



2026:DHC:9185-DB



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

*Date of decision: 12.10.2026*

# **CNR No. DLHC010925462025**

+ **W.P.(CRL) 3847/2025**

**ANJALI IYER**

.....Petitioner

Through: **Mr. Nishant Verma, Adv.**

versus

**THE STATE OF NCT OF DELHI & ORS.** .....Respondents

Through: **Mr. Sanjay Lao, Sr. Advocate with Mr. Aman Usman, APP and Mr. Abhinav Kumar Arya, Adv. alongwith SI Ansar Ali, PS- Madhu Vihar.**

**Mr. Kamlesh Kumar Mishra and Mr. Rohit Kalra, Advs. for R-2**

**CORAM:**

**HON'BLE MR. JUSTICE NAVIN CHAWLA**

**HON'BLE MR. JUSTICE ARUN BHARDWAJ**

**NAVIN CHAWLA, J. (ORAL)**

1. The present Writ Petition has been filed under Article 226 of the Constitution of India read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as 'BNSS') seeking issuance of a writ in the nature of *Habeas Corpus* for production of the minor girl child of the petitioner, who is aged about 9 years, and is presently in the custody of the father/respondent no. 2.

2. The learned counsel for the petitioner submits that the petitioner and respondent no. 2 were married on 15.09.2013 and were blessed with a girl child on 19.07.2017. Due to certain matrimonial disputes,

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the petitioner left her matrimonial home and started living with her parents at Bhopal since 01.03.2023. On 25.10.2025, respondent no. 2 and his family members came to Bhopal to take the child along with them, on the assurance that they would be sending her back to the petitioner before her school examinations. At that time, the girl child was studying in a school in Bhopal and her exams were to start from 11.11.2025.

3. The petitioner further asserts that on 26.10.2025, the mother of respondent no. 2 had also assured the petitioner that the child would be returned to the petitioner within three days. As the child was not returned by 02.11.2025, the father of the petitioner went to pick her up from respondent no. 2. However, the guard at the residential society misbehaved with him and denied him entry. It is further alleged that even the in-laws of the petitioner did not open the door and, hence, did not allow the father of the petitioner to meet the child. The same followed even on 03.11.2025.

4. As the girl child was not returned to the petitioner, she has filed the present Writ Petition.

5. On notice of this petition, respondent no. 2 has filed a reply wherein he admits that the child was in custody of the petitioner initially. However, he asserts that, on 24.10.2025, the petitioner herself sent a WhatsApp message to him stating that, as the petitioner and her father have no money, respondent no. 2 should come and take the girl child from her as she will not be able to manage the child anymore. We reproduce the message sent by her as under:

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***“My father and I have no money Please take  
‘xxx’ from here. We cannot manage”***

6. Respondent no. 2 asserts that on receipt of the said message, he took the child from the petitioner on 25.10.2025 with the consent of the petitioner, and even got the child admitted to a school in Delhi with effect from 01.11.2025, where she is presently studying.

7. As far as the alleged assurance given by the mother of respondent no. 2 on 26.10.2025 is concerned, respondent no. 2 denies the same. In fact, he asserts that his mother has not been on talking terms with the petitioner and therefore, there was no occasion for her to give such an assurance. He states his mother was travelling to Ayodhya on the said date and may have merely stated that she will be returning back from Ayodhya to Delhi after three days.

8. We must herein emphasize that the above averments of respondent no. 2 have remained uncontroverted by the petitioner, as the petitioner has not filed any rejoinder.

9. During the pendency of the present Writ Petition, we not only referred the parties to explore the possibility of arriving at an amicable settlement before the Delhi High Court Mediation and Conciliation Centre, but have also personally interacted with the parties and the minor child.

10. We also passed interim arrangements on visitation of the petitioner with the minor child, including *vide* our orders 05.12.2025 and 07.05.2026.

11. Unfortunately, the parties have not been able to settle their disputes.

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12. The learned counsel for the petitioner, placing reliance on the judgment of the High Court of Karnataka in ***Mrs Sandhya Goni v. State of Karnataka & Ors.***, 2015:KHC:16043-DB, submits that as the child was illegally taken away by respondent no. 2 on his assurance that she shall be returned to the petitioner within three days, the detention of the custody of the child with respondent no. 2 is illegal and the same needs to be restored to the petitioner. He further submits that the welfare of the child, which is of paramount consideration for this Court, lies with the custody of the child being with the petitioner.

13. On the other hand, learned counsel for respondent no. 2 submits that the petitioner herself voluntarily called upon respondent no. 2 to take the custody of the child from her. Therefore, it was only at her request that the child was brought to Delhi by respondent no. 2 and the custody of the child with respondent no. 2 cannot be said to be illegal as he is her natural guardian. He submits that thereafter, respondent no. 2 got Ms. 'X' admitted to a school in Delhi, where she is presently studying. He submits that the welfare of the child would therefore lie in being in the custody of respondent no. 2.

14. We have considered the submissions made by the learned counsels for the parties.

15. In ***Tejaswini Gaud v. Shekhar Jagdish Prasad Tewari***, (2019) 7 SCC 42, the Supreme Court held that though a Writ of *Habeas Corpus*, in matters of child custody, is maintainable, the same power to issue the same should only be exercised when the custody of the child is with a person unlawfully or without the authority of law. The Supreme Court held that, in child custody matters, the ordinary



remedy lies under the Hindu Minority and Guardianship Act, 1956 or the Guardian & Wards Act, 1890. We quote from the judgment 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 matter, 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*



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*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.*

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*26. The court while deciding the child custody cases is not bound by the mere legal right of the parent or guardian. Though the provisions of the special statutes govern the rights of the parents or guardians, but the welfare of the minor is the supreme consideration in cases concerning custody of the minor child. The paramount consideration for the court ought to be child interest and welfare of the child.”*

16. Guided by the above principles, as also by a *prima facie* consideration of the welfare of the child, we find that the custody of the minor child in the hands of respondent no. 2 cannot be said to be illegal. In fact, *prima facie*, it appears that the custody of the minor child was handed over by the petitioner to respondent no. 2 voluntarily, may be out of frustration or otherwise. The fact remains that on taking over the custody of the minor child, which appears to have been voluntarily given by the petitioner, respondent no. 2 has got the child admitted to a school in Delhi, where she is presently studying.

17. We find that there is also a dispute on whether the custody of the child was given to the respondent only for a short period. There is a dispute on the alleged conversation between the petitioner and the mother of respondent no. 2, with respondent no. 2 asserting that the same was only to inform the petitioner that the mother of respondent

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no. 2 shall be returning to Delhi after three days as she was travelling to Ayodhya during the relevant period.

18. In our opinion, these considerations, including the matters of welfare of the child, are to be determined by the competent court after considering the evidence and the submissions made therein by the parties. In the present case, in exercise of our extraordinary discretionary jurisdiction under Article 226 of the Constitution of India, these matters cannot be decided merely on the basis of affidavits and assertions of the parties which are disputed by each other.

19. Given the above facts, we refuse to exercise our extraordinary discretionary jurisdiction in the present Writ Petition, leaving it open to the petitioner to avail her remedies in accordance with law before a competent Court of jurisdiction.

20. We make it clear that in case any such remedy is availed, the same shall be adjudicated by a competent Court without being influenced by any observation or interim order made by us in the present petition.

21. In the meanwhile, the parties shall abide by the *interim* arrangement arrived at before us by the parties and as recorded in our orders dated 05.12.2025 and 07.05.2026. The same shall also be without prejudice to the rights of the parties and contentions before the competent court in appropriate proceedings.

22. The learned counsel for respondent no. 2 submits that the custody of the child be taken by the petitioner, in accordance with the interim arrangement between the parties, from a neutral venue, such as

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a Mall, preferably near the house of respondent no. 2, where respondent no. 2 will bring the child at a designated time. This is agreeable to respondent no. 2.

23. Accordingly, it is agreed that the parties shall, amongst themselves, discuss the time and the place where the custody of the child shall be handed over by respondent no. 2 to the petitioner, and thereafter be returned by the petitioner to respondent no. 2 in compliance with the interim visitation terms agreed by the parties and as recorded in the orders dated 05.12.2025 and 07.05.2026.

24. The present petition is disposed of in the above terms.

**NAVIN CHAWLA, J**

**ARUN BHARDWAJ, J**

**OCTOBER 12, 2026/akr/as**

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