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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(CRL) 417/2026

NEETU

.....Petitioner

Through: Mr. Vikas Padora, Mr. Aakash
Kumar, Ms. Aayushi Gupta,
Advocates.

versus

STATE OF NCT OF DELHI & ORS.

.....Respondent

Through: Mr. Sanjay Lao, Standing
Counsel with Mr. Abhinav
Kumar Arya, Mr. Aryan
Sachdeva, Ms. Priyam
Aggarwal, Advs. and Insp.
Sudhir Kumar, PS Chhawla for
State.
Mr. Dilip Kumar Jha, Adv. for
Respondent no. 3 with R-3 in
person.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

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22.04.2026

1. This petition has been filed under Article 226 of the Constitution of India read with Section 528 Bharatiya Nagarik Suraksha Sanhita, 2023, seeking a Writ of Habeas Corpus for production of the minor daughter of the petitioner and the respondent no. 3.
2. We, by our order dated 05.02.2026, had referred the parties to mediation. Unfortunately, the parties could not settle their disputes.
3. The learned counsel for the respondent no. 3 has submitted that the present petition is not maintainable, as the custody of the child in the hands of the father cannot be said to be illegal. He submits that the



petitioner had herself left the child in the custody of the respondent no.

3. He also makes allegations against the character of the petitioner.

4. As far as leaving the custody of the minor child with the respondent no. 3 is concerned, it is the case of the petitioner that she was, in fact, thrown out of her matrimonial home and was subjected to cruelty, including physical cruelty. It is further contended that almost immediately upon being thrown out, the petitioner filed complaints with the police regarding the illegal detention of the child by the respondent no. 3. She also makes allegation of physical and mental cruelty against respondent no. 3.

5. In this petition, we are not concerned with the *inter se* allegations made by the petitioner and the respondent no. 3 regarding their matrimonial disputes. These issues are to be adjudicated in an appropriate forum. In this petition, we are only concerned with the welfare of the child. Though, the learned counsel for the respondent is correct in contending that a Writ of Habeas Corpus cannot be a substitute for a guardianship petition, which would be filed before the concerned Family Court, and also that the custody of the minor child with the father cannot be said to be illegal, which is a pre-condition for entertaining a Writ of Habeas Corpus, at the same time, in the judgment of ***Tejaswini Gaud and Ors. v. Shekhar Jagdish Prasad Tewari and Others***, (2019) 7 SCC 42, the Supreme Court held that habeas corpus proceedings are not to justify or examine the legality of custody, it is a medium through which the custody of a child is addressed to the discretion of the Court; it 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. In child custody matters, the writ also extends its influence to restore the custody of a minor to his guardian, when wrongfully deprived of it. What is important is the welfare of the child and the Court is not bound by the mere legal right of the parents or the guardian. The Court exercises *parens patriae* Jurisdiction and should give due weight to the child's ordinary comfort, contentment, intellectual, moral and physical development, including ethical values.

6. Section 6 of the Hindu Minority and Guardianship Act, 1956 states that the custody of a minor child, who has not completed the age of 5 years, should ordinarily be with the mother.

7. Today, we have again interacted with the parties. Through this interaction, an admitted fact which emerges is that the respondent no. 3 is earning a living by driving his car on a commercial basis. He is presently not residing at the matrimonial home, but has shifted to a place in Dwarka and is staying with a lady friend, who he claims looks after the child while he is away for work.

8. The girl child is only around two and a half years old and, therefore, requires nurturing from the mother. We, therefore, find that the welfare of the child would be best in the care and custody of the mother.

9. Guided by the consideration of welfare of the minor child, as also the above statutory provision, we are of the opinion that the present petition is maintainable and that the welfare of the minor child would be in restoration of her custody to the mother, that is, the



petitioner herein.

10. The custody of the minor child has been handed over to the petitioner, who shall now keep her. The petitioner shall also allow access and visitation to the respondent no. 3.

11. The petition is disposed of in terms of the aforesaid orders.

12. We make it clear that our above opinion and observations will not affect adjudication of any proceedings that may be filed by either of the parties regarding their custody/visitation rights before a Court of competent jurisdiction.

NAVIN CHAWLA, J

RAVINDER DUDEJA, J

APRIL 22, 2026/lks/sk/Yg