for the Respondent-State.

Ms.Firdaus Moosa i/b Hemali Mehta Tejani for the Respondent No.2.

CORAM : SARANG V. KOTWAL &
SANDESH D. PATIL, JJ.
RESERVED ON : 18th APRIL, 2026
PRONOUNCED ON : 24th APRIL, 2026

JUDGMENT (PER SANDESH D. PATIL, J.) :

1. By this petition, the Petitioner, who is the father of the minor child 'H' (hereinafter referred to in short as 'the minor child') is seeking issuance of Writ of Habeas Corpus to produce the minor child before this Court.

2. The case of the Petitioner is as follows :

The marriage between the Petitioner and the respondent No.2 was solemnized on 4th December, 2017. The minor child was born on 24th February, 2021. Since birth, the minor child resided with the Petitioner being a father and the respondent No.2 being a mother. There were some matrimonial disputes between the Petitioner and the

respondent No.2. the minor child is at present in custody of the respondent No.2. The Petitioner has filed the present writ petition for production of the minor child before this Court.

3. This Court on 30th January, 2026, had referred the matter to a Mediator. The parties went for Mediation, however, the Mediation has failed.

The respondent No.2 – wife had sought time to file affidavit-in-reply and accordingly, the affidavit-in-reply was filed. We again asked the parties whether they would like to reconcile the differences amongst themselves, to which, the parties answered in the negative. This Court had vide order dated 25th March, 2026 directed that the learned Family Court before whom the application preferred by the Petitioner–husband for custody of the minor child, is pending, shall expeditiously take up the application and if necessary, the application for interim custody / interim access shall be heard on urgent basis and that the pendency of the present petition shall not

come in the way of the Family Court to decide the issue. We are informed across the bar that in pursuance to the Order dated 25th March, 2026, the learned Family Court had ordered that both the parties shall file written notes of arguments, on record on 28th April, 2026. Thus, the matter is fixed before the learned 5th Family Court at Bandra, Mumbai for hearing of the custody application on 28th April, 2026. This in short, is a conspectus of the matter in hand.

4. The learned Counsel appearing for the respondent had raised a preliminary issue regarding maintainability of the petition as according to the respondent No.2, an appropriate remedy in the nature of the application for custody of the minor child is already adopted by the Petitioner before the Family Court.

5. Heard the learned Counsel Ms. Firoza Daruwala appearing for the Petitioner and learned Counsel Ms. Firdaus Moosa appearing for the respondent No.2.

6. Learned Counsel for the Petitioner submitted that the

marriage between the parties i.e. the Petitioner and the respondent No.2 was solemnized on 4th December, 2017. The minor child was born on 24th February, 2021. Initially, in February, 2023, the minor child was enrolled in Veda Montessori which was in close proximity to the Petitioner's residence. She submitted that the respondent No.2 left her matrimonial house after packing her belongings and stridhan without taking the minor child on 24th March, 2025. The minor child, thereafter, remained in the care, custody of the Petitioner and his family, at his residence. It is further contended that the respondent No.2 returned on 30th March, 2025 to her matrimonial house and continued to reside there. Once again, following an argument on 23rd April, 2025, the respondent No.2 left her matrimonial house and went to reside at her parental residence without the minor child.

7. Learned Counsel for the Petitioner invited our attention to the reply which was filed by the respondent No.2 in this Court. She submitted that in para 22 of the affidavit-in-reply, the respondent

No.2 has categorically stated that she had left the matrimonial house after the arguments. It is further submitted by the learned Counsel appearing for the Petitioner that at the request of the respondent No.2, the minor child was sent to the parental residence of the respondent No.2 on 24th April, 2025. Since there was a birthday party, the respondent No.2, after attending the birthday party with the minor child, returned the minor child back to the Petitioner on 27th April, 2025. It is her contention that the minor child continued in the settled custody of the Petitioner at the residence of the Petitioner from 27th April, 2025. Learned Counsel for the Petitioner further submitted that on 2nd May, 2025 the respondent No.2 alongwith respondent No.3 (her mother) surreptitiously entered the Petitioner's residence in his absence. The respondent Nos. 4 and 5 remained stationed in the vehicle outside with the engine of the vehicle running. She submitted that the respondent Nos. 2 and 3 forcefully removed the minor child without the Petitioner's knowledge and consent. She relied upon the photographs which were annexed to Annexure "F" to the petition to buttress her contention. In addition to this, she stated

that even the respondent No. 2 has admitted in para 29 of her affidavit in reply that the respondent No.2 had taken away the minor child from her matrimonial house.

8. Learned Counsel appearing for the Petitioner contended that the respondent No.2 thus, unlawfully removed the minor child from the custody of the Petitioner and forcefully took the minor child to the parental home of the respondent No.2 on 2nd May 2025. She contended that the custody with the respondent No.2 is thus illegal and that the minor child be brought back and be placed in the custody of the Petitioner.

9. As far as the issue regarding maintainability of the petition is concerned, the learned Counsel appearing for the Petitioner submitted that the minor child was in a settled and continuous custody of the Petitioner since his birth. It is only on 2nd May, 2025 that the respondents in absence of the Petitioner, forcibly and surreptitiously removed the minor without the knowledge and consent of the

Petitioner. This, according to the learned Counsel for the Petitioner is not a mere dispute as to guardianship or access, but it is a matter concerning a wrongful and unlawful removal from the settled custody. She stated that the petition is, therefore, maintainable. Learned Counsel for the Petitioner further contended that where the custody of the minor is illegal or without the authority of law, the petition seeking Habeas Corpus is maintainable, even where the minor child is in custody of another parent. In support of her contention, she had relied on the Judgment of the Apex Court in the case of *Yashita Sahu v. State of Rajasthan & Ors*¹. She further stated that the Writ Court can certainly examine illegality of custody and intervene where detention of the minor child by a parent was illegal and without the authority of law. In support of her contention, she also relied upon the Judgment of the Apex Court in the case of *Tejaswini Gaud & Ors.v. Shekhar Jagdish Prasad Tewari & Ors.*²

10. Learned Counsel appearing for the Petitioner further stated

1 (2020) 3 SCC 67

2 (2019) 7 SCC 42

that mere pendency of the custody proceedings before the learned Family Court does not bar the petition in view of the forcible and unilateral removal of the minor child. She stated that the writ jurisdiction is invoked by her to remedy an immediate illegality and to restore *status-quo ante*, while final custody will be decided by the competent Court.

Learned Counsel for the Petitioner stated that the inherent jurisdiction of this Court to issue writ of Habeas Corpus is constitutional in nature and not circumscribed by the statutory remedies. She further stated that the Habeas Corpus jurisdiction in the minor child custody matter is an independent and inherent jurisdiction exercised as *parens patriae* and is not curtailed by availability or pendency of statutory remedies. She relied upon the Judgment in the case of *Rajeswari Chandrasekar Ganesh v. State of Tamil Nadu & Ors.*³. She submitted that the writ petition is therefore maintainable.

3 (2023) 12 SCC 472.

As far as merits of the case as stated above is concerned, according to the learned Counsel for the Petitioner, the minor child was very well in the custody of the Petitioner till 2nd May, 2025 and that the minor child was forcibly removed from the custody of the Petitioner without his knowledge and/or consent. She stated that the incident of the respondent Nos. 2 and 3 forcibly removing the minor child from the custody of the Petitioner is clearly visible in the CCTV footage. She, therefore, prayed that the petition be allowed.

11. Learned Counsel Ms.Moosa, on the other hand, contended that the petition was not maintainable. She submitted that the remedy of Habeas Corpus in custody matter can be exercised only in extraordinary circumstances and that the present case certainly does not fall in the term of extraordinary circumstances. She submitted that the present case is not of illegal detention because the respondent No.2 is a natural guardian. She stated that she had entered her matrimonial house on 2nd May, 2025 by using the fingerprint lock. She submitted that thus, the respondent No. 2 has not illegally barged

into the house. She stated that when she went to her matrimonial house on 2nd May, 2025, she saw her minor child vomiting and that therefore, being the mother, she calmly picked up the minor child. Learned Counsel for the respondents submitted that the respondent No.2 had not pushed or assaulted the Petitioner's sister and that she merely wanted to take the minor child to a doctor as the minor child's condition was not stable. She further submitted that the minor child was repeatedly vomiting and was unwell. She has drawn our attention to para 29 of her affidavit-in-reply to show as to in what circumstances the minor child was taken away from the matrimonial home by the Petitioner.

12. Learned Counsel for the respondent No.2 contended that the arguments of the Petitioner that the Petitioner was denied access to the minor child and also not allowed to contact the minor child is also incorrect. She stated that the Petitioner knows about the whereabouts of the minor child. She stated that on 13th, 14th, 17th, 18th, and 19th May, 2025, the Petitioner had met the minor child on multiple

occasions. She relied upon para 33 of the affidavit-in-reply of the respondent No.2 to buttress her contentions.

She stated that that Petitioner has threatened to circulate the private videos of the respondent No. 2 and hence, the respondent No.2 is apprehensive about the behaviour of the Petitioner. She stated that the custody application was filed by the Petitioner somewhere in July, 2025 before the learned Family Court. The present petition is filed in January, 2026 when the custody petition was already pending before the learned Family Court. She stated that the learned Family Court has already kept the matter for accepting the written arguments of the parties, on 28th April, 2026. She further stated that this Court has already expedited the hearing of the custody petition including the interim / ad-interim applications preferred in the said custody petition. She stated that the minor child is in lawful custody of his mother. The application for custody is pending before the appropriate Family Court. She stated that there are several disputed questions of facts in the present case and that the same is left to be decided before the

Family Court in the custody application.

In support of her case, she relied upon the Judgment in the case of *Jose Antonio Zalba Diez Del Corral v. The State of West Bengal & Ors.*⁴. She places reliance on para 14 to contend that the Writ of 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 ineffective. She stated that since the learned Family Court has already placed the matter on 28th April, 2026 for taking the written arguments on record, there is no element of “extraordinary circumstance” for entertaining this petition. She also relied upon the Judgment in the case of *Varun Malhotra v. The State of NCT of Delhi & Ors.*⁵ to contend that while deciding the matters of custody of a minor child, primary and paramount consideration is welfare of the minor child. She stated that the issues pertaining to competing actual allegations cannot be satisfactorily resolved in writ petition. She has

4 (2024) 12 scc 419

5 MANU/DE/1682/2026

tendered, across the bar, the order dated 13th April, 2026 passed by the learned Family Court at Bandra, Mumbai in custody application file by the Petitioner. She, at the end, prayed for the dismissal of the petition.

13. We have heard the learned Counsel appearing for the parties, at length. The preliminary objection of the respondents is that the writ petition for Habeas Corpus is not maintainable, particularly, in view of the fact that the Petitioner has already approached the Family Court by filing custody application, requires to be considered first. In this case, the allegations of the Petitioner - father is that the minor child was taken out of his custody without his knowledge and consent from his residence and hence, the writ petition was maintainable. The very basis of the case of the Petitioner is that the respondent No. 2 barged in the house of the Petitioner and high-handedly took the minor child from the house. It is also the contention of the Petitioner that the present remedy availed by him is an independent and inherent jurisdiction of this Court and therefore,

mere pendency of custody application would not be relevant. As against this, learned Counsel for the respondents has relied upon her affidavit where she has stated that she always had access to her matrimonial house. It is contended by the respondent No.2 that she had never barged illegally into the house as alleged by the Petitioner, instead, she had entered the house by using the fingerprint lock and that because the minor child was too ill, hence, she had taken away him to the doctor for the treatment. The entire cornerstone of the arguments of the respondent is that the minor child has never been in exclusive custody of the Petitioner and that she never barged into the house illegally, but went to her matrimonial house peacefully.

14. The issue as to whether what had happened on 2nd May, 2025 is the issue for core consideration. Both the parties have given different versions about the said incident. Whereas, the Petitioner contended that the said entry was illegal and forceful, so also the exit of the respondent No. 2 from the house alongwith the minor child was illegal and surreptitious. The respondent No. 2, on the other

hand, contended that she had entered the house by using the fingerprint lock. She contended that the house was her matrimonial house. She also contended that only because the minor child was vomiting and was not well, hence, she had taken the minor child with her. This disputed question of fact certainly cannot be gone into by this Court.

15. The pleadings of the parties are totally divergent on this view. This is a case of oath against oath. The Petitioner - father has filed the custody application before the learned Family Court which is pending before the learned 5th Family Court at Bandra, Mumbai, is required to be taken into consideration. It is also further required to be considered that on 25th March, 2026, in this very petition, this Court had directed the Family Court to expeditiously take up the application of custody, if necessary, the application of interim custody or interim access, on urgent basis. This order is holding the field till today, that is not challenged by any of the parties. Further the fact remains that the learned 5th Family Court, at Bandra, Mumbai, in

proceedings bearing Petition No. D-79 of 2025 has observed that the interim custody application of the minor child of the Petitioner was taken up for hearing. The reply was filed by the respondents therein to the said application. Both the parties vide Order dated 13th April, 2026 are directed to file their written notes of arguments on 28th April, 2026 and the matter is posted immediately on the said date.

16. Thus, the learned Family Court is deciding the application for interim access / custody filed by the Petitioner on an urgent basis. Since, several disputed questions of facts are arising in this proceedings, coupled with the fact that the competent Family Court has already taken up the matter on an urgent basis and has now kept the matter on 28th April, 2026, we do not find it appropriate to entertain the present petition.

17. The pleadings before the learned Family Court are completed. The written arguments will be filed on 28th April, 2026 and as such, it would be in the interest of the parties that the parties

are relegated to the Family Court for the purpose of deciding the application for interim custody / access. We find that there are no extraordinary circumstances to entertain the present petition. We, therefore, dismiss the petition keeping the contention of both the sides open in the custody petition filed before the learned Family Court.

18. We have perused the Judgments cited by both the parties. The common thread which runs through all those Judgments is that welfare of the minor child is of primary consideration. As stated above, there are several disputed questions of facts which are involved in this petition. It is best left for the Trial Court to decide the matter on merits. There is no extraordinary circumstance made out by the petitioner to disturb the custody of the minor child at this juncture. The minor child at present is in safe custody of the mother. We are, therefore, not granting any relief in this petition.

19. We are conscious of the human emotions, the Petitioner being father of the minor child has chosen to approach this Court for

expeditious access. We do not find any fault in the conduct of the Petitioner. We, therefore, do not propose to impose any cost on the Petitioner, though the learned Counsel for the petitioner had prayed for heavy costs.

20. We make it clear that we have not gone into the merits of the contentions raised by both the sides. All contentions of the parties are expressly kept open.

21. The learned Family Court, to decide the application for interim custody / access without being influenced by any of the observations made in this petition.

22. No relief is granted in this petition. Petition is dismissed accordingly.

SANDESH D. PATIL, J.

SARANG V. KOTWAL, J.