* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 17th February, 2026

Pronounced on: 11th March, 2026

\+ W.P.(CRL) 2808/2025 & CRL.M.A. 5416/2026

VARUN MALHOTRA .....Petitioner

Through: Mr. Anant Misra, Mr. Lokendra Dixit & Ms. Devika Gaur, Advs.

versus

THE STATE OF NCT OF DELHI AND ORS. .....Respondents

Through: Mr. Sanjay Lao, Standing Counsel (Criminal) for State with Ms. Priyam Agarwal, Adv. along with SI Krishan Pal Singh, PS Mukherji Nagar, Delhi.

Mr. Ankur Yadav, Mr. Vaibhav Maheshwari & Ms. Vrinda Goyal, Advs. for R-2.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

J U D G M E N T

RAVINDER DUDEJA, J.

1. The present writ petition under Article 226 of the Constitution of India has been filed by the petitioner/husband seeking issuance of a writ of *Habeas Corpus* directing Respondent No.2/mother to produce the minor son before this Court and further seeks a direction for his return to Canada.

Factual Background

2. The present petition has been filed by the petitioner, alleging therein that the petitioner/father and respondent no. 2/mother got

married on 21st January, 2013 in Delhi according to Hindu rites and ceremonies. The petitioner relocated to Chicago, USA in December 2014 for the purpose of employment. Respondent No. 2 joined the petitioner in October 2017 in Chicago, USA. They stayed together in USA till 2020. On 21st November, 2019, they were blessed with a child namely Master 'V'. In September 2020, the family relocated to Canada in pursuit of better opportunities as permanent residents.

3. It is alleged that in January 2023, the petitioner along with respondent No. 2 and the minor son travelled to Mexico to celebrate their 10th wedding anniversary. However, on 26th January, 2023, upon receiving an information about the sudden demise of her elder sister-in-law, respondent No. 2 travelled from Mexico to India, leaving the minor child Master 'V' in the care and custody of the petitioner. It is further alleged that although, respondent No. 2 had initially indicated a short stay in India, she later extended it to three months to support her brother's family. During this period, petitioner single-handedly managed all the parenting duties. Later, he also travelled to India with the child. In April, 2023, the couple along with their minor son and the petitioner's mother, flew back to Canada.

4. It is alleged that matrimonial discord arose between the parties. On 25th September, 2023, respondent No. 2 informed the petitioner regarding her resignation from her job in Canada and decided to live separately for a certain period. On 17th October 2023, respondent No. 2 travelled to India with the minor child with the consent of the petitioner for a three week vacation to visit her family. On 06th November, 2023, respondent No. 2 cancelled the return flight tickets

scheduled for 07th November, 2023 and did not return back.

5. During her stay in India, respondent No. 2 filed a complaint before the CAW Cell, alleging physical and mental harassment by the petitioner. She filed a Guardianship Petition bearing GP No. 1/2024 under section 25 of the Guardians and Wards Act, 1890 which is stated to be pending before the learned Family Court, Rohini District Court, Delhi. On 31st December, 2023, an FIR No. 1044/2023 was registered at her instance under Sections 498A/406/34 of the Indian Penal Code, 1860 ["**IPC**"] at PS Mukherjee Nagar, Delhi against the petitioner and his mother. In January, 2024, she also filed a domestic violence complaint against the petitioner and his mother before the learned Chief Metropolitan Magistrate, North District, Rohini District Court, Delhi.

6. On 2nd March, 2024, petitioner filed an application under Order VII Rule 11 of the Code of Civil Procedure, 1908 ["**CPC**"] for rejection of the Guardianship Petition filed by the respondent No.2, which is pending consideration before the learned Family Court, Delhi.

7. In March 2024, petitioner filed an urgent parenting application before the Ontario Superior Court of Justice, Canada, seeking the immediate return of his minor son. Vide order dated 7th March, 2024, the Ontario Superior Court, Canada, granted the petitioner interim sole parenting rights in respect of minor child 'V' and directed the immediate return of the child to Canada, holding that his retention in India by respondent No. 2 is without the consent of the petitioner and that his habitual residence is in Canada.

8. Despite the return order passed by the Ontario Superior Court, Canada, respondent No.2/mother along with the minor child has continued to reside in India since October 2023. Feeling aggrieved, petitioner filed the present petition before this Court on 23rd August, 2025.

Submissions on behalf of Petitioner/Husband

9. Learned counsel for the petitioner submitted that he is the biological father and natural guardian of the minor child, who was born in the United States of America and has been raised in Canada, thereby establishing his habitual residence outside India. Learned counsel further submitted that the child was brought to India by respondent no. 2/mother on the pretext of a temporary visit of approximately three weeks, for which the petitioner had granted consent and necessary travel documents, but respondent no. 2 deliberately failed to return to Canada, thereby, demonstrating her *mala fide*.

10. It was argued that such conduct amounts to wrongful retention and abduction of the child under international law. The petitioner asserted that the Ontario Superior Court, Canada, by interim order dated 7th March 2024, granted sole parenting rights to the petitioner and directed return of the minor child, thereby affirming the petitioner's custodial rights. Learned counsel submitted that the refusal of respondent no. 2 to comply with the foreign court's order demonstrates *mala fide* intent and disregard for lawful authority.

11. It was further argued that the child's education, social environment, and emotional stability have been adversely affected due

to his sudden displacement from Canada and prolonged stay in India. It was contended that the petitioner has been systematically denied communication and access to his son, causing him severe emotional trauma. It was also submitted that the respondent no.2/mother has no care and concern for their child and is frequently partying, while leaving the child behind with the house help.

12. It was submitted that respondent no. 2 has instituted multiple frivolous criminal and civil proceedings in India solely to create obstacles to the child's return and to harass the petitioner and his family and to institute parallel proceedings, despite not being an ordinary resident there. Learned counsel prayed that the welfare of the child lies in restoring him to his habitual environment in Canada where he had stable schooling, healthcare, and family support. It was contended that principle of comity of courts require Indian courts to enforce the orders passed by the Ontario Superior Court, Canada. Hence, it was prayed that the present petition be allowed and the minor child be returned to Canada. In support of his submissions, the learned counsel for the petitioner placed reliance on the judgment of this Court in ***Sunaina Rao Kommineni Vs. Abhiram Balusu, 2025:DHC:4483-DB***.

Submissions on behalf of Respondent No.2/Wife

13. *Per contra*, learned counsel for Respondent No.2 opposed the petition and submitted that the present petition is not maintainable as the child is in the lawful custody of his biological mother, which cannot be termed illegal detention for the purpose of *habeas corpus*. It was contended that *habeas corpus* is an extraordinary remedy meant

for unlawful confinement and not for adjudicating disputed custody rights between parents.

14. It was further submitted that upon arriving in India, Respondent No.2 initiated appropriate legal proceedings seeking guardianship and custody from the competent court, thereby invoking the jurisdiction of Indian courts in accordance with law. Learned counsel emphasized that the learned Family Court has already entertained the matter, thereby recognizing its jurisdiction and the petitioner cannot bypass that forum by invoking writ jurisdiction.

15. It was further contended that there are serious allegations of domestic violence, cruelty and harassment against the petitioner, resulting in initiation of criminal proceedings in India by respondent No. 2.

16. It was contended that the minor son is now settled at Delhi with the respondent no.2/mother and is attending school in Delhi since October 2023. It was also argued that uprooting him from his present surroundings and compelling his return to Canada would cause him severe emotional and psychological distress.

17. Learned counsel further argued that the foreign court's order relied upon by the petitioner is only interim and cannot override the jurisdiction of Indian courts where the child is physically present and an ordinary resident. Learned counsel contended that the return order passed by the Ontario Superior Court, Canada cannot be enforced mechanically and the courts in Delhi must independently consider the welfare of the minor child. It was prayed that the writ petition be dismissed. In support, the learned Senior Counsel for Respondent No.

2 has placed reliance on the judgment of the Supreme Court in ***Nithya Anand Raghavan Vs. State (NCT of Delhi) & Anr., (2017) 8 SCC 454*** and ***Tejaswini Gaud Vs. Shekhar Jagdish Prasad Tewari, (2019) 7 SCC 42***.

Analysis and Findings

18. We have heard the learned counsel for the parties and carefully perused the material on record.

19. The petitioner seeks issuance of a writ of *Habeas Corpus* for production of his minor son and also seeks directions regarding his custody and return to Canada. The dispute, in fact, is more of a custody battle between estranged parents.

20. It is not in dispute that the minor son is presently residing with Respondent No.2, that is, his biological mother at Delhi. Custody with a natural guardian, particularly the mother, cannot ordinarily be termed illegal so as to justify the issuance of a writ of *Habeas Corpus*. The extraordinary jurisdiction under Article 226 of the Constitution is discretionary and is not intended to supplant statutory remedies. *Habeas Corpus* is a prerogative writ which is an extraordinary remedy and the writ is maintainable only where detention of the minor child is illegal or without authority of law.

21. The Supreme Court in ***Veena Kapoor Dr. (Mrs.) Vs. Varinder Kumar Kapoor, (1981) 3 SCC 92*** emphasized that in matters of custody of minor child, the welfare of the child is the paramount consideration and it will override the legal right of either party/parent. In this case, the issue of custody of child was between the natural guardians, who were not living together. The mother of the child, filed

the *Habeas Corpus* petition seeking custody of the child from her husband alleging that her husband was having illegal custody of the one and a half year old child. The Supreme Court directed the District Judge concerned to take down evidence, adduced by the parties, and send a report to the Supreme Court on the question whether considering the interest of the minor child, its mother should be given its custody.

22. In ***Sarita Sharma Vs. Sushil Sharma, (2000) 3 SCC 14***, the tussle over the custody of two minor children was between their separated mother and father. The Family Court of the USA while passing the decree of divorce gave custody rights to the father. When the mother flew to India with the children, the father approached the High Court by filing a *Habeas Corpus* petition. The High Court directed the mother to handover the custody to the father. The Supreme Court in appeal, while dismissing the writ petition observed that when a minor child is in the custody of the mother, such custody cannot be considered unlawful merely because the father seeks custody, and that the High Court should instead of allowing the *Habeas Corpus* petition should have directed the parties to initiate appropriate proceedings where a thorough enquiry regarding the interest of children could be made. The relevant para of the judgment reads as under:-

> *"6. …… Considering all the aspects relating to the welfare of the children,* ***we are of the opinion that in spite of the order passed by the Court in U.S.A. it was not proper for the High Court to have allowed the habeas corpus writ petition and directed the appellant to hand over custody of the children to the respondent and permit him to take them away to U.S.A. What would be in the interest of***

> ***the children requires a full and thorough inquiry and, therefore, the High Court should have directed the respondent to initiate appropriate proceedings in which such an inquiry can be held.*** *Still there is some possibility of the mother returning to U.S.A. in the interest of the children. Therefore, we do not desire to say anything more regarding entitlement of the custody of the children. The chances of the appellant returning to U.S.A. with the children would depend upon the joint efforts of the appellant and the respondent to get the arrest warrant cancelled by explaining to the Court in U.S.A. the circumstances under which she had left U.S.A. with the children without taking permission of the Court. There is a possibility that both of them may thereafter be able to approach the Court which passed the decree to suitably modify the order with respect to the custody of the children and visitation rights."*

23. Similarly, in the landmark judgment of ***Tejaswini Gaud*** (supra), the Supreme Court reiterated that a writ of *Habeas Corpus* in child custody matters is maintainable only where the custody is unlawful or without authority of law. Even in such cases, the Court must be guided by the paramount consideration of the welfare of the child rather than the legal rights of the parties. The Apex Court further held that in child custody matters, the ordinary remedy lies only under the Hindu Minority and Guardianship Act, 1956 or the Guardians and Wards Act, 1890. If the Court believes that the matter requires a thorough examination of facts, it may choose not to use its extraordinary jurisdiction and instead instruct the parties to seek relief before a civil court. Only in rare and exceptional circumstances will the Court decide custody rights through its extraordinary jurisdiction on a *Habeas Corpus* petition. The relevant paras of the judgment reads as under:-

> *"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 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."

24. The Supreme Court in ***Nithya Anand*** (supra), has categorically held that the High Court, when hearing a *habeas corpus* petition involving a minor child, may either order the child's return or refuse to alter custody based on the specific facts and circumstances of the case, with the child's welfare being the paramount consideration. Orders of foreign courts are subordinate to the child's welfare and cannot be enforced through *habeas corpus* as if the High Court were executing a foreign decree. However, the petitioner remains free to pursue other legal remedies available under the law to enforce the

foreign court's order or to seek custody before an appropriate Indian court. The relevant portion of the judgment reads as under:-

> *"46. 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. The order of the foreign Court must yield to the welfare of the child. Further, the remedy of writ of habeas corpus cannot be used for mere enforcement of the directions given by the foreign court against a person within its jurisdiction and convert that jurisdiction into that of an executing court. Indubitably, the writ petitioner can take recourse to such other remedy as may be permissible in law for enforcement of the order passed by the foreign Court or to resort to any other proceedings as may be permissible in law before the Indian Court for the custody of the child, if so advised."*

25. The Supreme Court further held that foreign custody orders are only one of the factors to be considered and that the Indian court must independently examine whether returning the child would be in his or her best interest. The welfare of the child is of paramount importance. The relevant portion of the judgment reads as under:-

> *"66. The invocation of first strike principle as a decisive factor, in our opinion, would undermine and whittle down the wholesome principle of the duty of the Court having jurisdiction to consider the best interests and welfare of the child, which is of paramount importance. If the Court is convinced in that regard, the fact that there is already an order passed by a foreign Court in existence may not be so significant as it must yield to the welfare of the child. That is only one of the factors to be taken into consideration. The interests and welfare of the child are of paramount consideration. The principle of comity of courts as observed in Dhanwanti Joshi's case (supra), in relation to non-convention countries is that the Court in the country to which the child is removed will consider the question on merits bearing the welfare of the child as of paramount*

importance and consider the order of the foreign Court as only a factor to be taken into consideration. While considering that aspect, the Court may reckon the fact that the child was abducted from his or her country of habitual residence but the Court's overriding consideration must be the child's welfare.

67. XXX
68. XXX

69. We once again reiterate that the exposition in the case of Dhanwanti Joshi (supra) is a good law and has been quoted with approval by a three-judge bench of this Court in V. Ravi Chandran (supra). We approve the view taken in Dhanwanti Joshi (supra), inter alia in paragraph 33 that so far as non-convention countries are concerned, the law is that the Court in the country to which the child is removed while considering the question must bear in mind the welfare of the child as of paramount importance and consider the order of the foreign Court as only a factor to be taken into consideration. The summary jurisdiction to return the child be exercised in cases where the child had been removed from its native land and removed to another country where, may be, his native language is not spoken, or the child gets divorced from the social customs and contacts to which he has been accustomed, or if its education in his native land is interrupted and the child is being subjected to a foreign system of education, for these are all acts which could psychologically disturb the child. Again the summary jurisdiction be exercised only if the court to which the child has been removed is moved promptly and quickly. The overriding consideration must be the interests and welfare of the child."

26. Applying the aforesaid principles to the present case, the custody of the child with mother/Respondent No.2 cannot *per se* be regarded as illegal. The petitioner's grievance pertains to entitlement to custody, which is a matter requiring detailed adjudication rather than summary determination in writ proceedings.

27. It is an admitted position that Respondent No.2 has instituted a petition under the Guardians and Wards Act, 1890, being GP No. 1/2024, seeking custody and guardianship of the minor child before the learned Family Court at Delhi. The said Guardianship Petition is

presently pending adjudication before the competent court.

28. The existence and pendency of the said proceedings is crucial. The Guardians and Wards Act, 1890 provides a comprehensive statutory framework for determination of custody disputes on the basis of evidence and welfare considerations. The learned Family Court, exercising *parens patriae* jurisdiction, in our opinion, is the appropriate forum to evaluate the competing claims of the parents.

29. The petitioner herein had challenged the maintainability of the said Guardianship Petition by filing an application under Order VII Rule 11 CPC seeking rejection of the petition on the ground that the Indian courts lacked territorial jurisdiction. The said application is stated to be pending.

30. Since the learned Family Court has yet to adjudicate the petitioner's challenge to maintainability, it would be inappropriate for this Court to entertain the present writ petition which, in effect, seeks to circumvent the pending proceedings before the learned Family Court.

31. In ***Sunaina Rao*** (supra), the wife had filed the Guardianship Petition after the husband had already approached the Arizona Court and that Court had passed a detailed order on joint custody of the child. Further, the Guardianship Petition filed by the wife in India had been returned by the learned Family Court, finding lack of territorial jurisdiction. The said judgment therefore, has no application to the facts of the present case.

32. The petitioner has placed reliance on orders passed by the

foreign court, that is, the Ontario Superior Court, Canada directing return of the minor child. While such orders are entitled to due regard, they cannot be enforced automatically through *Habeas Corpus* proceedings, especially when the welfare of the child is required to be independently assessed by the court within whose jurisdiction he presently resides.

33. Coming back to the present case, the material on record reveals that the minor child is presently residing with his mother/Respondent No.2 in Delhi, is attending school, and is living in a family environment since last more than two years. Uprooting him abruptly and directing his removal from the jurisdiction without a detailed inquiry into his welfare would not be appropriate.

34. It is well settled law by a catena of judgments that while deciding matters of custody of a child, primary and paramount consideration is welfare of the child. The issues raised by the petitioner involve disputed questions of fact, including the circumstances under which the child came to India, his present well-being, and the competing allegations of the parties regarding custody. Such issues cannot be satisfactorily resolved in summary writ proceedings and may require due appreciation of evidence.

35. In our opinion, the present writ petition seeks to convert this Court into an executing forum for a foreign order, which is impermissible in custody matters. We feel it pertinent to point out that the petitioner has an efficacious alternate remedy before the learned Family Court where the Guardianship Petition is pending. Entertaining the present petition, at this stage, would result in parallel

proceedings and may prejudice the adjudication before the learned Family Court.

36. In view of the foregoing discussion, this Court is of the considered opinion that no case is made out for issuance of a writ of *Habeas Corpus* or for interference in the custody of the minor child at this stage.

37. The writ petition is accordingly dismissed.

38. It is clarified that the learned Family Court shall proceed with the Guardianship Petition, including on its maintainability expeditiously and decide the matter on its own merits, uninfluenced by any observations contained herein.

RAVINDER DUDEJA, J.

NAVIN CHAWLA, J.

11th March, 2026/*AK/RM*