

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

WRIT PETITION NO.737 OF 2026

Kanchan Akshay Shinde)
Aged 28 years, Indian inhabitant,)
Residing at – H/23, Best Staff Quarters)
1st Floor, Sai Baba Road, Near Gandhi)
Hospital, Parel, Mumbai-400 012.)... Petitioner

Versus

1.The State of Maharashtra)
(At the instance of Vikhroli Police)
Station,Mumbai-400 083.))

2. Akshay Suresh Shinde)
Age 32 Years,)
Residing at :- Building No7A)
Room No.506, Indradhanush Tower)
Kannamwar Nagr, Vikhroli,)
Mumbai-400 083.)

3. Darshana Devre)
Residing at : Building No.7A,)
Room No.506, Indradhanush Tower)
Kannamwar Nagar, Vikhroli,)
Mumbai-400 083.)... Respondents

Ms. Aarti R. Dharamsey for the Petitioner.

Ms. Mahalakshmi Ganapathy for Addl.PP for Respondent No.1-State.

Mr. Bilal Chougule a/w Mr. Rugved Naik for Respondent Nos.2 and 3.

Mr. Vitthal Pardhi, Police Sub-Inspector, attached to Vikhroli Police Station, Mumbai.

**CORAM : SARANG V. KOTWAL &
SANDESH D. PATIL, JJ.**

DATE : 10th MARCH 2026

P.C.

1) This is a writ petition filed by the mother of a 12 months' old daughter for issuance of a writ in the nature of *habeas corpus*.

2) It is the case of the Petitioner that her husband-Respondent No.2. assaulted and abused her on 6th February 2026 in their matrimonial house. She had to leave the house to protect herself. Since then, the 12 months old daughter is in the custody of Respondent No.2. Respondent No.3 is the married sister of the Respondent No.2. The Petitioner's daughter was born on 15th February 2025. As of today, she is around 1 year and one month old.

3) Learned Counsel for the Petitioner submitted that the Petitioner's daughter still needs breastfeeding partially especially during the night. The Petitioner and the Respondent No.2 got married on 31st December 2023 at Kanjurmarg, Mumbai. They started residing in their matrimonial house at Vikhroli, Mumbai. It is the case of the Petitioner

that since beginning, she was subjected to physical, emotional and mental cruelty. She was harassed verbally and physically by the Respondent No.2 and his family. On 27th September 2024, the Petitioner had lodged a NC complaint at Vikhroli Police Station regarding the physical assault committed by the Respondent No.2 on her, but no effective action was taken. Respondent No.2 never improved his behavior. He used to get wild and cruel with the Petitioner. He did not even change after the birth of their daughter.

4) On 6th February 2026, Respondent no.2 assaulted the Petitioner verbally and physically. Respondent No.3 in the state of intense rage snatched the Petitioner's minor child from her, even though she was breastfeeding her daughter. The Respondent No.2 restrained the Petitioner and locked the minor child inside a room, thereby preventing the Petitioner from accessing her own infant daughter. The Petitioner had to leave the house scared for the safety. She went to the Police Station. The Police merely registered an NC, but they did not register an F.I.R.

5) In this background, she approached this Court seeking two reliefs. First main relief is, issuance of a writ of *habeas corpus*, directing Respondent Nos.2 and 3 to produce the minor daughter and handing over the custody to the Petitioner. The second relief is for registration of offences against the Respondent Nos.2 and 3.

6) We have heard Ms. Aarti R. Dharamsey, learned Counsel for the Petitioner, Ms. Mahalakshmi Ganapathy learned Addl.PP for Respondent No.1-State and Mr. Bilal Chougule, learned Counsel for Respondent Nos.2 and 3.

7) Learned Counsel for the Petitioner does not press the prayer for registration of offences against the Respondent Nos. 2 and 3 at this stage. She has pressed the prayer for a writ of *habeas corpus* and handing over custody of the minor daughter.

8) The learned Counsel for the Petitioner made submissions in consonance with the Petitioner's case mentioned in the petition. In

addition, she relied on the additional affidavit tendered today, which contains some photographs of the incident and also WhatsApp messages exchanged between the parties, which show that Respondent No.2 had sent messages in abusive and filthy language to the Petitioner.

9) On the other hand, learned Counsel for the Respondent Nos.2 and 3 relied on the affidavit in reply filed by the Respondent No.2. He submitted that the Petition is not maintainable. If one of the natural parents retains the custody of their minor children, it is not illegal detention, and therefore, a writ of *habeas corpus* cannot be issued. He submitted that the Petitioner herself had left the matrimonial house, leaving behind the 12 months old daughter. At that time, she had shown no love and affection for the daughter. He relied on certain communications between the parties. It seems through WhatsApp messages exchanged in the month of February 2026, the relationship was normal and both the parties had shown caring attitude towards each other. He submitted that the Petitioner is not working. On the other hand, the Respondent No.2 is gainfully employed in a private company. The Respondent No.2 is residing with his old parents. His mother has undergone knee replacement surgery. His family is looking

after the child. The Respondent No.3 hardly visits the Respondent No.2's place, except on some occasions when her son who is suffering from Thalassemia, requires treatment. He, thus, reiterated that the Petition is not maintainable and a writ of habeas corpus cannot be issued.

10) We have considered these submissions. We have perused the WhatsApp messages. Though on some occasions, messages indicated the relationship was normal, but we have also seen the messages, where the Respondent No.2 had sent abusive messages in a filthy language to the Petitioner. There are certain photographs annexed to her additional Affidavit. There is a substance in her allegations that she was forced to leave the matrimonial house and she was scared for her safety. The daughter was snatched from her. She had not left the daughter willingly with the husband and his family.

11) As the learned Counsel for the Respondent Nos.2 and 3 submitted that in such case a writ of habeas corpus cannot be issued. We have examined this aspect in the light of observations made by the Hon'ble

Supreme Court. In this context the observations made by the Supreme Court in the case of **Rajeshwari Chandrasekar Ganesh Vs. State of Tamil Nadu and Ors**, reported in **(2023) 12 Supreme Court Cases 472**, are important. Paragraphs 99, 100, 101 and 102, in that context are important, which reads thus :-

“99. Thus, it is well established that in issuing the writ of habeas corpus in the case of minors, the jurisdiction which the Court exercises is an inherent jurisdiction as distinct from a statutory jurisdiction conferred by any particular provision in any special statute. In other words, the employment of the writ of habeas corpus in child custody cases is not pursuant to, but independent of any statute. The jurisdiction exercised by the court rests in such cases on its inherent equitable powers and exerts the force of the State, as parens patriae, for the protection of its minor ward, and the very nature and scope of the inquiry and the result sought to be accomplished call for the exercise of the jurisdiction of a court of equity. The primary object of a habeas corpus petition, as applied to minor children, is to determine in whose custody the best interests of the child will probably be advanced. In a habeas corpus proceeding brought by one parent against the other for the custody of their child, the Court has before it the question of the rights of the parties as between themselves, and also has before it, if presented by the pleadings and the evidence, the question of the interest which the State, as parens patriae, has in promoting the best interests of the child.

100. The general principle governing the award of custody of a minor is succinctly stated in the following words in Halsbury's Laws of England, 4th Edn., Vol. 24, Para 511 at p. 217:

"...Where in any proceedings before any court the custody or upbringing of a minor is in question, then, in deciding that question, 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."

101. In the American Jurisprudence, Vol. 39, 2nd Edn., Para 148 at pp. 280-81, the same principle is enunciated in the following words:

"... a court is not bound to deliver a child into the custody of any claimant or of any person, but should, in the exercise of a sound discretion, after careful consideration of the facts, leave it in such custody as its welfare at the time appears to require".

102. In the footnote 14 at p.281, the following extracts from two American cases are set out which also emphasis this point :

"The employment of the forms of habeas corpus in a child custody case is not for the purpose of testing the legality of a confinement or restraint as contemplated by the ancient common law writ, or by statute, but the primary purpose is to furnish a means by which the court, in the exercise of its judicial discretion, may determine what is best for the welfare of the child, and the decision is reached by a consideration of the equities involved in the welfare of the child, against which the legal rights of no one, including the parents, are allowed to militate." Howarth v. Northcott 152 Conn 460.

The Hon'ble Supreme Court has observed that the primary object of *habeas corpus* petition, as applied to minor children, is to determine in whose custody the best interests of the child will probably be advanced. In a habeas corpus proceeding brought by one parent

against the other for the custody of their child, the Court has before it the question of the rights of the parties as between themselves, and also has before it, if presented by the pleadings and the evidence, the question of the interest which the State, as *parens patriae*, has in promoting the best interests of the child.

12) Applying those guidelines to the present facts of the case, we find that in this case, the interest of the child lay in the custody being handed over to the mother-the Petitioner. The Respondent No.2 is gainfully employed. He is hardly at home during the working hours. As admitted, his parents are old, his mother had undergone knee replacement surgery. There is no one else to look after the child. Respondent No.3 is residing elsewhere. Her own son is suffering from medical issues. Therefore, it is quite clear that there is no one from the his family to look after the one year old child.

13) On the other hand, the Petitioner is not working. She is residing with her parents and brother's family. She is in a position to look after the child through out the day and night. As mentioned before us that

the child is dependent to some extent on breastfeeding. This is also an important consideration. There is previous history of physical and mental abuse meted out to the Petitioner, therefore, her apprehension to reside in the matrimonial house is not unjustified.

14) This matter was listed before us on 9th March 2026. We interviewed both the parties in our Chambers and we made efforts, so that the parties could arrive at some form of settlement. But we observed that the apprehension was deep rooted in the mind of the Petitioner and it was difficult for her to go back and reside with the Respondent No.2.

15) In this view of the matter, the best interest of the child would be served, if the custody is handed over to the Petitioner, i.e. to the mother of one year old daughter. While handing over the custody, one option was to direct the Respondent No.2 to produce the child before the Court and then hand over to the custody of the Petitioner, but the child is too young, her best interest would be served, if the Police are directed to take steps in that behalf. It is needless to add, the parties

would have to obtain necessary orders for custody from the competent Court, by exercising their statutory rights. In that case, if such proceedings are filed, they shall be decided without being influenced by this Order. Hence, the following Order.

: O R D E R :

- (i) The Officers of Vikhroli Police Station, Mumbai, including at least two lady Police Officers, shall take steps to take the custody of the Petitioner's minor daughter from the Respondent No.2 and immediately hand her over to the Petitioner.
- (ii) The Police Officers shall give sufficient notice to the Petitioner, as to when they will be undertaking this exercise.
- (iii) It is directed that the custody be handed over on or before **11th March 2026**. In the meantime, the Respondent No.2 shall keep his minor daughter in his house and shall not take any steps to remove her from there.

(iv) With these directions, the Petition is allowed and is disposed of.

(SANDESH D. PATIL, J.)

(SARANG V. KOTWAL, J.)