



\$~2

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

Date of decision: 03.08.2026

CNR No. DLHC010297452026

+ **W.P.(CRL) 2026/2026**

YOGESH KUMAR

.....Petitioner

Through: Mr.Mohd. Suza Faisal,
Mr.Rishav Kumar & Mr.Mohd.
Kashif, Advs.

versus

STATE OF NCT DELHI AND OTHERS.

.....Respondents

Through: Mr.Amol Sinha, ASC for State
along with Mr.Kshitiz Garg,
Mr.Ashvini Kumar, Mrs.Chavi
Lazarus, & Mr.Nitish Dhawan,
Advs. for R-1 & 2.

Mr.Daljeet Dhiman & Ms.Nidhi
Saxena, Advs. for R-3.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

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 Bhartiya Nyaya Suraksha Sanhita, 2023 seeking issuance of a Writ in the nature of Habeas Corpus, directing the respondent nos.1 and 2 to produce the two minor children of the petitioner, and for the grant of their custody to the petitioner.



2. In the petition, it is disclosed that the two minor children were born to the petitioner and his deceased wife on 01.09.2022. The petitioner claims that on 20.11.2022, the petitioner's wife unfortunately committed suicide, pursuant to which a criminal case, that is, FIR No. 711/2022 came to be registered, making the petitioner an accused. The petitioner remained in custody till June 2026, when he was released on bail. The petitioner has, thereafter, filed the present petition seeking custody of the minor children from respondent no.3, the maternal grandmother of the children/mother of the petitioner's wife.

3. The learned counsel for the petitioner, placing reliance on the judgments of the Supreme Court in **Tejaswini Gaud and Ors. v. Shekhar Jagdish Prasad Tewari and Others**, (2019) 7 SCC 42, and **Vivek Kumar Chaturvedi & Anr. v. State of UP & Ors.**, (2025) 4 SCC 342, has submitted that the father, being the natural guardian of the minor children, the custody of the minor children must be given to the petitioner. He submits that the welfare of the children would also lie with the custody being handed over to their father, that is, the petitioner herein.

4. On the other hand, the learned counsel for respondent no.3 submits that the children have been in the custody of respondent no.3 ever since the death of the petitioner's wife. The petitioner is, in fact, facing a charge under Section 302 of the IPC for the murder of the mother of the minor children. He further submits that the maternal grandfather of the children, that is, the husband of respondent no.3, has also filed a Guardianship Petition, seeking guardianship of the



children, which is pending adjudication before the Competent Court. He submits that the welfare of the minor children must be determined in such proceedings and that this Court should not intervene in the exercise of its extraordinary discretionary jurisdiction under Article 226 of the Constitution of India.

5. The learned counsel for respondent nos.1 and 2 also confirms the fact that the petitioner is facing a charge under Section 302 of the IPC for the murder of his wife and is presently enlarged on bail pending trial.

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

7. In the present case, the custody of the minor children, almost right from their birth, has remained with respondent no.3, their maternal grandmother. The petitioner was, in fact, in custody for a period of almost four years, till his release in June 2026. He is currently facing trial for the murder of the mother of the children.

8. In ***Tejaswini Gaud and Ors.*** (supra), the Court observed that, in deciding the matters of child custody, 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 and where it is proved that the detention of a minor child by a parent or others is illegal and without any authority of law. The Court, however, reiterated that the ordinary remedy for the same lies only under the Hindu Minority and Guardianship Act, 1956 or the Guardians and Wards Act, 1890, as the case may be, and in proceedings under the said Acts. It was held that what is important is the welfare of the child,



and where the Court is of the view that a detailed inquiry is required, the Court may decline to exercise its extraordinary jurisdiction and direct the parties to approach the Civil Court; it is only in exceptional cases that the right of the parties to the custody of the minor child will be determined in exercise of extraordinary jurisdiction on a petition of Habeas Corpus.

9. In the facts of the said case, the Court found that the custody of the minor child had been given to the appellants therein (the child's maternal relatives) in extraordinary circumstances and due to the extreme ill-health of respondent no.1 (father) therein. After recovering from his illness, respondent no.1 sought the custody of the child, which was refused by the appellants. In such circumstances, the Court held that the respondent no.1 therein had neither abandoned the child nor had deprived the child of a right to his love and affection, and that the circumstances were such that, due to the illness of the parents, the appellants had taken care of the child for some time, however, they cannot retain the custody of the child for these reasons.

10. In ***Vivek Kumar Chaturvedi & Anr.*** (supra), the Court was again confronted with the facts where the father of the child had re-married. The Court found that this fact alone cannot stand against the father's claim for custody and that the grandparents cannot have a better claim than the father, who is the natural guardian. The Court emphasized that there was no allegation of any matrimonial dispute when the mother of the child was alive, nor was there a complaint of abuse perpetrated against the wife or the child.

11. The facts of the two cases cited by the learned counsel for the



petitioner are, therefore, totally distinct and not applicable to the facts of the present case.

12. As noted hereinabove, almost right from the birth of the two minor children, they have been in the custody of respondent no.3. The petitioner, in fact, has been in custody for the murder of his own wife/the mother of the children and is facing trial in the said case. He is presently enlarged on bail pending trial, and his future is also not certain.

13. Be that as it may, the above observations are only *prima facie* in nature, as the welfare of the children has to be determined by the Competent Court in the proceedings initiated by the maternal grandfather of the children, that is pending adjudication before the Competent Court. We have noted the above facts only to emphasize that given the above, this is not a fit case for exercising our extraordinary discretionary jurisdiction under Article 226 of the Constitution of India.

14. We, therefore, dismiss the present petition, leaving it open to the petitioner to agitate his rights before a Court of Competent jurisdiction. We make it clear that any observation made hereinabove shall not, in any manner, influence the Competent Court in such proceedings.

NAVIN CHAWLA, J

RAVINDER DUDEJA, J

AUGUST 3, 2026/rv/pb