IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRWP-6232-2025

Date of decision: 27.08.2025

Veerpal Kaur

….Petitioner

versus

State of Punjab and others

….Respondents

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present:- Mr. Chetan Goyal, Advocate for the petitioner.

Mr. Gurpartap Singh Bhullar, AAG Punjab.

Mr. Siddharth Gupta, Advocate for respondent No.4.

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SUMEET GOEL, J.

The *petition in hand* filed under Articles 226/227 of the Constitution of India, in essence, is aimed at directing respondent No.4 (father of the child in question) to hand over the custody of a minor child aged about 04 years to the petitioner (mother of the child in question).

2. Shorn of non-essential details, the relevant factual matrix of the *lis* in hand is adumbrated, thus:

(i) The petitioner-mother and respondent No.4-father were married on 05.11.2019 in accordance with Sikh rites and rituals. One male child (hereinafter referred to as '*child in question*') was born on 26.08.2021 and is currently aged about 04 years.

(ii) Respondent No.4-father had filed a petition under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as '*HMA*') for

dissolution of marriage between him and the petitioner-mother, in January 2024, wherein, the petitioner-mother (herein) had filed an application for visitation rights. However, the main petition for grant of divorce was withdrawn on 21.05.2024 by respondent No.4-father.

(iii) The petitioner-mother is stated to have filed a petition under the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as '*DV Act*') wherein, an application preferred by her, for issuance of direction to respondent No.4-father (herein) to allow her to meet the *child in question* was declined on 11.02.2025. It is common ground between the counsel for rival parties that the said order has not been challenged till date.

(iv) The petitioner-mother has also instituted an application under Section 25 of the Guardians and Wards Act, 1890 (hereinafter referred to as '*GW Act*') for seeking custody of the child in question from respondent No.4-father (herein) in January 2025, which is still pending adjudication.

(v) This Court has been accordingly petitioned, by way of the *petition in hand*, on the premise that the petitioner–mother is entitled to have custody of the *child in question* and respondent No.4–father is in illegal/wrongful custody of the *child in question*.

Rival Submissions

3. Learned counsel appearing for the petitioner-mother has argued that the *child in question* was born on 26.08.2021 and is currently aged only about 04 years and, therefore, welfare of the *child in question* as also the mandate of law necessitates that custody of the *child in question* should be

with the petitioner. Learned counsel has urged that the petitioner-mother, on account of ill treatment at the hands of respondent No.4-father and his family members, was constrained to leave the matrimonial home and the atmosphere prevailing in the house of respondent No.4 – father is not congenial for upbringing of minor *child in question*. Learned counsel has iterated that respondent No.4 – father is indulging in illicit relations with women and is habitual of taking drugs/ intoxicants. On the strength of these submissions, grant of *petition in hand*, is entreated for.

4. A status report by way of an affidavit dated 24.06.2025 of Rupinder Kaur, PPS, Deputy Superintendent of Police, Sub division Dirba on behalf of respondents No.1 to 3 has been filed. Learned State counsel has raised submissions in tandem with the said status report.

However, keeping in view the nature of *lis* in hand, this Court finds that, primarily, it is contest for custody of the *child in question* between the petitioner-mother & the respondent No.4 - father and, thus, the State of Punjab is not a contesting party.

5. Learned counsel appearing on behalf of respondent No.4 – father has vehemently opposed the *petition in hand* by urging that the petitioner – mother is guilty for suppression of material facts from this Court. He has argued that the petitioner – mother has filed a petition under Section 25 of the *GW Act*, but has deliberately not divulged the same in the present petition. Learned counsel has further relied upon the order dated 11.02.2025 passed by the learned JMIC, Sangrur in *DV Act* proceedings, wherein, prayer for interim visitation rights made by the petitioner–mother

was declined; to substantiate the contention of the petitioner-mother not having disclosed true and correct facts of the *petition in hand.* Learned counsel has further argued that welfare of the *child in question* demands that his custody should continue with respondent No.4 – father. It has further been urged that the *petition in hand*, filed in the shape of writ petition of Habeas Corpus, is not maintainable. On the strength of these submissions, dismissal of the *petition in hand* has been canvassed for.

6. I have heard learned counsel for the rival parties and have perused the available record.

Prime Issue

7. The seminal legal issue which arises for rumination in the *petition in hand* is the realm of exercise of jurisdiction of the High Court in a Habeas Corpus writ petition when there is statutory alternative remedy available in the form of a petition under the Hindu Minority and Guardianship Act, 1956/ the Guardians and Wards Act, 1890.

The analogues issue that arises is whether the petitioner – mother should be afforded custody of the *child in question* in the factual milieu of the *petition in hand*.

Relevant Statute

8. Article 226 of the Constitution of India (hereinafter referred to as 'Article 226) reads thus:

> "***226. Power of High Courts to issue certain writs*** *– (1) Notwithstanding anything in article 32 every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government,*

within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

(2) The power conferred by clause (1) to issue directions, orders or writs to any Government authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories."

Relevant Case Law

9. The precedent(s), *apropos* to the issue(s) in hand are, thus:

(i) The Hon'ble Supreme Court in a judgment titled as ***Dr. Mrs. Veena Kapoor versus Varinder Kumar Kapoor, 1982 AIR Supreme Court 792***; has held as under:

"*3. It is difficult for us in this habeas corpus petition to take evidence without which the question as to what is in the interest of the child cannot satisfactorily be determined. We, therefore, direct that the learned District Judge, Chandigarh, will make a report to us before 23rd of this month on the question as to whether the custody of the child should be handed over to the petitioner-mother, taking into consideration the interest of the minor. The learned Judge will give liberty to the parties to adduce evidence on the question in issue. The learned District Judge may either take up the matter himself or assign it to an Additional District Judge, if there is any at Chandigarh.*"

(ii) The Hon'ble Supreme Court in a judgment titled as ***Syed Saleemuddin versus Dr. Rukhsana, 2001(2) RCR (Criminal) 591***; has held as under:

"*9. xx xx xx*

From the principles laid down in the aforementioned cases it is clear that in an application seeking a writ of Habeas Corpus for custody of minor children the principal consideration for the Court is to ascertain whether the custody of the children can be said to be unlawful or illegal and whether the welfare of the children requires that present custody should be changed and the children should be left in care and custody of somebody else. The principle is well settled that in a matter of custody of a child the welfare of the child is of paramount consideration of the Court."

(iii) The Hon'ble Supreme Court in a judgment titled as ***Nithya Anand Raghavan versus State of NCT of Delhi & Anr., 2017(3) RCR (Civil) 798***; has held as under:

"*28. The present appeal emanates from a petition seeking a writ of habeas corpus for the production and custody of a minor child. This Court in* ***Kanu Sanyal v. District Magistrate, Darjeeling & Ors., 1974(4) S.C.C. 141****, has held that habeas corpus was essentially a procedural writ dealing with machinery of justice. The object underlying the writ was to secure the release of a person who is illegally deprived of his liberty. The writ of habeas corpus is a command addressed to the person who is alleged to have another in unlawful custody, requiring him to produce the body of such person before the Court. On production of the person before the Court, the circumstances in which the custody of the person concerned has been detained can be inquired into by the Court and upon due inquiry into the alleged unlawful restraint pass appropriate direction as may be deemed just and proper. The High Court in such proceedings conducts an inquiry for immediate determination of the right of the person's freedom and his release when the detention is found to be unlawful. In a petition for issuance of a writ of habeas corpus in relation to the custody of a minor child, this Court in* ***Sayed Saleemuddin v. Dr. Rukhsana & Ors., 2001(2) RCR (Civil) 613: 2001(2) RCR (Criminal) 591 : (2001) 5 SCC 247****, has held that the principal duty of the Court is to ascertain whether the custody of child is unlawful or illegal and whether the welfare of the child requires that his present custody should be changed and the child be handed over to the care and custody of any other person. While doing so, the paramount consideration must be about the welfare of the child. In the*

case of Mrs. Elizabeth (supra), it is held that in such cases the matter must be decided not by reference to the legal rights of the parties but on the sole and predominant criterion of what would best serve the interests and welfare of the minor. The role of the High Court in examining the cases of custody of a minor is on the touchstone of principle of parens patriae jurisdiction, as the minor is within the jurisdiction of the Court (see ***Paul Mohinder Gahun v. State of NCT of Delhi & Ors., 2005(1) RCR (Civil) 737 : 113 (2004) Delhi Law Time 823*** *relied upon by the appellant). It is not necessary to multiply the authorities on this proposition.*

29. The High Court while dealing with the petition for issuance of a writ of habeas corpus concerning a minor child, in a given case, may direct return of the child or decline to change the custody of the child keeping in mind all the attending facts and circumstances including the settled legal position referred to above. Once again, we may hasten to add that the decision of the Court, in each case, must depend on the totality of the facts and circumstances of the case brought before it whilst considering the welfare of the child which is of paramount consideration.

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30. In a habeas corpus petition as aforesaid, the High Court must examine at the threshold whether the minor is in lawful or unlawful custody of another person (private respondent named in the writ petition). For considering that issue, in a case such as the present one, it is enough to note that the private respondent was none other than the natural guardian of the minor being her biological mother. Once that fact is ascertained, it can be presumed that the custody of the minor with his/her mother is lawful. In such a case, only in exceptionable situation, the custody of the minor (girl child) may be ordered to be taken away from her mother for being given to any other person including the husband (father of the child), in exercise of writ jurisdiction. Instead, the other parent can be asked to resort to a substantive prescribed remedy for getting custody of the child."

(iv) The Hon'ble Supreme Court in a judgment titled as ***Tejaswini Gaud and Ors. versus Shekhar Jagdish Prasad Tewari and Others, 2019 (3) RCR (Civil) 104***; has held as under:

> "*13. Writ of habeas corpus is a prerogative process for securing the liberty of the subject by affording an effective means of immediate release from an illegal or improper detention. The writ also extends its influence to restore the custody of a minor to his guardian when wrongfully deprived of it. The detention of a minor by a person who is not entitled to his legal custody is treated as equivalent to illegal detention for the purpose of granting writ, directing custody of the minor child. For restoration of the custody of a minor from a person who according to the personal law is not his legal or natural guardian, in appropriate cases, the writ court has jurisdiction.*
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> *18. Habeas corpus proceedings is not to justify or examine the legality of the custody. Habeas corpus proceeding 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.*
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> *19. 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 Guardians 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."

(v) The Hon'ble Supreme Court in a judgment titled as ***Jose Antonio Zalba Diez Del Corral alias Jose Antonio Zalba versus The State of West Bengal & Ors., 2021 SCC Online SC 3434***; has held as under:

"*11. It cannot be disputed that both the parents may have a right for custody of their children but the said question of custody is to be considered and decided after evidence is adduced by the parties, and after following the due procedure, which would be under the provisions of the Guardians and Wards Act; and the petitioner has already filed a petition under the said Act, which matter is pending consideration before the Trial Court in Kolkata.*"

(vi) The Hon'ble Supreme Court in a judgment titled as ***Rajeswari Chandrasekar Ganesh versus State of Tamil Nadu & Ors., 2023 (12) SCC 472***; has held as under:

"*75. In a petition seeking a writ of Habeas Corpus in a matter relating to a claim for custody of a child, the principal issue which should be taken into consideration is as to whether from the facts of the case, it can be stated that the custody of the child is illegal.*

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79. The exercise of the extraordinary jurisdiction for issuance of a writ of Habeas Corpus would, therefore, be seen to be dependent on the

jurisdictional fact where the applicant establishes a prima facie case that the detention is unlawful. It is only where the aforementioned jurisdictional fact is established that the applicant becomes entitled to the writ as of right.

80. The object and scope of a writ of Habeas Corpus in the context of a claim relating to the custody of a minor child fell for the consideration of this Court in Nithya Anand Raghavan (supra) and it was held that the principal duty of the court in such matters should be to ascertain whether the custody of the child is unlawful and illegal and whether the welfare of the child requires that his present custody should be changed and the child be handed over to the care and custody of any other person.

81. Taking a similar view in the case of ***Syed Saleemuddin v. Dr. Rukhsana and others, (2001) 5 SCC 247****, it was held by this Court that in a Habeas Corpus petition seeking transfer of custody of a child from one parent to the other, the principal consideration for the court would be to ascertain whether the custody of the child can be said to be unlawful or illegal and whether the welfare of the child requires that the present custody should be changed.*

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91. 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."

(vii) The Hon'ble Supreme Court in a judgment titled as ***Nirmala versus Kulwant Singh & Ors., 2024 AIR Supreme Court 2344***; has held as under:

"*12. It can thus be seen that this Court has held that the habeas corpus is a prerogative writ which is an extraordinary remedy. It has been held that recourse to such a remedy should not be permitted unless the ordinary remedy provided by the law is either not available or is ineffective. It has been held that 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. It has further been held that 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.*

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16. It can thus be seen that no hard and fast rule can be laid down insofar as the maintainability of a habeas corpus petition in the matters of custody of a minor child is concerned. As to whether the writ court should exercise its extraordinary jurisdiction under Article 226 of the Constitution of India or not will depend on the facts and circumstances of each case."

(viii) The Hon'ble Supreme Court in a judgment titled as ***Gautam Kumar Das versus NCT of Delhi and Others, 2024 (4) RCR (Civil) 98***; has held as under:

"*15. Recently, this Court, in the case of Nirmala (supra) in paragraph 16 has also observed that no hard and fast rule can be laid down insofar as the maintainability of the habeas corpus petition in the matters of custody of minor child is concerned. It has been held that as to whether the writ court should exercise its jurisdiction under Article 226 of the*

Constitution of India or not will depend on the facts and circumstances of each case.

16. However, it is to be noted that a common thread in all the judgments concerning the custody of minor children is the paramount welfare of the child. xxxxxxxxxx"

(ix) The Hon'ble Supreme Court in a judgment titled as ***Somprabha Rana & Ors. versus The State of Madhya Pradesh & Ors., 2024 (9) SCC 382***; has held as under:

"*10. We believe that considering the peculiar facts of the case and the child's tender age, this is not a case where custody of the child can be disturbed in a petition under Article 226 of the Constitution of India. Only in substantive proceedings under the GW Act can the appropriate Court decide the issue of the child custody and guardianship. Regular Civil/Family Court dealing with child custody cases is in an advantageous position. The Court can frequently interact with the child. Practically, all Family Courts have a child centre/play area. A child can be brought to the play centre, where the judicial officer can interact with the child. Access can be given to the parties to meet the child at the same place. Moreover, the Court dealing with custody matters can record evidence. The Court can appoint experts to make the psychological assessment of the child. If an access is required to be given to one of the parties to meet the child, the Civil Court or Family Court is in a better position to monitor the same.*"

Analysis (re law)

10. *Article 226* is couched in comprehensive phraseology and *ex facie* it confers plenary power upon the High Court to reach and undo injustice wherever it is found. The Constitution of India has designedly used a broad language in describing the nature of the power, the purpose for which and the person or authority against whom it can be exercised. Indubitably, it can issue writs in the nature of prerogative writs as commonly

understood in English law but scope thereof has been widened by the use of word '*in the nature of*' in *Article 226*. *Ergo*, the High Court is well endowed to issue *directions* and *orders* as well apart from writs other than prerogative writs. In other words, *Article 226* enables the High Court to mould the relief(s) to meet any peculiar and complicated requirement emerging in a given case. Accordingly, it is true posit of our Constitutional jurisprudence that the jurisdiction exercised by the High Court under *Article 226* is required to be exercised once the Court is satisfied regarding existence of injustice or arbitrariness and any restriction, whether self imposed or statutory, stands removed in such a situation and no rule or technicality in the exercise of such power can stand in the way of the High Court for rendering justice. The very amplitude of the writ jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed limitations. There is no gainsaying that, while a writ Court is endowed with wide and plenary jurisdiction, empowered to administer justice and uphold Constitutional rights, it must exercise such authority with due caution and judicial restraint.

11. The writ of Habeas Corpus, a venerable cornerstone of the common law, stands as one of the most ancient legal instruments devised to safeguard individual liberty against unwarranted encroachment. This fundamental principle has been assimilated into our Constitutional jurisprudence and its efficacy as a mechanism, wielded by Constitutional Courts to protect the freedom of the individual, confers upon it the highest degree of importance, serving as a potent remedy accessible even to the humblest of citizens against the most formidable of authorities. It has been

aptly characterized as *'the key that unlocks the door to freedom'*. Its profound significance lies in its quintessential embodiment of a civilized society's commitment to individual liberty, affirming the timeless resolve that liberty is an inherent right, not a privilege bestowed by the State. This pivotal function was aptly articulated by an American jurist, Chief Justice John Marshall in ***Ex parte Bollman, 8 U.S. (4 cranch) 75 (1807),*** where Chief Justice Marshall famously heralded it as the '***Great Writ of Liberty***' reflecting its status as an indispensable pillar of constitutional jurisprudence of any civilized Society. The writ of Habeas Corpus is inherently procedural in nature and deals with the machinery of justice & not with the substantive law. It operates as a prerogative writ by which the causes & validity of detention of an individual are investigated by summary procedure. Should the detaining authority, whether a public official or a private individual, fail to convince the Court that the deprivation of personal liberty is in strict conformity with the *'procedure established by law'*, the detained individual is forthwith entitled to freedom. *Ergo,* the issue of illegality/unlawfulness of detention is a key jurisdictional fact for issuance of the writ of Habeas Corpus.

12. In cases involving a writ of Habeas Corpus concerning the custody of a minor - child, where the petition is filed by one parent against the other or against a relative, the paramount issue for judicial rumination is two fold: *firstly,* whether the minor-child's current custody is unlawful or illegal & *secondly,* whether the minor-child's welfare necessitates a change

in existing custodial arrangement, thereby entrusting the child to the care & custody of another.

12.1 The detention of a minor-child by a person, not legally entitled to the custody, is deemed equivalent to an illegal detention for the purpose of granting writ of Habeas Corpus as has been held by Hon'ble Supreme Court in case of ***Tejaswini Gaud*** (supra). Consequently, the unlawful or illegal nature of the minor-child's custody constitutes a jurisdictional pre-requisite for the exercise of Habeas Corpus writ jurisdiction. The Court's primary duty is to determine whether the child is being held without legal justification, as this foundational facet is what empowers the Court to intervene and issue this prerogative writ in the nature of Habeas Corpus, as has been held by the Hon'ble Supreme Court in ***Rajeswari Chandrasekar Ganesh*** (supra)

13. In custody disputes pertaining to a minor-child, the conventional recourse is through the provisions of relevant guardianship statutes including the Hindu Minority and Guardianship Act, 1956; the Guardians and Wards Act, 1890 etc. These legislative frameworks provide a comprehensive and structural process for the adjudication of custody matters involving thorough examination of evidence presented by the rival parties and adherence to established procedural norms as has been held by Hon'ble Supreme Court in cases of ***Jose Antonio Zalba Diez Del Corral*** (supra) and ***Somprabha Rana*** (supra). Given the existence of such an efficacious and readily available alternative remedy, a writ Court should, as a matter of general judicial discipline and restraint, *ordinarily* refrain from intervening.

To do otherwise would be to improperly arrogate to itself a jurisdiction that rightfully belongs to the Courts designated under these specific statutes. The extraordinary jurisdiction of a writ Court should be invoked only when the foundational jurisdictional fact of minor-child being in illegal custody is demonstrably established or such exercise of jurisdiction is warranted by welfare of minor child.

The writ of Habeas Corpus is not a substitute for meticulous and evidence-based determination of custody dispute. It is not to be utilized as a subterfuge to circumvent the proper statutory forums and its exercise must be reserved for exceptional circumstances, where the pre-requisite jurisdictional fact is established for its invocation. As a general principle, a minor-child in the custody of one of his natural guardians cannot, as a matter of course, be deemed to be in unlawful or illegal custody, absent a specific order to the contrary issued by a competent Court. This *factum* necessitates that writ Court in such cases exercise judicial restraint & deference, allowing the parties to seek their remedies through these *apropos* statutes, save in cases, where *welfare of minor-child* necessitates an indulgence by the writ Court.

14. It is a pellucid principle of law, in all matters pertaining to the custody of a minor-child, notwithstanding the nature of proceedings that the paramount consideration for the Court is the *welfare of minor-child.* The final adjudication must not be guided by the strict legal rights of contesting parties, but rather by the singular and overriding objective of what would best serve the minor-child's interest. The foundational principles and

jurisprudential systems of diverse global legal traditions are in remarkable harmony on a central and inviolable tenet: that the welfare and best interests of child constitute the paramount and overriding consideration in all matters concerning child custody and guardianship. This foundational tenet is articulated with innate clarity in ***AMERICA JURISPRUDENCE, IInd Edition, Volume 39, para 31, page 34***, which met with favour from the Hon'ble Supreme Court reads thus:

> *"Generally, where the writ of habeas corpus is prosecuted for the purpose of determining the right to custody of a child, the controversy does not involve the question of personal freedom, because an infant is presumed to be in the custody of someone until it attains its majority. The Court, in passing on the writ in a child custody case, deals with a matter of an equitable nature, it is not bound by any mere legal right of parent or guardian, but is to give his or her claim to the custody of the child due weight as a claim founded on human nature and generally equitable and just. Therefore, these cases are decided, not on the legal right of the petitioner to be relieved from unlawful imprisonment or detention, as in the case of an adult, but on the Court's view of the best interests of those whose welfare requires that they be in custody of one person or another; and hence, 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. In short, the child's welfare is the supreme consideration, irrespective of the rights and wrongs of its contending parents, although the natural rights of the parents are entitled to consideration.*
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> *An application by a parent, through the medium of a habeas corpus proceeding, for custody of a child is addressed to the discretion of the court, and custody may be withheld from the parent where it is made clearly to appear that by reason of unfitness for the trust or of other sufficient causes the permanent interests of the child would be sacrificed by a change of custody. In determining whether it will be for the best*

> *interest of a child to award its custody to the father or mother, the Court may properly consult the child, if it has sufficient judgment".*

A Court's role in adjudicating minor - child custody cases is manifestation of its *parens patriae* jurisdiction, akin to an ultimate guardian as has been held by Hon'ble Supreme Court in case of ***Nirmala*** (supra) and ***Gautam Kumar Das*** (supra). The Court's decision in each case must be predicated, on a holistic and meticulous examination of the totality of the facts and circumstances, with the minor - child's welfare serving as the central and most crucial criterion as has been held by Hon'ble Supreme Court in case of ***Syed Saleemuddin*** (supra) and reiterated in case of ***Gautam Kumar Das*** (supra). This approach is mandated by the consideration that minor-child is not a mere object of legal dispute but a subject whose well-being is of the highest priority, superseding all other considerations, pushing all other aspects, including adversarial claims of the parties, into the oblivion. As stated in ***Halsbury's Law of England, Fourth Edition, Vol.24, para 511, page 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."*

The principle that the *welfare of a minor child* is paramount is so fundamental that, in appropriate cases, a writ Court, exercising its *parens patriae* jurisdiction, may even relax the jurisdictional pre-requisite of minor child being kept in illegal/unlawful custody. In such exceptional

circumstances, the burden also lies upon the petitioner to establish, with unambiguous and cogent materials that the minor child's custody with the respondent is demonstrably contrary to the minor child's ultimate welfare. To effectively adjudicate this paramount issue, the writ Court may, in its discretion, adopt an inquisitorial methodology, employing a range of measures, including a personal interaction with the minor child and requesting the submission of affidavit(s) from the rival parties detailing all material facts. This enables the Court to order a proper custodial arrangement, notwithstanding the absence of the jurisdictional pre-requisite, in view of peculiar facts and circumstances of a case. However, this latitude must be exercised with scrupulous judicial restraint, ensuring that the Court does not arrogate the jurisdiction properly vested in specific/designated statutory forums and that its extra-ordinary power is not reduced to a mere alternative to other available and efficacious legal remedies.

Similarly, in furtherance of the minor-child's welfare and to fulfill its duty as *sentinel on the qui vive* for the minor child's well-being, the writ Court may issue such interim orders concerning the custody and other incidental aspects as are warranted by the exigencies of the situation. Such an interim order, issued to ensure minor child's well being, can be passed even when the Court directs the parties to pursue an alternative remedy under applicable guardianship statute as has been held by the Hon'ble Supreme Court in case of ***Nithya Anand Raghavan*** (supra). For such purpose, the writ Court may even seek report from concerned Civil/Family Court with respect to such issues as it deems appropriate for determination

of facts & then take a view itself as held by the Hon'ble Supreme Court in case of *Dr.* ***Veena Kapoor*** (supra). Such an approach is necessitated to keep the *welfare of the minor child* as ultimate determinant of justice.

15. No exhaustive set of guideline(s) to govern, the exercise of this aspect by the High Court, can possibly be laid down, however alluring this aspect may be. It is neither fathomable nor desirable to lay down any straightjacket formula in this regard. To do so would be to crystallize into a rigid definition, a judicial discretion, which for best of all reasons deserve to be left undetermined. Any attempt in this regard would be, to say the least, a *utopian* endeavour. Circumstantial flexibility, one additional or different fact, may make a sea of difference between conclusions of two cases. Such exercise would thus, indubitably, be dependent upon the factual matrix of the particular case which the High Court is in *seisin* of, since every case has its own peculiar factual conspectus.

16. As a sequitur to the above rumination, the following postulates emerge:

I. The High Court's jurisdiction to issue a writ of Habeas Corpus in minor child custody matter is predicated on the basic jurisdictional fact, namely, the minor child's custody is demonstrably illegal/unlawful. In appropriate cases, the High Court may relax this jurisdictional prerequisite, in the interest of welfare of minor child.

II. The writ of Habeas Corpus is not a substitute for the comprehensive and evidence based procedures available under applicable guardianship statutes (such as Hindu Minority and Guardianship Act, 1956; Guardians and Wards Act, 1890 etc.).

As a matter of general judicial principle, the writ Court ought to *ordinarily* exercise restraint and defer dispute(s) to statutory forums unless accentuating circumstances necessitate such intervention by High Court

III. In all matters relating to the custody of minor child, the paramount consideration is the *welfare of such child.* In exercise of its *parens patriae* jurisdiction; the High Court may, in appropriate cases, upon a holistic examination of facts, take an inquisitional role to ensure that the custodial arrangement serves the best interest of the child, superseding the adversarial claims of the parties.

IV. In furtherance of a minor child's welfare, the writ Court may issue interim order(s) concerning custody and other incidental aspects as warranted by exigencies of the situation, ensuring that the minor child's well being remains the ultimate determinant of justice and thereafter refer parties to remedy(s) before statutory forum(s) for final/further determination of the *lis.*

V. The High Court, in its writ jurisdiction has unbridled, unfettered and plenary powers. No inflexible and comprehensive guidelines can conceivably be enumerated governing the exercise of these intrinsic powers. There is no gainsaying that the nature, mode and extent of such exercise of this jurisdiction by the High Court shall depend upon the judicial discretion exercised by the High Court in the facts and circumstances of a given case.

Analysis (re facts of the present case)

17. Now this Court reverts to the facts of the present case to delve thereupon.

18. The petitioner – mother has already instituted an application under the Guardians and Wards Act, 1890 for seeking custody of the *child in question* from respondent No.4 – father, in January 2025. Still further the petitioner – mother had filed an application, seeking visitation rights) in the *DV Act*, which came to be declined on 11.02.2025. No justification is coming forth, at the end of the petitioner as to why this Court ought to exercise its extra ordinary power under writ jurisdiction despite the petitioner having earlier filed an application (under the Guardians and Wards Act, 1890) for primarily the same relief. Thus, nothing accentuating has been brought forward which may persuade this Court to exercise its writ jurisdiction. *Ergo,* the writ petition deserves to be dismissed with liberty to the rival party(s) to pursue their cause before the concerned Court under the statutorily available remedies including the Guardians and Wards Act, 1890.

Further, the petitioner – mother has not disclosed, in the present proceedings, the factum of her earlier having instituted proceedings under the Guardians and Wards Act, 1880 as also the declining of her application (for visitation rights) under the *DV Act* proceedings. When the learned counsel for the petitioner was specifically asked regarding this concealment, the response was nothing but sheer prevarication. This unscrupulous attempt, by the petitioner, deserves to be deprecated. This Court refrains from imposing costs upon the petitioner keeping in view, *inter alia,* the factum of the petitioner being a lady aged 26 years with no antecedents regarding such concealment in Court proceedings & the matter in hand arising out of issue of custody of a minor child.

Decision

19. In view of the prevenient ratiocination, it is directed as under:

(i) The writ petition is dismissed, reserving liberty in favour of the rival party(s) to pursue their cause before the concerned Court(s) in the petition pending adjudication under the Guardians and Wards Act and/or in any other proceedings instituted by them.

(ii) Any observations made and/or submissions noted hereinabove shall not have any effect on the merits of the litigation(s) pending between the rival parties (herein) regarding the custody of the child in question, which, but of-course, shall be decided on its own merits without being influenced with this order.

(iii). Pending application(s), if any, shall also stand disposed of.

(SUMEET GOEL)
JUDGE

August 27, 2025
Mahavir/Ajay

Whether speaking/reasoned: Yes

Whether reportable: Yes