

**IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA****Cr. WP No. 7 of 2026****Date of decision: 23.02.2026**

Himanshu Dilip KulkarniPetitioner*Versus**State of Himachal Pradesh & others*
...Respondents

*Coram:***The Hon'ble Mr. Justice G.S. Sandhwalia, Chief Justice.**
The Hon'ble Mr. Justice Bipin C. Negi, Judge.*Whether approved for reporting?¹ Yes*

For the Petitioner: Mr. Aashutosh Srivastava,
Advocate through Video
Conferencing with Mr. Vishwajeet
Singh, Advocate.

For the Respondents: Mr. Rakesh Dhaulta, Additional
Advocate General.

G.S. Sandhwalia, Chief Justice (Oral)

The petitioner seeks issuance of a writ of Habeas Corpus for producing the minor girl child, namely, Ms. Yashika, before this Court, being her father as such, on the ground that respondent No. 3-Divya Himanshu

¹ *Whether the reporters of Local Papers may be allowed to see the judgment?*

Kulkarni-the mother as such has taken the child away. A prayer has also been made to hand over the custody of the minor child to the petitioner, without any obstruction, interference or delay, in furtherance of the minor child's welfare and in order to prevent further psychological emotional and educational harm and to direct the respondents to immediately facilitate and ensure the restoration and uninterrupted continuation of the minor child's education at her previous school, thereby safeguarding her academic year and promptly reinstating her education.

2. The marriage between the petitioner and respondent No. 3 was solemnized on 25.02.2012. From their wedlock, the girl child, namely, Yashika was born on 06.07.2017 in District Kangra near Dharamshala. The marriage as such was registered on 13.09.2021 (Annexure P-1), which would go on to show that the petitioner and respondent No. 3 resided at 'Punj House', Dhauladhar View, Post Office Dari, Tehsil Dharamshala, District Kangra, H.P.

3. Apparently, the petitioner and respondent No. 3 resided at different places, including Chandigarh, Mumbai, Bangalore and then eventually, moved to Bangkok, Thailand, wherein the petitioner continues to reside.

4. From the pleadings, it would be clear that on 10.10.2025, respondent No. 3 had travelled to India alongwith the minor child. On return of respondent No. 3, post Diwali from India, she had been hospitalized from 25th to 26th November, 2025, which had led her brother to arrive in Bangkok on 26.11.2025. Thereafter, the respondent No. 3 had left Bangkok on 13.12.2025. From the pleadings itself, the petitioner is stated to have returned to Bangkok residence on 15.12.2025, when he discovered that all the child's belongings had been removed from the house. It has also been averred in paragraph-17 that repeated efforts were made from 17.12.2025 to resolve the matter, but respondent No. 3 had changed her contact number and failed to respond to the proposals for counselling, leaving calls and messages

from the petitioner and his family members, un-answered. Finally, on 29.12.2025, a conference call was arranged between the petitioner's brother, respondent No. 3, her brother and her father. It has also been averred in paragraph-14 that the petitioner's father had managed to speak with the father of respondent No. 3, who had stated that respondent No. 3 had reached Dharamshala and that he would speak to her and revert. After this communication, the father of respondent No. 3 did not respond to his calls/messages. In such circumstances, the petition has been preferred.

5. The matter was listed before the Vacation Judge on 13.02.2026, whereby it was observed that the maintainability of the writ petitioner has to be justified and the matter was listed for today.

6. Learned Counsel has placed reliance upon the judgment of the Apex Court in ***Tejaswini Gaud & others Vs. Shekhar Jagdish Prasad Tewari & others, AIR 2019 SC 2318***, to contend that the present petition as such would be maintainable.

7. We had occasion to consider the issue of maintainability of a Habeas Corpus petition arising out of a dispute between the parents as such in **Cr.W.P. No. 11 of 2023**, titled as **Saurav Rattan Vs. State of Himachal Pradesh & others**, decided on 09.05.2025, in which reliance has also been placed by the father in that case also, upon the judgment in **Tejaswini Gaud's** case (*supra*).

8. The said judgment is pertaining to the dispute as such, where the child was in custody of the brother and sister of the deceased wife and in such circumstances, the Apex Court had allowed the writ petition and directed that the right of the father to have the custody of the child, could not be held to be bad by upholding the judgment of the High Court.

9. Paragraph-18 of **Tejaswini Gaud's** judgment can be taken into consideration, which reads as under:-

"18. 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."

10. In such circumstances, in **Saurav Rattan's case**, (*supra*), this Court came to the conclusion that it would be the Guardian Court as such, which would go into the issue regarding the custody on the basis of the evidence as such and it would not be for the Writ Court as such to deal with the issue of Habeas Corpus, once the dispute is between husband and wife.

11. We had also referred to the judgments of the Apex Court in **Sayed Saleemuddin versus Dr. Rukhsana and others, (2001) 5 SCC 247, Nithya Anand Raghavan versus State (NCT of Delhi) and another, (2017) 8 SCC 454, Rajeswari Chandrasekar Ganesh versus State of Tamil Nadu and others, (2023) 12 SCC 472** and **Somprabha Rana and others Versus State of Madhya Pradesh and others, (2024) 9 SCC 382** in support of the said proposition as an alternative remedy was available.

12. In such circumstances, we are of the considered opinion that once there is a specific averment made as to where the respondent No. 3 is present namely in Dharamshala, it does not lie in the mouth of the learned Counsel to submit that the petition is being filed, as the whereabouts as such of the minor child are not known. Once the whereabouts as such are specific, the concerned Court would have such jurisdiction.

13. Keeping in view the facts that the child was relocated from the foreign country, the father is abroad

and the present petition has also been filed wherein the affidavit has been attested at Pune, we are of the considered opinion that if such a petition is preferred before a Court of competent jurisdiction, the Court will be sensitive to the said issue and it will ensure that the matter is taken up at the earliest, on filing of the petition which may be preferred before the said Court.

14. Resultantly, we do not entertain the present petition keeping in view the settled position of law. Accordingly, the same is dismissed. However, a liberty is reserved to the petitioner to approach the concerned Court for appropriate relief. Pending application(s), if any, also stands disposed of.

(G.S. Sandhawalia)
Chief Justice.

February 23, 2026
(hemlata)

(Bipin C. Negi)
Judge.