



2025:AHC-LKO:53828-DB

AFR

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

HABEAS CORPUS WRIT PETITION No. - 308 of 2025

Mayank Ojha (Minor) Thru. Here Natural Guardian
Mother Shashi

.....Petitioner(s)

Versus

State Of U.P. Thru. Home Secy. Lko. And 6 Others

.....Respondent(s)

Counsel for Petitioner(s) : Sanjeev Kumar Shukla
Counsel for Respondent(s) : G.A., Om Prakash Yadav, Ram Milan
Yadav

Court No. - 9

HON'BLE RAJESH SINGH CHAUHAN, J.

HON'BLE SYED QAMAR HASAN RIZVI, J.

(Per: SYED QAMAR HASAN RIZVI, J.)

1. Heard Sri. Sanjeev Kumar Shukla, learned counsel for the petitioner, Sri. G.D.Bhatt, learned A.G.A. for the State-respondents as well as Sri. R. M. Yadav, Advocate, who has filed *Vakalatnama* on behalf of opposite party No. 7, which is taken on record.

2. By means of the present writ petition the petitioner has prayed for the following reliefs:

"I. Issue a writ or order in the nature of Habeas Corpus is direct the opposite party no. 2 & 3 to produce the corpus of the petitioner Mayank Ojha aged about 11 years Son of Surya Prakash Ojha before this Hon'ble Court he may be released from the illegal and unjustified custody and detention of the opposite party no.2 and 3 and in case if the opposite party no.2 and 3 failed to ensure the production of the corpus of the petitioners to directed the opposite party no-2 to 6 to ensure the production of the petitioner before this Hon'ble Court on date fixed by the Hon'ble Court and after recording her free statement, he may be released from the illegal and unjustified custody and detention of the opposite party no.2 and 3 and give the custody of her mother of the petitioner.

II. That in case if the opposite party no.2 failed to ensure the production of the corpus of the petitioner to directed the opposite party no. 3 to ensure the production of the petitioner before this Hon'ble Court on date fixed by the

Hon'ble Court and after recording her free statement, he may be released from the custody of the opposite party no.02 an 3 and give the custody of her mother of the petitioner."

3. This Court on 26.08.2025 passed an Order, operative part whereof is extracted herein below for ready reference:

"7A. Having considered the submissions of the learned counsel for the parties and also to know the willingness of the detenue Mayank Ojha, his presence would be required before this Court on the next date.

8. List this case on 08.09.2025.

9. On that date, the detenue Mayank Ojha shall appear before this Court and his appearance shall be ensured by the Superintendent, Rajkiya Bal Grih (Balak), Mohaan Road, Lucknow and a copy of this order be provided to the Superintendent, Rajkiya Bal Grih (Balak), Mohaan Road, Lucknow, by registered post/speed post within three working days for its compliance.

10. On the next date, the mother of the detenue (petitioner here) namely Shashi and opposite party no. 7- Surya Prakash Ojha (father of the detenue) shall appear in person before this Court.

11. The Station House Officer, Police Station Sangrampur, District Amethi shall ensure the presence of opposite party no. 7 on the next date.

12. Learned A.G.A. shall intimate this order to the Station House Officer, Police Station Sangrampur, District Amethi, for its compliance "

4. In compliance of the aforesaid Order, Ms. Shashi the mother of the child/petitioner corpus namely Mayank Ojha and Mr. Surya Prakash Ojha (respondent No. 7) are present before this Court.

5. The child/corpus namely Mayank Ojha, aged about 11 years, son of Mrs. Shashi and Mr. Surya Prakash Ojha is also present-in-person. His presence before this Court has been ensured by Mr. Ram Krishna Awasthi, In-charge of 'Rajkiya Bal Griha (Balak)', Mohan Road, Lucknow.

6. Mr. Ram Krishna Awasthi has stated that earlier the child/corpus was placed at 'Rajkiya Bal Griha (Balak)', Mohan Road, in his custody,

however, at present he is boarding at '*Dayanand Bal Sadan*', Motinagar, Lucknow. He further submitted that in pursuance of the letter communicating the Court's Order dated 26.08.2025, he being the In-charge of '*Rajkiya Bal Griha (Balak)*' has given company to the child/petitioner corpus. He informed the Court that the petitioner corpus is enjoying his life in congenial and healthy atmosphere at '*Dayanand Bal Sadan*', Motinagar, Lucknow. He has already been admitted to a school having good reputation and standard, where he is studying properly and participates in extracurricular activities. He is a very sharp / brilliant student and has secured first division.

7. Mr. Vinod Kumar Pandey, Sub-Inspector, Police Station-Sangrampur, Amethi has ensured the presence of the respondent No. 7 as well as the child/ petitioner corpus.

8. The child/petitioner corpus namely Master Mayank Ojha who is present before this Court appears to be a normal child with sharp and healthy mind having commendable ability to understand and answer the queries of the Court properly.

9. On being asked by the Court, as to whether he is willing to live with his mother namely Mrs. Shashi, who by means of the instant petition has come before this Court as natural guardian of the petitioner corpus; the child/corpus namely Mayank Ojha outrightly refused to accept the said proposal by saying that he is not at all willing to go and live with his mother. In reply to a pointed query as to why he is not willing to live with his own mother, he categorically stated that he does not like his mother as she had left him while he was just two years old baby. On being further asked as to whether he wants to go and live with his father Mr. Surya Prakash Ojha, the child reluctantly stated that although he has no objection in living with his father, but he would prefer to stay at '*Dayanand Bal Sadan*', Motinagar, Lucknow where he is presently residing. He not only uttered satisfaction with his present status of living at '*Dayanand Bal Sadan*' Motinagar, rather expressed happiness over the same.

10. Mr. Surya Prakash Ojha, the father of the child/corpus, on being asked as to whether he remarried after the dissolution of marriage with Ms. Shashi; he stated that though he got remarried, but his second wife died

after some time. At present he is living alone at Faridabad on account of his job, where he is presently working as Quality Supervisor at Mehra Metal, Faridabad, Haryana.

11. Replying to the query of the Court that whether the father of the petitioner corpus ever visited the aforesaid Child Home to meet his son; the In-charge *Rajkiya Bal Griha (Balak)*, Mr. Ram Krishna Awasthi, quoted an incident that Mr. Surya Prakash Ojha once along with a lady came to '*Dayanand Bal Sadan*', Motinagar, Lucknow and told that he has come to celebrate the birthday of his son Mayank Ojha. But, on verification it was found that the said lady was not the mother of the petitioner corpus. In such a situation suspecting some foul play the concerned authority did not permit him to meet the petitioner.

12. Confronting the aforesaid allegation, Mr. Surya Prakash Ojha fairly conceded that the said lady was not the mother of the petitioner but his maid, however, he had wrongly introduced her as the mother of the child just to manage a meeting with his son. He has stated that he is willing to live with his son Mayank Ojha and also undertaken that he will take care of him properly.

13. Per contra, Mr. G.D.Bhatt, learned Additional Government Advocate; appearing on behalf of the State-respondents, on the basis of the instructions / comments dated 20.08.2025 as furnished by Mr. Ram Prakash Yadav, Sub- Inspector, Police Station-Sangrampur, District-Amethi; submits that on account of the fact that the relationship between the mother and father of the petitioner corpus are so strained that they got their marriage dissolved from the Court of law. Moreover, the mother namely Mrs. Sashi lodged an First Information Report against Surya Prakash Ojha (father of the Petitioner corpus) and succeeded in sending him to jail in Case Crime No. 120/23 under section 420, 467 and 468 of I.P.C. Further, due to the explicit refusal of the petitioner corpus to go with his mother namely Ms. Sashi and father Surya Prakash Ojha being in Jail; he was sent to '*Gandhi Seva Niketan Bal Grih*', Rae Bareli under the order / directions of the Child Welfare Committee, District- Amethi, dated 24.02.2024.

14. The extract of the instruction / comment dated 20.08.2025 as has been placed before this Court by the learned Additional Government Advocate,

is quoted hereinbelow for ready reference:

"उपरोक्त बन्दी प्रत्यक्षीकरण याचिका के सम्बन्ध में आख्या इस प्रकार है:-

1-प्रस्तर-1 में अंकित कथन याचिनी के निजी ज्ञान एवं अभिलेख से संबंधित हैं, जिस पर कोई टिप्पणी नहीं करनी है।

2- प्रस्तर-2 में अंकित कथन याचिनी के निजी ज्ञान एवं अभिलेख से संबंधित है, जिस पर कोई टिप्पणी नहीं करनी है।

3-प्रस्तर-3 में अंकित कथन याचिनी द्वारा मा० न्यायालय से की गयी याचना से संबंधित है, जिसके द्वारा याचिनी ने डेटेन्यू को मा० न्यायालय के समक्ष प्रस्तुत किये जाने एवं डेटेन्यू को याचिनी / उसकी माता की सुपुर्दगी में दिया जायेगा।

इस संबंध में अवगत कराना है कि डेटेन्यू मयंक ओझा के माता-पिता (याचिनी श्रीमती शशि व विपक्षी सं०-7 सूर्य प्रकाश ओझा) के मध्य काफी दिनी से विवाद चल रहा था और सक्षम न्यायालय के द्वारा विधिक रूप से तलाक हो चुका है मयंक के पिता/ विपक्षी सं०-7 सूर्य प्रकाश ओझा नि०ग्रा० पता उपरोक्त के द्वारा न्यायपीठ बाल कल्याण समिति को प्रेषित पत्र में मयंक की माता श्रीमती शशि ओझा पुत्री शीतला प्रसाद तिवारी ग्रा० होलमन तिवारी का पुरवा ब्लाक भेटुआ थाना जनपद अमेठी का सक्षम न्यायालय द्वारा विधिक रूप से तलाक हो जाने के पश्चात वर्तमान में दूसरी शादी करके दूसरे पति एवं बड़े बेटे ऋषि ओझा के साथ हरियाणा में रहने का उल्लेख किया गया है तथा मयंक के पिता/विपक्षी सं०-7 सूर्यप्रकाश ओझा को उसकी पूर्व पत्नी शशि ओझा के द्वारा मु०अ०सं०-120/23 अन्तर्गत धारा 420, 467 व 468 आई.पी.सी. में दर्ज कराकर जेल भेजवाया गया ऐसी स्थिति में मयंक / डेटेन्यू निराश्रित होने के कारण न्यायपीठ बाल कल्याण समिति जनपद अमेठी के समक्ष पुलिस द्वारा प्रस्तुत किया गया। बालक/डेटेन्यू मयंक ने अपनी माता शशि के साथ जाने से यह कहते हुए इन्कार कर दिया कि मुझे तुम 2 साल की उम्र में छोड़कर चली गई थी और मैं पिता के साथ था उन्हें भी तुमने जेल भेजवा दिया मैं तुम्हारे साथ नहीं जाऊंगा ऐसी स्थिति में न्यायपीठ के निर्देशानुसार डेटेन्यू / मयंक ओझा को गाँधी सेवा निकेतन बाल गृह रायबरेली में आवासित कराया गया, जो कि वर्तमान में स्थानान्तरित होकर राजकीय बाल गृह बालक मोहान रोड लखनऊ में आवासित है।

चूंकि प्रकरण माता-पिता के मध्य बच्चे की कस्टडी का है, अतः इसका निस्तारण थाना स्थानीय के स्तर से सम्भव नहीं है। प्रकरण में मा० न्यायालय अथवा सक्षम न्यायालय द्वारा जो भी आदेश पारित किया जायेगा, उसका अक्षरशः अनुपालन सुनिश्चित किया जायेगा।

4- प्रस्तर-4 में अंकित कथन याचिनी के निजी ज्ञान एवं अभिलेख से संबंधित है, जिस पर कोई टिप्पणी नहीं करनी है।

5-प्रस्तर-5 में अंकित कथन पर कोई टिप्पणी नहीं करनी है।

6-प्रस्तर में अंकित कथन प्र०सू०रि० सं०-120/2023 अंतर्गत धारा 468, 467, 420 आईपीसी थाना संग्रामपुर जनपद अमेठी से संबंधित है, जिस पर कोई टिप्पणी नहीं करनी है।

7-प्रस्तर-7 में अंकित कथन के संबंध में यह कहना है कि मु०अ०सं०-120/23 अन्तर्गत धारा 420, 467 व 468 आई.पी.सी. में अभि० / विपक्षी सं०-7 सूर्य प्रकाश ओझा, जो कि डेटेन्यू का पिता है के जेल चले जाने की स्थिति में मयंक / डेटेन्यू निराश्रित होने के कारण उसे न्यायपीठ बाल कल्याण समिति जनपद अमेठी

के समक्ष पुलिस द्वारा प्रस्तुत किया गया। बालक /डेटेन्यू मयंक ने अपनी माता शशि के साथ जाने से यह कहते हुए इन्कार कर दिया कि मुझे तुम 2 साल की उम्र में छोड़कर चली गई थी और मैं पिता के साथ था उन्हें भी तुमने जेल भेजवा दिया मैं तुम्हारे साथ नहीं जाऊंगा ऐसी स्थिति में न्यायपीठ के निर्देशानुसार डेटेन्यू / मयंक ओझा को गाँधी सेवा निकेतन बाल गृह रायबरेली में आवासित कराया गया, जो कि वर्तमान में स्थानान्तरित होकर राजकीय बाल गृह बालक मोहान रोड लखनऊ में आवासित है।

8- प्रस्तर-8 में अंकित कथन याचिनी के निजी ज्ञान एवं अभिलेख से संबंधित हैं, जिस पर कोई टिप्पणी नहीं करनी है।

9- प्रस्तर-9 में अंकित कथन के संबंध में यह कहना है कि मु०अ०सं०-120/23 अन्तर्गत धारा 420, 467 व 468 आई.पी.सी. में अभि०/ विपक्षी सं०- 7 सूर्य प्रकाश ओझा, जो कि डेटेन्यू का पिता है के जेल चले जाने की स्थिति में मयंक / डेटेन्यू निराश्रित होने के कारण उसे न्यायपीठ बाल कल्याण समिति जनपद अमेठी के समक्ष पुलिस द्वारा प्रस्तुत किया गया। बालक/डेटेन्यू मयंक ने अपनी माता शशि के साथ जाने से यह कहते हुए इन्कार कर दिया कि मुझे तुम 2 साल की उम्र में छोड़कर चली गई थी और मैं पिता के साथ था उन्हें भी तुमने जेल भेजवा दिया मैं तुम्हारे साथ नहीं जाऊंगा ऐसी स्थिति में न्यायपीठ के निर्देशानुसार डेटेन्यू / मयंक ओझा को गाँधी सेवा निकेतन बाल गृह रायबरेली में आवासित कराया गया, जो कि वर्तमान में स्थानान्तरित होकर राजकीय बाल गृह बालक मोहान रोड लखनऊ में आवासित है।

10- प्रस्तर 10 से 12 में अंकित कथन याचिनी के निजी ज्ञान एवं अभिलेख से संबंधित है, जिस पर कोई टिप्पणी नहीं करनी है।

11- प्रस्तर-13 में अंकित कथन न्यायपीठ जिला बाल कल्याण समिति जनपद अमेठी द्वारा पारित आदेश दिनांक 12.06.2025 से संबंधित है, जिस पर कोई टिप्पणी नहीं करनी है।

12- प्रस्तर-14 से 19 में अंकित कथन याचिनी के निजी ज्ञान एवं अभिलेख से संबंधित हैं, जिस पर कोई टिप्पणी नहीं करनी है।

13- प्रस्तर-20 में अंकित कथन मा० न्यायालय से संबंधित हैं। चूंकि प्रकरण माता-पिता के मध्य बच्चे की कस्टडी का है, अतः इसका निस्तारण थाना स्थानीय के स्तर से सम्भव नहीं है। प्रकरण में मा० न्यायालय अथवा सक्षम न्यायालय द्वारा जो भी आदेश पारित किया जायेगा, उसका अक्षरशः अनुपालन सुनिश्चित किया जायेगा।”

15. Learned Additional Government Advocate has also drawn our attention to the order dated 12.06.2025 as contained in Annexure No. 8 to the Writ Petition whereby The District Child Welfare Committee, Amethi after taking into consideration the overall facts and circumstances of the case passed a detailed order keeping in view the welfare of the minor and his wish/desire and directed the Superintendent, *Rajkiya Bal Griha (Balak), Mohan Road, Lucknow* to get him admitted in *Dayanand Bal Sadan Awasiya Vidyalaya, Moti Nagar, Lucknow* for his proper education. For convenience, the aforesaid order is quoted herein below:

"न्यायपीठ बाल कल्याण समिति जनपद अमेठी के समक्ष मयंक ओझा पुत्र श्री सूर्यप्रकाश ओझा उम्र लगभग 10 वर्ष नि०ग्रा० गैहदा ठेंगड़ा थाना संग्रामपुर जनपद अमेठी की पत्रावली प्रस्तुत हुई पत्रावली में समस्त सभी अभिलेखों का अवलोकन करने पर ज्ञात हुआ कि मयंक ओझा के माता-पिता के मध्य काफी दिनों से विवाद चल रहा था और सक्षम न्यायालय के द्वारा विधिक रूप से तलाक हो चुका है मयंक के पिता सूर्य प्रकाश ओझा नि०ग्रा० पता उपरोक्त के द्वारा न्यायपीठ बाल कल्याण समिति को प्रेषित पत्र में मयंक की माता शशि ओझा पुत्री शीतला प्रसाद तिवारी ग्रा० होलमन तिवारी का पुरवा ब्लाक भेटुआ थाना व जनपद अमेठी का सक्षम न्यायालय द्वारा विधिक रूप से तलाक हो जाने के पश्चात वर्तमान में दूसरी शादी करके दूसरे पति एवं बड़े बेटे ऋषि ओझा के साथ हरियाणा में रहने का उल्लेख किया गया है तथा मयंक के पिता सूर्यप्रकाश ओझा को उसकी पूर्व पत्नी शशि ओझा के द्वारा मु०अ०सं० 120/23 अन्तर्गत बारा 420,467 व 468 भा०द०सं० में दर्ज कराकर जेल भेजवाया गया ऐसी स्थिति में मयंक निराश्रित होने के कारण न्यायपीठ बाल कल्याण समिति जनपद अमेठी के समक्ष पुलिस द्वारा प्रस्तुत किया गया बालक मयंक ने अपनी माता शशि के साथ जाने से यह कहते हुए इन्कार कर दिया कि मुझे तुम 2 साल की उम्र में छोड़कर चली गई थी और मैं पिता के साथ था उन्हें भी तुमने जेल भेजवा दिया मैं तुम्हारे साथ नहीं जाऊँगा ऐसी स्थिति में न्यायपीठ के निर्देशानुसार मयंक ओझा को गाँधी सेवा निकेतन बाल गृह रायबरेली में आवासित कराया गया वर्तमान में स्थानान्तरित होकर राजकीय बाल गृह बालक मोहान रोड लखनऊ में आवासित है। मयंक ओझा से कई बार उसके माता-पिता से वार्ता करायी गई किन्तु मयंक अपने माता-पिता के साथ जाने को तैयार नहीं है मयंक के पिता ने भी दूसरी शादी कर ली है एवं माता शशि ने भी दूसरी शादी कर ली है सौतेली मां अथवा सौतेले पिता के सानिध्य में बालक मयंक का भविष्य उज्ज्वल प्रतीत नहीं हो रहा है मयंक की मां शशि ओझा ने जिला प्रोबेशन कार्यालय अमेठी के माध्यम से मयंक ओझा की शिक्षा एवं संरक्षण के सम्बन्ध में पत्र प्रस्तुत किया है। उक्त प्रकरण माननीय पारिवारिक न्यायालय से सम्बन्धित प्रतीत होता है अतः मयंक ओझा के संरक्षण से सम्बन्धित वाद सक्षम न्यायालय में योजित कराकर निस्तारण कराना उचित प्रतीत होता है। पत्रावली में राजकीय बाल गृह बालक मोहान रोड लखनऊ के अधीक्षक का पत्र भी संलग्न है जिसमें बालक मयंक को अच्छी शिक्षा प्रदान कराने हेतु दयानन्द बाल सदन आवासीय विद्यालय मोती नगर लखनऊ में शिक्षा दिलाने की इच्छा व्यक्त की गई है जिसमें बच्चे का उज्ज्वल भविष्य एवं सर्वोत्तम हित प्रतीत होता है।

आदेश

अतः न्यायपीठ बाल कल्याण समिति जनपद अमेठी सर्वसम्मति से अधीक्षक राजकीय बाल गृह बालक मोहान रोड लखनऊ को निर्देशित करती है कि बालक मयंक ओझा की उचित शिक्षा हेतु दयानन्द बाल सदन आवासीय विद्यालय मोती नगर लखनऊ में प्रवेश दिलाये तथा मयंक के माता शशि एवं पिता सूर्य प्रकाश को निर्देशित किया जाता है कि सक्षम न्यायालय में वाद योजित करके मयंक के संरक्षण हेतु उचित आदेश पारित कराये।"

Government Advocate is that the Writ of Habeas Corpus is not maintainable against a judicial order, i.e. an order passed by the Child Welfare Committee under the Juvenile Justice Act, 2015. He further submitted that if the detention is pursuant to judicial orders passed by a Court of competent jurisdiction or by the Child Welfare Committee under the Juvenile Justice Act, the same cannot be treated as an illegal detention. The grievance, if any, against such an order may be redressed by way of challenging the legality, validity and correctness of the order by filing an appropriate proceeding before the competent appellate or revisional forum under the applicable provisions of law but the same cannot be reviewed in a petition seeking writ of habeas corpus.

17. It has been vehemently argued by Mr. G.D.Bhutt that the aforesaid order dated 12.06.2025 passed by the District Child Welfare Committee, Amethi in exercise of its' power under the Juvenile Justice (Care and Protection of Children) Act has not been challenged before any competent forum having jurisdiction nor the custody of the petitioner corpus has been sought under the Guardians and Wards Act or any other law and as such neither the mother nor the father can be allowed to seek/procure the relief by circumventing the statutory remedies by way of Writ of Habeas Corpus.

18. We have heard the submissions of the parties present before the Court and perused the available material. Before entering into the merits of the case, it would be apt to consider the issue of maintainability of the instant Writ of Habeas Corpus.

19. At this stage it would be appropriate to go through the observations made by the Hon'ble Supreme Court regarding the Writ of Habeas Corpus, in the case of **Kanu Sanyal versus District Magistrate, Darjeeling and Others**; reported in (1973) 2 SCC 674. The relevant part of the same is extracted herein below:

"It will be seen from this brief history of the writ of habeas corpus that it is essentially a procedural writ. It deals with the machinery of justice, not the substantive law. The object of the writ is to secure release of a person who is illegally restrained of his liberty. The writ is, no doubt, a command addressed to a person who is alleged to have another person unlawfully in his custody requiring him to bring the body of such person before the Court, but the production of the body of the person detained is directed in order that the

circumstances of his detention may be inquired into, or to put it differently, "in order that appropriate judgment be rendered on judicial enquiry into the alleged unlawful restraint". The form of the writ employed is "We command you that you have in the King's Bench Division of our High Court of Justice -- immediately after the receipt of this our writ, the body of A.B. being taken and detained under your custody -- together with the day and cause of his being taken and detained -- to undergo and receive all and singular such matters and things as our court shall then and there consider of concerning him in this behalf". The italicized words show that the writ is primarily designed to give a person restrained of his liberty a speedy and effective remedy Patna High Court CR. WJC No.1355 of 2019 dt. 05-03-2020 for having the legality of his detention enquired into and determined and if the detention is found to be unlawful, having himself discharged and freed from such restraint. The most characteristic element of the writ is its peremptoriness and, as pointed out by Lord Halsbury, L.C., in *Cox v. Hakes* (supra), "the essential and leading theory of the whole procedure is the immediate determination of the right to the applicant's freedom" and his release, if the detention is found to be unlawful. That is the primary purpose of the writ; that is its substance and end. ..."

20. The question on the maintainability of the habeas corpus petition with regard to custody of the minor child came up for consideration before the Hon'ble Supreme Court in the case of **Tejaswini Gaude versus Shekhar Jagdish Prasad Tewari** reported in (2019) 7 SCC 42, wherein the Hon'ble Apex Court has been pleased to observe as under: (SCC p. 54, paras 19-20)

"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 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 the 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.

21. The Full Bench of this Court in the case of **Rachna and another versus State of U.P. and others**; reported in **AIR 2021 All 109 (FB)**, while deciding a reference made by a Division Bench considering various provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 and the law laid down by various Courts; has answered as under:

“We accordingly come on our conclusions in respect of question nos. 1, 2 and 3 for determination as follows: -

Question No. 1: “Whether a writ of habeas corpus is maintainable against the judicial order passed by the Magistrate or by the Child Welfare Committee appointed under Section 27 of the Act, sending the victim to Women Protection Home/Nari Niketan/Juvenile Home/Child Care Home?”

Answer: “If the petitioner corpus is in custody as per judicial orders passed by a Judicial Magistrate or a Court of Competent Jurisdiction or a Child Welfare Committee under the J.J. Act. Consequently, such an order passed by the Magistrate or by the Committee cannot be challenged/assailed or set aside in a writ of habeas corpus.”

Question No. 2: "Whether detention of a corpus in Women Protection Home/Nari Niketan/Juvenile Home/Child Care Home pursuant to an order (may be improper) can be termed/viewed as an illegal detention?"

Answer: “An illegal or irregular exercise of jurisdiction by a Magistrate or by the Child Welfare Committee appointed under Section 27 of the J.J. Act, sending the victim to Women Protection Home/Nari Niketan/Juvenile Home/Child Care Home cannot be treated an illegal detention.”

Question No. 3: "Under the Scheme of the Juvenile Justice (Care and Protection of Children) Act, 2015, the welfare and safety of child in need of care and protection is the legal responsibility of the Board/Child Welfare Committee and as such, the proposition that even a minor cannot be sent to Women Protection Home/Nari Niketan/Juvenile Home/Child Care Home against his/her wishes is legally valid or it requires a modified approach in consonance with the object of the Act ?"

Answer: "Under the J.J. Act, the welfare and safety of child in need of care and protection is the legal responsibility of the Board/Child Welfare Committee and the Magistrate/Committee must give credence to her wishes. As per Section 37 of the J.J. Act the Committee, on being satisfied through the inquiry that the child before the Committee is a child in need of care and protection, may, on consideration of Social Investigation Report submitted by Child Welfare Officer and taking into account the child's wishes in case the child is sufficiently mature to take a view, pass one or more of the orders mentioned in Section 37 (1) (a) to (h)."

22. The Full Bench of this Court, in the case of Rachna (*supra*) very categorically observed that writ of habeas corpus would not be maintainable, if the detention in custody is pursuant to judicial orders passed by a Judicial Magistrate or a court of competent jurisdiction or by the 'Child Welfare Committee'. Suffice to indicate that an illegal or irregular exercise of jurisdiction by the Magistrate passing an order of remand or by the 'Child Welfare Committee' under Juvenile Justice Act cannot be said to be an illegal detention. The grievance, if any, against such an order may be redressed by way of challenging the legality, validity and correctness of the order by filing an appropriate proceeding before the competent appellate or revisional forum under the applicable provisions of law but the same cannot be reviewed in a petition seeking writ of habeas corpus.

23. The Hon'ble Full Bench while deciding the case of Rachna (*supra*) also took serious note of the situation where a minor corpus refuses to go with his / her parents, then in such situation, appropriate arrangements must be made to ensure the well being of the child. His / her interest bears paramount importance and before proceeding to pass order for custody of the minor, the welfare of the minor must be kept in mind. The wish of minor and the wish/desire of girl can always be considered by the Magistrate concerned/Committee and as per her wishes/desire further

follow up action is required to be taken in accordance with law under the Juvenile Justice Act.

24. The Hon'ble Supreme Court in the case of **Nirmala versus Kulwant Singh and others**; reported in **(2024) 10 SCC 595**, has been pleased to hold that the habeas corpus is a prerogative writ which is an extraordinary remedy and recourse to such a remedy should not be permitted unless the ordinary remedy provided by the law is either not available or is ineffective. The Hon'ble Apex Court has also observed 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. 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. It has also been held by the Hon'ble Supreme Court 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 is 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 only where it is proved that the detention of a minor child by a parent or others was illegal and without any authority of law.

25. It is trite in law that writ of habeas corpus would not be maintainable, if the detention in custody is pursuant to judicial orders passed by a Judicial Magistrate or a court of competent jurisdiction or by the Child Welfare Committee. Section 27 of the Juvenile Justice Act defines the 'Child Welfare Committee' and provides that the State Government shall by notification in the Official Gazette constitute for every district, one or more Child Welfare Committees for exercising the powers and to discharge the duties conferred on such Committees in relation to 'child in need of care and protection' under the said Act. The powers of the Committee are defined in Section 27(9) of the Juvenile Justice Act. The said provision of the Act makes it clear that while passing such orders, the Committee exercises the power of Judicial Magistrate and functions as a Bench and shall have the powers conferred by the Code of Criminal Procedure, 1973 (2 of 1974) on a Metropolitan Magistrate or, as the case may be, a Judicial Magistrate of First Class. The powers, functions and responsibilities of the Committee are defined under Section 29 and 30 of

the Juvenile Justice Act. Section 30(vi) provides that it is the function of the Committee to ensure care, protection, proper rehabilitation or restoration of children in need of care and protection, based on the child's individual care plan and passing necessary directions to parents or guardians or fit persons or children's homes or fit facility in this regard. It further provides for selection of registered institution for placement of each children requiring institutional support, based on the child's age, gender, disability and needs and keeping in mind the available capacity of the institution. Further, the term 'Juvenile' has been defined in Section 2(35) of the Juvenile Justice Act to mean a child below the age of 18 years. The word 'Child' has been defined in Section 2(12) of the Juvenile Justice Act to mean a person who has not completed 18 years of. Age. The meaning of the phrase 'child in need of care and protection' is defined under Section 2(14) of the Juvenile Justice Act.

26. The Juvenile Justice Act, 2015 provides a complete mechanism dealing with welfare of the child. The 'Child Welfare Committee' exercises the power of Magistrate in view of the provision of Section 27 of the Juvenile Justice Act, 2015 and for all purposes, the Committee acts like the Magistrate. Once the order has been passed by the Magistrate, then it can only be assailed before the appropriate Court by filing an appeal or any other remedy as provided under the law.

27. At the cost of repetition, we reiterate that if the corpus is found a child, as defined under Section 2(12) of the Juvenile Justice Act, 2015, he/she would fall in the category of 'child in need of care and protection' in view of Clauses (iii), (viii) and (xii) of Sub-section (14) of Section 2 of the Juvenile Justice Act, 2015. Hence the order passed by the Child Welfare Committee placing the corpus in a protection home would be within its power conferred under Section 37 of the Juvenile Justice Act, 2015. Thus, the person aggrieved by an order passed by the Child Welfare Committee can file an appeal under Section 101 of the Juvenile Justice Act, 2015. Further, the Juvenile Justice Act, 2015 provides the revisional forum before the High Court wherein the High Court may, at any time either on its own motion or an application received in this behalf, call for the record of any proceeding in which any Committee or Board or Children's Court, or court has passed an order, for the purpose of

satisfying itself as to the legality or propriety of any such order and may pass such order in relation thereto as it thinks fit. Therefore, in such a situation, it cannot be presumed that in case the corpus is in Children's Home pursuant to an order passed by the 'Child Welfare Committee'; then the same is neither without jurisdiction nor illegal or perverse, keeping in mind the provisions of Juvenile Justice Act, 2015, the detention of the corpus cannot be said to be illegal and in case the petitioner is aggrieved by the order of the 'Child Welfare Committee', the petitioner is at liberty to take recourse of remedy of Appeal or Revision provided under Sections 101 & 102 of the Juvenile Justice Act.

28. It would not be out of place to quote the Para 69 of the judgment passed by the Full Bench of this Court in the case of **Rachna** (*supra*), which reads as under:

“69. If we look at the relevant Sections of J.J. Act, the object of the J.J. Act is pro-child legislation. The J.J. Act itself provides all remedial measures of rehabilitation and care to a child who is in need of care and protection. We attach equal importance to other Sections of the J.J. Act. They are emphatic, and in case the petitioner is aggrieved, and the corpus is sent to the shelter home arbitrarily, then the said situation may also be looked into and examined in the regular appeal or revision. Section 37 of J.J. Act clearly provides that the Committee on being satisfied through the inquiry that the child before the Committee is a child in need of care and protection, may, on consideration of Social Investigation Report submitted by the Child Welfare Officer and taking into account the child's wishes in case the child is sufficiently mature to take a view, pass one or more of the following orders. The framers have also consciously taken due care of child's wishes in case the child is sufficiently mature to take a view. It is the paramount responsibility of the Committee to take all necessary measures for taking into account the child's wishes after making due enquiry, which contemplates under Section 36 of J.J. Act and take final decision.”

29. The order passed by the Committee pursuant to which the corpus has been sent to Children's Home is a judicial order and hence the detention of corpus cannot be termed to be illegal. Moreover, the order passed by the Committee is appealable. Thus, the instant Habeas Corpus Petition being not maintainable is liable to be dismissed.

30. In so far as the question of custody of the child is concerned, the

ordinary remedy lies only under the Guardians and Wards Act, 1890. The jurisdiction of the Court is determined by whether the minor ordinarily resides within the area on which the Court exercises such jurisdiction. The Hon'ble Apex Court in the case of **Tejaswini Gaud** (*supra*) has held that there are significant differences between the 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 Courts, rights are determined only on the basis of the affidavits. In case if the Court is of the view that a detailed enquiry including the welfare of the minor child and his preference would have been involved, such an exercise could be done only in a proceeding under the provisions of the Guardians and Wards Act, 1890 the Court may decline to exercise the extra-ordinary jurisdiction and direct the parties to approach the Civil Court.

31. Having regard to the foregoing discussion, the legal position which emerges is that in a case where the custody of the petitioner corpus has been handed over as per the order passed by the 'Child Welfare Committee', constituted under the Juvenile Justice Act, 2015, the said order cannot be assailed in a petition seeking a writ of habeas corpus.

32. We find that the petitioner corpus having been placed under the care of the respondent no.3 and has now been boarded in *Dayanand Bal Sadan*, Motinagar, Lucknow, pursuant to an order passed by the 'Child Welfare Committee' in exercising powers under the Juvenile Justice Act, 2015 and the rules made thereunder, the custody which is presently with the said respondent cannot be said to be illegal or unlawful detention and the petition for a writ of habeas corpus would not be entertainable in the facts of the case.

33. Learned counsel for the petitioner has not been able to dispute the aforesaid legal position.

34. In view of aforesaid, this Court is not inclined to exercise its extra-ordinary jurisdiction under Article 226 of the Constitution of India, so as to entertain the petition seeking a writ of habeas corpus.

35. The instant writ petition fails and is, accordingly, **consigned to**

record.

36. The Sub-Inspector concerned, who is present before the Court as well as Mr. Ram Krishna Awasthi, In-charge of '*Rajkiya Bal Griha (Balak)*', Mohan Road, Lucknow, are directed to ensure the safe return of the petitioner corpus to the *Dayanand Bal Sadan*, Motinagar, Lucknow from where he has been brought to the Court, as has been informed by the aforesaid In-charge of '*Rajkiya Bal Griha (Balak)*', Mohan Road, Lucknow.

37. Before parting with the matter, in view of the fact that the father of the child/petitioner corpus has shown his serious concern regarding the well-being of his child and pressed for the custody of the child; this Court grants liberty to Mr. Surya Prakash Ojha, father of the child/petitioner corpus to file appropriate application under the provisions of the Guardians and Wards Act, 1890 before the competent court of having jurisdiction and in the event he files such an application, the competent court shall decide the same expeditiously. We further direct that in case such an application is made, an order at least with regard to visitation rights may be passed within a period of four weeks from the date of filing of such application before the court concerned. At the same time, we also grant liberty to the petitioner to assail the order of the 'Child Welfare Committee' under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 and the Rules made thereunder, before the appropriate forum strictly in accordance with law.

38. However, we clarify that no observation made by this Court while passing the present order, would in any manner influence the proceedings, if any, under the Guardians and Wards Act, 1890 or any other proceeding under the Juvenile Justice Act, 2015 and the same shall be decided in accordance with law, on its own merits.

39. On the earnest request made by Mr. Surya Prakash Ojha, father of the petitioner corpus, for promoting the bond between the minor child and the father in a graded manner; we provide that he may be allowed to visit the Children's Home/ '*Dayanand Bal Sadan*', to meet his child but within the premises of the same, for a period of three hours at least once a month, after seeking prior permission from the competent authority of the said Children's Home. However, the aforesaid meeting with the

child/petitioner corpus shall be managed and monitored by the competent authority. During the said meeting, the respondent no.7 shall strictly follow the instructions of the concerned authorities. The aforesaid arrangement shall continue till passing of appropriate orders by the competent Court on the said application seeking visitation rights.

(Syed Qamar Hasan Rizvi,J.) (Rajesh Singh Chauhan,J.)

September 8, 2025

(Manoj K.)/ Abhishek Gupta