



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETITION NO. 96 OF 2026

[Praful Shankar Gedam **vs.** The State of Maharashtra, through the Commissioner of Police,
Nagpur and ors.]

Office Notes, Office Memoranda
of Coram, Appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's orders

Mrs. Meera P. Kshirsagar, Advocate for the petitioner
Mr. A. B. Badar, A.P.P. for the State

CORAM : **ANIL L. PANSARE AND**
NIVEDITA P. MEHTA, JJ.

DATE : **04-02-2026.**

Heard.

2. The petitioner – husband has filed petition seeking writ/direction in the nature of habeas corpus directing respondent nos. 1 to 3 to trace his minor son Vipul, who is, as such in the custody of his mother – respondent no. 4.

3. According to the petitioner, the mother is suffering from mental ailment and is not in a position to take care of the child. Learned counsel for the petitioner has relied upon order of the trial Court dated 16-1-2026 directing respondent no. 4 to hand over interim custody of the child to the petitioner. The trial Court has also directed the concerned police station to take custody of the child and hand it over to the petitioner, if its order is not complied by respondent no. 4.

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4. We requested learned Additional Public Prosecutor (APP) to take instructions from concerned police station. Accordingly, instructions are taken.

5. Learned APP submits that respondent no. 4 is not available at the place mentioned in the application. He further submits that order dated 16-1-2026 has been challenged by the brother of respondent no. 4. The details, however, are not furnished.

6. Thus, interim custody is granted to the petitioner and the order by which it is granted is under challenge. The word 'interim custody' would also mean that the custody is otherwise maintained with the respondent no. 4. Such a custody cannot be treated as illegal detention.

7. Here, we invite attention of the petitioner to the judgment of the Supreme Court in the case of ***Tejaswini Gaud and others Vs. Shekhar Jagdish Prasad Tewari and others [(2019) 7 SCC 42]*** wherein the Supreme Court, after considering earlier judgments, held thus :

"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

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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 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.”*

8. Considering the position of law as mentioned above as also what we have mentioned in earlier paragraphs, the petitioner shall justify filing present

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petition. In the meantime, issue notice, returnable in three weeks.

9. Learned APP waives notice for respondent nos. 1 to 3.

(JUDGE)

(JUDGE.)

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