



2026:DHC:59-DB



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

***Date of decision: 06.01.2026***

+ W.P.(CRL) 4238/2025  
NEELAM JOSHI

.....Petitioner

Through: Ms.Urvashi Bhatia, Mr.Bharat  
Bhushan Bhatia, Mr.Jatin  
Khatri, Mr.Gaurav Pachauri,  
Mr.Mathew Philip and  
Mr.Utkarsh Dwiwedi, Advs.  
Petitioner in person

versus

STATE (NCT OF DELHI) & ORS. ....Respondents

Through: Mr.Sanjay Lao, Standing  
Counsel (Crl.) with Insp.  
Paramjit, PS Burari and Insp.  
Surender Kumar, PS Chhawla.  
Ms.Swati Rathi, Ms.Chetishtha  
Malik, Mr.Phool Kumar and  
Mr.Prem Sood, Advs. for R-4  
to R-8 along with Respondent  
no.4 in person

**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 Bharatiya Nagarik Suraksha Sanhita, 2023, seeking issuance of a Writ of Habeas Corpus, directing the respondents to produce the body of the two minor daughters of the petitioner, one aged 12 months and the second aged about 4 years and 9 months, respectively.



2. Briefly stated, the petitioner herein was married to the respondent no. 4 according to the Hindu rites and customs in Delhi on 10.03.2019. Pursuant to their marriage, matrimonial dispute arose between the said parties and the petitioner filed a written complaint to the Women's Commission and the P.S. Chhawla, Delhi, on 30.09.2019, against the respondent nos.4 to 8. The respondent no. 4 is the husband of the petitioner; the respondent nos.5 and 6 are the father-in-law and the mother-in-law of the petitioner respectively; while respondent nos. 7 and 8 are the brothers-in-law of the petitioner. The said dispute was, however, settled and the petitioner states that she did not pursue it any further based on the assurance given by the respondent no. 4.

3. The first child was born on 22.03.2021, whereafter matrimonial dispute again arose between the parties, leading to the petitioner filing an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005, against the respondent nos.4 to 8 on 08.11.2021. The dispute was referred to the Delhi Mediation Centre, Tis Hazari Courts, New Delhi, where the same was settled again between the parties vide the Settlement dated 19.05.2022 and both the parties decided to live together as husband and wife along with their minor daughter at the matrimonial home.

4. The second child was born to the parties, that is, the petitioner and the respondent no.4, on 18.09.2023. However, unfortunately, the child passed away on 20.05.2024.

5. The parties, thereafter, were blessed with their third child on 10.12.2024, in respect of whose custody also the present petition has



been filed.

6. The petitioner herein claims that on 21.07.2025, the respondent nos.4 to 6 asked the petitioner to visit her paternal home for a few days, while insisting that the minor daughters be left back at the matrimonial home with respondent nos. 4 to 6. Upon her return, however, she was not allowed to enter her matrimonial home and the children remained in the custody of the respondent nos.5 to 8, that are, the parents-in-law and the brothers-in-law of the petitioner.

7. Thereafter, the petitioner filed a complaint, bearing DD no. 373 dated 06.08.2025, before the CAW Cell at P.S. Subzi Mandi against the respondents nos. 4 to 8 and an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 before the Judicial Magistrate First Class, Central District, Tis Hazari Courts, Delhi, on 29.08.2025. It is alleged that while the petitioner had consented for settlement through mediation and was appearing for the same, however, the respondents nos. 4 to 8 have not been appearing for the same.

8. The petitioner had also moved an application under Section 21 of the Protection of Women from Domestic Violence Act, 2005 before the Judicial Magistrate First Class, Central District, Tis Hazari Courts, Delhi, on 15.09.2025, seeking custody of her minor daughters. The said application is pending adjudication and is listed for service of summons on the remaining parties.

9. It is the case of the petitioner that the respondent no.4 is a Hawaldar in the Accounts Department in the Indian Army and was earlier posted in Bengal, thereafter in Patiala, and is presently posted



in Kupwara, Kashmir. The children are, therefore, in the custody of the parents-in-law and the brothers-in-law of the petitioner.

10. The petitioner on the above facts, and claiming herself to be the natural guardian, has filed the present petition seeking custody of the minor children.

11. On the other hand, the respondent no.4 claims that the petitioner left her matrimonial home of her own volition, leaving the children behind. He, however, admits to him remaining away from Delhi due to his postings at various places and that the children are in the custody of his parents and brothers. He submits that for his children he can return back to Delhi.

12. Given the above facts, we explored the possibility of the parties, that is, the petitioner and the respondent no.4, arriving at an amicable settlement and even interacted with them.

13. From our interaction with the parties, we find that presently, the parties are not in a position to amicably settle their disputes. There are allegations and counter-allegations being made against each other. The fact, which also appears from such interaction, is that there is no serious allegation made by the respondent no.4 against the petitioner at least as far as her suitability for the custody of the children is concerned.

14. Similarly, it is an admitted position that, as on today, due to the posting of the respondent no.4, the custody of the children is with the grandparents, that are, respondent nos. 5 and 6. The age of the children are not in dispute, which we have already mentioned above.

15. In the above facts, the learned counsel for the respondent no.4



submits that the petitioner should be left to avail her remedies in accordance with law and specifically the Hindu Minority and Guardianship Act, 1956 (hereinafter referred to as the, 'HMG Act'). She submits that the petitioner should not be allowed to short-circuit the process of law by filing the present petition to seek the custody of the minor children, especially where the custody is with the respondent no.4/the legal guardian, that is, the father.

16. In support of her submissions and the above objections, she places reliance on the judgment of the Supreme Court in *Nirmala v. Kulwant Singh & Ors.*, (2024) INSC 370; of the Punjab and Haryana High Court in *Veerpal Kaur v. State of Punjab & Ors.*, 2025:PHHC:113490; and of the Madhya Pradesh High Court in *Nazma Bi v. The State of Madhya Pradesh & Anr.*, (Order dated 25.05.2023 passed in Writ Petition No.4165/2023).

17. On the other hand, the learned counsel for the petitioner, placing reliance on Section 6 of the HMG Act, submits that given the age of the children, the fact that the children are minor girls, and that the respondent no.4 is not in Delhi but posted in Kashmir, leaving the custody of the minor children with the grandparents, the petitioner is the natural guardian of the children.

18. Placing reliance on the judgment of the Supreme Court in *Tejaswini Gaud & Ors. v. Shekhar Jagdish Prasad Tewari & Ors.*, (2019) 7 SCC 42; and of this Court in *Monika Tiwari v. Govt. of NCT of Delhi & Ors.*, 2025:DHC:7608-DB, she submits that this would, therefore, be a fit case for exercise of the extraordinary powers under Article 226 of the Constitution of India by this Court to hand over the



custody of the minor children to the petitioner.

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

20. As would be evident from the above, the minor children are presently aged about 4 years 9 months and 12 months, respectively. They both are minor girl child. The respondent no.4, due to his present posting, is not in Delhi but is situated in Kashmir and the custody of the minor children is presently with the grandparents, that is, respondent nos.5 and 6. The petitioner was in custody of the children till 21.07.2025, when she went to her parental home, and whereafter she is not being allowed to enter her maternal home.

21. While it is the case of the petitioner that the custody of the minor children was illegally kept with the respondent nos.5 and 6, it is the case of the respondent no.4 that the petitioner, on her own volition, left the matrimonial home, leaving the minor children behind. We would not like to go into this controversy and disputed question of fact in our discretionary and summary jurisdiction.

22. We are further mindful of the fact that no serious allegation, in fact, no allegation at all, has been made by the respondent no.4 against the petitioner on her motherhood or on her suitability to have the custody of the minor children.

23. In these facts and keeping in view the provisions of Section 6 of the HMG Act, as against the grandparents, that are, respondent nos. 5 and 6, the petitioner, in absence of respondent no. 4 is not only the natural guardian of the children, but also entitled to their custody. The custody of the children with the respondent nos. 5 and 6, therefore,



can be said to be illegal.

24. In *Tejaswini Gaud* (supra), the Supreme Court held that a Writ of Habeas Corpus, though being a summary jurisdiction and an extraordinary remedy, is warranted where the custody of the minor children is not with the natural guardian. The welfare of the child is the paramount consideration of the Court. The Court held that such a Writ can be issued where the detention of the minor child is illegal and without any authority of law. We quote from the judgment as under:

*“14. Writ of habeas corpus is a prerogative process for securing the liberty of the subject by affording an effective means of immediate release from an illegal or improper detention. The writ also extends its influence to restore the custody of a minor to his guardian when wrongfully deprived of it. The detention of a minor by a person who is not entitled to his legal custody is treated as equivalent to illegal detention for the purpose of granting writ, directing custody of the minor child. For restoration of the custody of a minor from a person who according to the personal law, is not his legal or natural guardian, in appropriate cases, the writ court has jurisdiction.*

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*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.”*

25. In **Monika Tiwari** (supra), this Court found that the child was in the custody of the grandparents and not the father. The Court emphasizing that though for the normal psychological, physical and emotional growth and overall wellbeing of a child, the child should be living in the custody of both the parents, however, in cases of matrimonial disputes, the temporary/permanent custody may have to be given to either of the parents taking in view the welfare of the child.

26. In **Nirmala** (supra), the Supreme Court was confronted with a fact where the father of the child had initiated proceedings before the Child Welfare Committee and the Appellate Court therein had held that the CWC had passed an order granting him the custody of the children without jurisdiction. In spite of the same, in a Writ of Habeas Corpus filed by the father, the High Court had directed the grandmother therein to hand over the custody of the child to the father. The Court, considering the judgment in **Tejaswini Gaud** (supra), held that no hard and fast rule can be laid down insofar as the maintainability of a Habeas Corpus petition in matters of custody of minor child is concerned. The Court in the peculiar facts of that case further held that the High Court should not have interfered with the





custody of the child as a detailed inquiry, including welfare of the minor child and his preference would be involved.

27. In ***Veerpal Kaur*** (supra), the Court was confronted with the facts wherein there were matrimonial disputes between the parents of the child, resulting in various proceedings being filed by them against each other. The Court in those facts, held as under :

*“16. As a sequitur to the above rumination, the following postulates emerge:*

*I. The High Court’s jurisdiction to issue a writ of Habeas Corpus in minor child custody matter is predicated on the basic jurisdictional fact, namely, the minor child’s custody is demonstrably illegal/unlawful. In appropriate cases, the High Court may relax this jurisdictional prerequisite, in the interest of welfare of minor child.*

*II. The writ of Habeas Corpus is not a substitute for the comprehensive and evidence based procedures available under applicable guardianship statutes (such as Hindu Minority and Guardianship Act, 1956; Guardians and Wards Act, 1890 etc.). As a matter of general judicial principle, the writ Court ought to ordinarily exercise restraint and defer dispute(s) to statutory forums unless accentuating circumstances necessitate such intervention by High Court.*

*III. In all matters relating to the custody of minor child, the paramount consideration is the welfare of such child. In exercise of its parens patriae jurisdiction; the High Court may, in appropriate cases, upon a holistic examination of facts, take an inquisitorial role to ensure that the custodial arrangement serves the best interest of the child, superseding the adversarial claims of the parties.*

*IV. In furtherance of a minor child’s welfare, the writ Court may issue interim*



*order(s) concerning custody and other incidental aspects as warranted by exigencies of the situation, ensuring that the minor child's well being remains the ultimate determinant of justice and thereafter refer parties to remedy(s) before statutory forum(s) for final/further determination of the lis.*

*V. The High Court, in its writ jurisdiction has unbridled, unfettered and plenary powers. No inflexible and comprehensive guidelines can conceivably be enumerated governing the exercise of these intrinsic powers. There is no gainsaying that the nature, mode and extent of such exercise of this jurisdiction by the High Court shall depend upon the judicial discretion exercised by the High Court in the facts and circumstances of a given case."*

28. In ***Nazma Bi*** (supra), the custody of the child was with the father. The Court, therefore, held that it could not be said that the custody of the child was illegal.

29. From the above, it would be evident that the jurisdiction under Article 226 of the Constitution of India being discretionary and extraordinary in nature, the Court has developed principles of self-restraint especially in matters of child custody where disputed questions of fact and determination of the welfare of the child are involved and there are equally efficacious statutory remedies available to the parties. This, however, does not mean that the Court is denuded of its jurisdiction or powers under Article 226 of Constitution of India to issue a Writ of Habeas Corpus and to hand over the custody of the child to a natural guardian, where the custody of the children is not in the hands of the natural guardian and such transfer of custody is found to be in the welfare of the children. Ultimately, it is the welfare of the



children that will govern the exercise or refusal to exercise the said jurisdiction by the Court.

30. The Supreme Court in ***Rajeswari Chandrasekhar Ganesh v. State of Tamil Nadu & Ors.***, (2023) 12 SCC 472, has held that in a petition seeking a Writ of Habeas Corpus in a matter relating to a claim for custody of a child, the principal issue which should be taken into consideration is as to whether from the facts of the case, it can be stated that the custody of the child is illegal. It was held that the Writ of Habeas Corpus is a prerogative Writ and an extraordinary remedy. It is a writ of right and not a writ of course and may be granted only on reasonable ground or probable cause being shown. The exercise of such jurisdiction would, therefore, be seen to be dependent on the jurisdictional fact where the applicant establishes a *prima facie* case that the detention is unlawful. The principal duty of the court dealing with a petition seeking a writ of Habeas Corpus in the context of a claim relating to the custody of a minor child is to ascertain whether the custody of the child is unlawful and illegal and whether the welfare of the child requires that the present custody should be changed and be handed over to any other person. It was held that the Court, while considering issuance of such a Writ, acts under its inherent equitable jurisdiction, independent of any statutory provision, and with the State acting as *parens patriae*. We quote from the judgment as follows:

*“99. Thus, it is well established that in issuing the writ of habeas corpus in the case of minors, the jurisdiction which the Court exercises is an inherent jurisdiction as distinct from a statutory jurisdiction conferred by any*



*particular provision in any special statute. In other words, the employment of the writ of habeas corpus in child custody cases is not pursuant to, but independent of any statute. The jurisdiction exercised by the court rests in such cases on its inherent equitable powers and exerts the force of the State, as parens patriae, for the protection of its minor ward, and the very nature and scope of the inquiry and the result sought to be accomplished call for the exercise of the jurisdiction of a court of equity. The primary object of a habeas corpus petition, as applied to minor children, is to determine in whose custody the best interests of the child will probably be advanced. In a habeas corpus proceeding brought by one parent against the other for the custody of their child, the Court has before it the question of the rights of the parties as between themselves, and also has before it, if presented by the pleadings and the evidence, the question of the interest which the State, as parens patriae, has in promoting the best interests of the child.”*

31. In the present case, as has been highlighted hereinabove, the children are of the age of 4 years and 9 months and 12 months, respectively. They both are minor daughters. The respondent no. 4 is admittedly not in Delhi and, therefore, the minor children are not in his custody, but in the custody of the grand-parents. There are no allegations against the petitioner regarding her not being a suitable mother or transfer of the custody of the children to her not being in the welfare of the minor children. While granting custody of a girl child, we need to also keep in mind that in her formative years, the child needs the support and love of her mother.

32. Given the above facts, we direct that the respondent nos. 4 to 8 shall hand over the custody of the minor children to the petitioner



forthwith.

33. At the same time, the respondent no. 4, while being in Delhi, cannot be denied the benefit of extending his love and affection to the minor children. Therefore, the petitioner shall allow the respondents nos. 4, 5 and 6 to meet the minor children on every alternate day, for at least 2 hours, between 3 P.M. and 5 P.M. at the Children's Room, Family Courts, Tis Hazari Courts, Delhi.

34. The petitioner shall bring the minor children for such visitation and shall be entitled to take them away after such visitation hours.

35. Once the respondent no. 4 rejoins his duties and is not in Delhi, the respondent nos. 5 and 6 would also be entitled to such visitation rights over the minor children once a week at the same time and at the same venue.

36. We make it clear that the above arrangement is only temporary in nature and the parties shall be entitled to avail of their remedies in accordance with law with respect to the custody and the visitation rights over the minor children.

37. In case such remedy is availed, it shall be decided by the Competent Court remaining uninfluenced by any observation made by us herein or the *interim* arrangement that we have made in the present petition.

38. With the above directions, the present petition is disposed of.

**NAVIN CHAWLA, J**

**RAVINDER DUDEJA, J**

**JANUARY 6, 2026/gs/sg/as**