

Reserved On : 06/01/2026
Pronounced On : 06/02/2026

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**R/SPECIAL CRIMINAL APPLICATION (HABEAS CORPUS) NO.
11700 of 2025**

With

CRIMINAL MISC.APPLICATION (DIRECTION) NO. 1 of 2025
In R/SPECIAL CRIMINAL APPLICATION NO. 11700 of 2025

With

CRIMINAL MISC.APPLICATION (DIRECTION) NO. 2 of 2025
In R/SPECIAL CRIMINAL APPLICATION NO. 11700 of 2025

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE N.S.SANJAY GOWDA Sd/-

and

HONOURABLE MR.JUSTICE D. M. VYAS Sd/-

Approved for Reporting	Yes	No
		✓

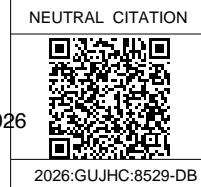
AKULKUMAR DINESHBHAI RANA & ANR.

Versus
STATE OF GUJARAT & ORS.

Appearance:

DELETED for the Applicant(s) No. 2
 MS ROOPAL R PATEL(1360) for the Applicant(s) No. 1
 DS AFF.NOT FILED (N) for the Respondent(s) No. 6,7
 MR. CHINTAN DAVE, APP for the Respondent(s) No. 1
 PUNITA H JOSHI(8419) for the Respondent(s) No. 2,3,4,5,8

CORAM:HONOURABLE MR.JUSTICE N.S.SANJAY GOWDA
and
HONOURABLE MR.JUSTICE D. M. VYAS



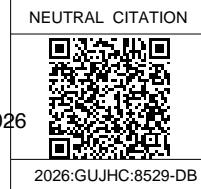
**CAV JUDGMENT
(PER : HONOURABLE MR.JUSTICE N.S.SANJAY GOWDA)**

[1] Akulkumar Dineshbhai Rana (hereinafter referred to as "the father") has filed this petition seeking a direction to be issued to his wife, Monika (hereinafter referred to as "the mother"), as well as to his in-laws and a relatives of his wife, to produce his minor daughter, [REDACTED], before the Court and to declare that she has been kept in illegal detention. He also seeks a direction to set his minor daughter, [REDACTED], at liberty forthwith.

[2] From the pleadings and the arguments, the following undisputed facts emerge:-

[2.1] Akulkumar married Monika in 2018. Akulkumar, the father is an employee of the Union Government, while Monika, the mother is an employee of the State Government. At the time of the marriage, the father was staying at Ahmedabad, while the mother was posted at Bhuj-Kachchh.

[2.2] In the year 2019, their daughter, [REDACTED], was born. In the year 2020, the father was promoted as an Inspector and transferred to Morbi. In the year 2021, the mother sought for a transfer and was posted at Mandvi, which was near Morbi. Subsequently, the mother, on her request, was transferred to Bhachau, also in Kachchh district, which was about 90 kms.



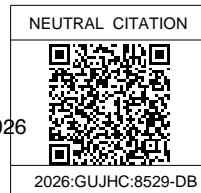
from Morbi, where the father was working. In September 2021, the father was also transferred to Bhachau and, consequently, they started living together at Bhachau.

[2.3] However, at this stage, it appears that marital discord started between them.

[2.4] It is contended by the father that on 14.08.2023, the mother took the minor daughter to Mehsana, where her parents were living, and since then she has been kept in illegal custody. In other words, it is the complaint of the father that the minor daughter, who was aged about 4 years in 2023, has been kept in the illegal confinement by her grandparents at the behest of her mother.

[2.5] It would be beneficial to extract the exact plea of the petitioner in this regard:-

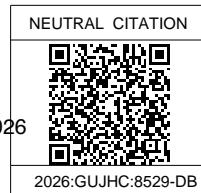
"3.8. When the petitioner No.2 becomes three years old, the petitioner No.1 got her admission in kids play group and paid the tuition fees therefore. Annexed hereto and marked as ANNEXURE:"D" is a copy of the petitioner No.1's bank statement dated 15/07/2023 evidencing that, said tuition fees was paid by the petitioner No. 1. However, the respondent No.2 continuously was insisting for raising her daughter with her parents at Mehsana only. Despite great protest by the petitioner No.1, though the petitioner No.2 was suffering from fever, the respondent No.2 took her to Mehsana at her parents house in the



afternoon on 14/08/2023 and since then, the daughter -petitioner No.2 is in illegal custody of the respondent Nos.3 to 5 herein in connivance with the respondent No.2. Exhausted by continuous and tremendous mental torture, ultimately, the petitioner No.1 sought own request transfer at Ahmedabad and as such, he is residing in Ahmedabad since 12/09/2023. Even before the transfer of the petitioner-1 on 12.09.2023, when the promotion of the respondent no.2 was due somewhere in ending of 2022, she sought transfer to Mehsana to live with her parents."

[3] As could be seen from the above, it is the admitted case of the father that the mother was insistent that her daughter be raised at Mehsana only and, despite his protestations, his daughter was taken to Mehsana and was made to live with her grandparents. These averments in the petition would thereby indicate that the custody of a 4 years old child was entrusted by her mother to her parents i.e., the maternal grandparents of the 4 years old child.

[4] In fact, it is the case of the mother that since both the father and mother were working, taking care of a 4 years old child was extremely difficult and, therefore, the mother was forced to request her parents to look after the child. This act according to the father tantamounts to an illegal confinement of his daughter. In other words, the entrustment of a child by the mother to her parents for the upkeep of her minor child is sought to be termed as unlawful confinement by the father.

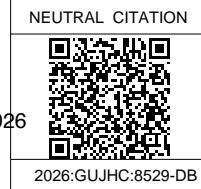


[5] It is also forthcoming from the arguments and from the pleadings extracted above, that the father thereafter sought a transfer from Bhachau to Ahmedabad and, on this transfer being granted, he has been residing in Ahmedabad since 12.09.2023. It is also forthcoming from the record that the father had, in fact, issued a legal notice on 03.10.2024, i.e., about a year after residing separately, calling upon his wife to agree to the dissolution of their marriage by mutual consent.

[6] These facts narrated above, which are not in dispute, clearly establish that there is a serious marital discord between the mother and father, and this has transformed itself into a battle for the custody of a daughter who is aged about 5 years as on the date of filing of the petition. This habeas corpus petition is essentially filed to secure the custody of the minor daughter by the father on the premise that her stay with her grandparents was against his will and amounts to illegal confinement.

[7] It is also forthcoming that after this petition was filed in the month of August 2025, a complaint has also been filed alleging commission of offences under Section 498A by the mother against the father.

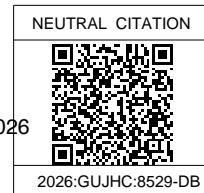
[8] In the light of the above facts, the only question to be considered by this Court is whether the handing over of custody by the mother of her 4 year old child to her parents, i.e.,



grandparents of the child, would amount to an illegal confinement, merely because it was not acceded to by her husband.

[9] At the very outset, it is to be stated that the custody of a minor girl, and that too a 4 year old with her mother can never be construed as either unlawful custody or illegal confinement, especially when there is no proceeding pending between the parents regarding the custody of the child and when there are no orders governing the custody of the child. If, in a given case, a mother, due to work constraints or otherwise for the benefit of the child's upkeep, decides to entrust the custody of her minor 4 year old daughter to her grandparents, that can never amount to either unlawful custody or illegal confinement.

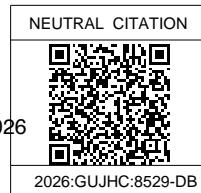
[10] The responsibility of taking care of a 4 year old child would rest on both the parents, but given the fact that the needs of a tender 4 year old girl are to be taken care of, the responsibility would essentially lie on the shoulders of the mother and not on the father. It is also to be borne in mind that in the case of a working couple, the difficulties of raising a child by themselves would also assume great significance and would be beset with a lot of difficulties. If a working lady, in this situation, decides to take the help of her parents to ensure that her child is brought up in a secure atmosphere, the husband cannot be permitted to say that such kind of custody amounts to illegal custody or amounts to unlawful confinement. We are,



therefore, of the view that the prayer sought in the writ petition, that the custody of the daughter with her maternal grandparents at the behest of her mother is unlawful custody, is wholly untenable, and the prayer for setting her at liberty cannot be granted.

[11] Learned counsel for the father, however, strenuously contended that the primary duty of the Court is to ensure that the welfare of the child is looked into and is given the paramount consideration. She argued that the custody of the 5 year old girl would be better served if the custody were with the father, since he had parents who could take care of his 5 year old daughter. Learned counsel also sought to place reliance on various judgments in support of her contention that it is the duty of the Court to ensure that the interest of a minor child is the only concern for a Court, which cannot be doubted at all.

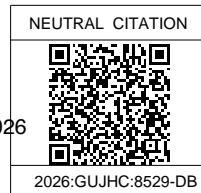
[12] Learned counsel appearing on behalf of mother, on the other hand, contended that even in law, the natural guardian of the 5 year old child would always be the mother, and given the fact that both the mother and father were working, the mother had taken a conscious decision to entrust the custody of the child to her parents, and this would not amount to handing over custody in that sense of the term. It was argued that the child was being taken care of by the mother, but with the assistance of her parents, since the mother was a government servant and raising a child by herself in a place other than her hometown would always be difficult.



[13] We are of the view that the arguments advanced by the learned counsel for the father do not merit acceptance, since in the present case, the act of the mother entrusting the custody of her 5 year old daughter to her parents for the upkeep of the child cannot amount to illegal confinement. This is only an arrangement made by a mother to ensure that her daughter is well taken care of, and this will not entitle the father to file an habeas corpus petition.

[14] It is pertinent to state here that, considering the fact that the mother and father were educated and were employees of the Union and the State Government, this Court passed an order on 16.09.2025 and counselled both of them and passed an order facilitating visitation rights to the father. The father was permitted to travel to Mehsana and meet the child at Mehsana Circuit House on every Saturday and Sunday between 3 p.m. and 5 p.m. Since it was thereafter reported that the interaction with the child was going on smoothly, the request made by the husband to extend custody over the entire weekend was also granted *vide* order dated 14.10.2025.

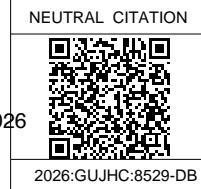
[15] This Court passed the order facilitating visitation with the fond hope that there could be a reconciliation between the mother and father, at least insofar as it related to custody of the child. However, subsequent events, such as the filing of applications alleging interference with visitation rights, appear



to have created an atmosphere which is not conducive to reconciliation. In fact, applications have been made seeking clarification and also interim custody and complaints are also made that the orders of the Court were defied. It is, however, stated that the visitation of the father with the daughter was going on in a good atmosphere and continues to go on well.

[16] It is not in dispute that there are no proceedings initiated by either of the parties claiming custody of the child before the Family Court. It is only if a proceeding is initiated before the appropriate court and evidence is adduced to show that the welfare of the child would be better served if the custody were to be handed over to the applicant, the question of custody of the child can be adjudicated upon. Since the mother and father are at loggerheads and the child is being used as a weapon in their battle, in our view, it would be appropriate to permit either of the parties to approach the Family Court to seek retain or custody of the child. If such a proceeding is initiated, the Family Court shall examine the claim on the basis of evidence adduced and pass appropriate orders.

[17] Nothing stated in this order shall be construed as rendering an opinion on the merits of the claim of either the mother or the father or the child, and the Family Court will have to take an independent decision based on the material that is produced before it.



[18] Since both the mother and father submitted before us that the visitation between the father and the child was going on quite well without any difficulty, in our view, it would be appropriate to continue the interim arrangement that was ordered on 16.09.2025 and modified on 14.10.2025 till appropriate orders are passed in a proceeding that may be initiated by either the mother or the father before the appropriate Family Court.

[19] Subject to the above, the writ petition is dismissed. Notice is discharged.

[20] All pending civil applications stand consigned to records.

Sd/-
(N.S.SANJAY GOWDA, J.)

Sd/-
(D. M. VYAS, J.)

DHARMENDRA KUMAR