



2026:DHC:2008-DB



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Reserved on: 16th February, 2026
Pronounced on: 11th March, 2026

+ W.P.(CRL) 2988/2024 & CRL.M.A. 11271/2025, CRL.M.A.
11272/2025

YASIR AYAZ

.....Petitioner

Through: Mr. Khalid Akhtar, Mr. Maaz
Akhtar, Mr. Abdullah Akhtar
and Ms. Sana Anwar, Advs.

versus

STATE OF NCT DELHI & ANR.

.....Respondents

Through: Mr. Sanjay Lao, Standing
Counsel (Crl.) with Ms. Priyam
Aggarwal, Mr. Aryan Sachdeva
and Mr. Abhinav Kr. Arya,
Advs.

SI Deval Shalkhlan, PS
Bhajanpura

Mr. Colin Gonsalves, Sr. Adv.
with Mr. Manik Gupta, Mr. M.
S. Khan, Ms. Neha Khan, Mr.
Akbar Kaleem, Ms. Shaziya
and Mr. Yasir Khan, 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 is filed by the petitioner/husband seeking issuance of a writ of *Habeas Corpus* directing Respondent No.2/mother of the minor



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children, to produce the children before this Court and further seeks a direction for their return to the United Kingdom in terms of orders passed by the High Court of Justice, Family Division, London.

Brief Facts

2. The petitioner/father and Respondent No.2/mother met in the United Kingdom in 2006 and after five years, they solemnized their marriage as per Islamic law in 2011 in the Kingdom of Saudi Arabia and registered their marriage in Swansea, United Kingdom in March 2012. Out of the wedlock, two sons were born- “AA” having DOB as 04th March, 2014 and “MM” having DOB as 30th August, 2018. Both the children are British nationals, having been born in the United Kingdom, and had been residing in the United Kingdom since their birth. The petitioner, being of Pakistani origin, was granted British Citizenship in 2016 and the Respondent No.2, in 2023, was granted leave to live indefinitely in the United Kingdom.

3. On 31st August, 2023, with the consent of the petitioner, Respondent No.2 travelled to India with the minor children allegedly for a temporary visit/vacation on the false pretext of spending more time with family and attending wedding. The Respondent No.2, however, filed a custody petition bearing GP No. 47/2023 before the Karkardooma Courts, Delhi, India on 03rd November, 2023.

4. Since the visa of the minor children was to expire on 06th/07th November, 2023, the petitioner, on 08th November, 2023, acceded to the request of the Respondent No.2 for extension of visa for three months. The visa extension was granted, however, the Respondent No.2, allegedly, thereafter wrongfully retained the children in India



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and ceased communication with the petitioner.

5. The petitioner received summons from the learned Family Court, Karkardooma Courts, Delhi on 29th January, 2024 to appear before the Court. Pursuant to this, the petitioner, on 23rd February, 2024, moved an application before the High Court of Justice, Family Division, London [“**U.K. High Court**”], seeking return of his children to the United Kingdom, being British nationals.

6. The Respondent No.2, on 04th April, 2024, sent her statement as reply to the U.K. High Court on the jurisdictional aspect of India being the appropriate forum. The U.K. High Court, passed an order dated 06th June, 2024 regarding jurisdiction and *forum conveniens*. On 14th August, 2024, the U.K. High Court, passed a detailed order declaring that the children, who are British Passport holders, shall remain ‘wards’ of the U.K. High Court.

7. The U.K. High Court, after final hearing, passed a return order dated 16th August, 2024, directing that the minor children be returned to the petitioner/father in United Kingdom by 01st September, 2024 on the ground that they are British nationals and that their habitual residence was in that jurisdiction. It was also observed that the appropriate forum is United Kingdom, not India.

8. Despite the return order, the Respondent No.2/mother along with the minor children has continued to reside in India with her sister and father and the children are stated to be presently enrolled in a school at Delhi.

9. Since the Respondent No.2 refused to return to United Kingdom along with the children in compliance of orders of the U.K. High



Court, the petitioner, on 24th September, 2024, filed the present writ petition before this Court.

Submissions on behalf of Petitioner/Husband

10. Learned counsel for the petitioner submitted that the couple had been residing in the United Kingdom for a considerable period and had two children out of the wedlock. Their children are British nationals who were born, raised, and educated in United Kingdom-making it their habitual residence. It was stated that the Respondent No.2 travelled to India with the children only for a temporary visit but thereafter refused to return back to the United Kingdom, thereby disrupting their settled environment and depriving the petitioner access to his children by retaining them in India. It was further submitted that denial of access of children to the father prejudices the paternal relationship and the children's welfare.

11. It was contended that such retention is without the petitioner's consent and in breach of binding orders of the U.K. High Court categorically directing the children's return to the United Kingdom. The learned counsel submitted that the U.K. High Court has already exercised jurisdiction over the minor children, who are British passport holders, and declared the children as wards of the U.K. High Court and directed their return back to the United Kingdom. It was contended that principle of comity of courts require Indian courts to enforce the said order.

12. It was stated that the Respondent No.2, having avoided proceedings before U.K. High Court, has filed custody petition in district court of India to create a parallel jurisdiction in India, despite



the children not being ordinary resident here. Hence, it was prayed that the present petition be allowed and the minor children be returned to United Kingdom. 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, and of the Supreme Court in *Yashita Sahu Vs. State of Rajasthan & Ors.*, (2020) 3 SCC 67; and *Kanika Goel Vs. State of Delhi & Anr.*, (2018) 9 SCC 578.

Submissions on behalf of Respondent No.2/Wife

13. *Per contra*, learned Senior Counsel for Respondent No.2 submitted that the writ petition is misconceived and amounts to an attempt to bypass the statutory remedies available under the Guardians and Wards Act, 1890. It was contended that the custody of the minor children with their mother is lawful and in their best interest, and cannot be characterised as illegal detention so as to justify the issuance of a writ of *Habeas Corpus*.

14. It was further submitted that upon arriving in India, Respondent No.2 promptly 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 these proceedings are pending and that the Family Court has already entertained the matter, thereby recognizing its jurisdiction. Furthermore, the petitioner's application under Order VII Rule 11 of the Code of Civil Procedure, 1908 [“CPC”] has been rejected by the learned Family Court, Karkardooma Courts, Delhi vide order dated 29th January, 2026 and the same has not been challenged



by the petitioner.

15. It was contended that the children are now settled at Delhi, are living in a supportive family environment and are attending Birla Brainiacs International School *via* online mode. It was argued that uprooting them from their present surroundings and compelling their return to United Kingdom would cause them severe emotional and psychological distress.

16. Learned counsel contended that the return order passed by the U.K. High Court cannot be enforced mechanically and that this Court must independently consider the welfare of the children. 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 *Somprabha Rana & Ors. Vs. The State of Madhya Pradesh & Ors., 2024 INSC 664*.

Court Reasoning and Analysis

17. We have considered the submissions made by the learned counsel for the parties and carefully perused the material on record.

18. The petitioner seeks issuance of a writ of *Habeas Corpus* for production of his minor children and also seeks directions regarding their custody and return to the United Kingdom. The dispute, in a nutshell, is a custody battle between the parents.

19. It is not in dispute that the minor children are presently residing with Respondent No.2, that is, their 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. The writ of *Habeas Corpus* in custody matters is maintainable only where detention of the minor is illegal or without authority of law.

20. 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 the said case, the issue of custody of child was between the natural guardians who were not living together. Veena, 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 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.

21. 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 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.”*

22. Similarly, in the landmark judgment of *Tejaswini Gaud & Ors. Vs. Shekhar Jagdish Prasad Tewari & Ors.*, (2019) 7 SCC 42, 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



23. In *Kanika Goel* (supra), the Supreme Court held that in petition seeking the writ of *habeas corpus*, the High Court must examine at the threshold whether the minor is in the lawful custody of another person (private respondent named in the writ petition). Where the custody is with the mother, the Court may not make any further enquiry or, resort to a summary or elaborate enquiry to determine the welfare of the child.

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 xxx xxx

68. xxx xxx 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 children with mother/Respondent No.2 cannot *per se* be characterized 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 seeking custody and guardianship of the minor children before the Family Court at Karkardooma, Delhi, being GP No. 47/2023. The said Guardianship Petition is presently pending adjudication before the competent court. 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 Family Court, exercising *parens patriae* jurisdiction, in our opinion, is the appropriate forum to evaluate the competing claims of the parents.

28. The petitioner herein had challenged the maintainability of the said Guardianship Petition by filing an application under Order VII



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Rule 11 CPC seeking rejection of the same on the ground that the Indian courts lacked territorial jurisdiction. The learned Family Court, by order dated 29th January, 2026, dismissed the said application, holding that the petition was maintainable and that the court had jurisdiction to entertain the matter. Once the competent court has rejected 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 Family Court.

29. 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. Similarly, in *Yashika Sahu* (supra), the wife brought the child into India in violation of orders of the jurisdictional court in USA.

30. The petitioner has placed reliance on orders passed by the foreign court, that is, the U.K. High Court directing return of the children. While such orders are entitled to due regard, they cannot be enforced automatically through *Habeas Corpus* proceedings, especially when the welfare of the children is required to be independently assessed by the court within whose jurisdiction they presently reside.



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

32. The issues raised by the petitioner involve disputed questions of fact, including the circumstances under which the children came to India, their present well-being, and the competing claims of the parties regarding custody. Such issues cannot be satisfactorily resolved in summary writ proceedings and require evidence.

33. 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 Family Court where the Guardianship Petition is already pending and where the parties are free to lead evidence and pursue their claim for custody and visitation. Entertaining the present petition would result in parallel proceedings and may prejudice the adjudication before the learned Family Court.

34. In view of the foregoing discussion, this Court is not inclined to exercise its extraordinary discretionary jurisdiction in the present Writ Petition, while leaving it open to the parties to avail of their alternative remedies in accordance with law. It is made clear that no observation made in the present order shall in any manner prejudice either of the

