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

Date of decision: 23rd April, 2026
Uploaded on: 29th April, 2026

\+ **W.P.(CRL) 1183/2025**

JASJIT SINGH MANGAT & ANR .....Petitioners

Through: Ms. Chand Chopra, Mr. Punishk Handa, Advs. alongwith Petitioner No. 1 in person

versus

UNION OF INDIA THROUGH MINISTRY OF HOME AFFAIRS & ORS. .....Respondents

Through: Ms. Radhika Bishwajit Dubey, CGSC with Ms. Gurleen Kaur Waraich, Mr. Kritarth Upadhyay, Mr. Vivek Sharma, Mr. Amulya Dev Mishra, Advs.
Ms. Anubha Bhardwaj, SPP along with Ms. Ananya Shamshery, Ms. Muskan Chawla, Advs. for R4
Ms. Priya Singh, GP
Mr. Attin Shankar Rastogi, Mr. Rajesh Ranjan, Mr. Archit Chauhan, Mr. Shivkant Arora, Mr. Adil Vasudeva, Mr. Jigyasa Prashaer, Advs. for R5

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE MADHU JAIN

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

2. This is a habeas corpus petition filed by the Petitioners - Mr. Jasjit Singh Mangat and Mrs. Gyan Kaur Mangat seeking production of the minor

son of Petitioner No. 1, who is currently residing in the United States of America along with his ex-wife, Respondent No. 5 - Ms. Preet Kaur Dhillon.

3. The brief background of the case is that the Petitioner was married to Respondent No. 5 on 21st July, 2003 in the USA as both the said parties were citizens of the USA at the relevant time. Thereafter, they travelled to India and on 4th July, 2005 a daughter was born to them.

4. The couple then had a son through a surrogate mother in the USA. It is the case of the Petitioner that Respondent No. 5 is not the biological mother or the legal mother of the son as per the law in India. However, it is not disputed that in all legal documents of the minor son such as passport etc., the Respondent No. 5 has been reflected as the mother. It is stated that the couple along with their children used to live in India and the elder daughter was studying in the Shri Ram School, Delhi.

5. The mother of the Petitioner No. 1 *i.e.*, Mrs. Gyan Kaur Mangat, on 16th August, 2018 filed a complaint before the Police Station, Hazrat Nizamuddin, Delhi stating that her daughter-in-law and both the grand-children are missing after having gone to Sundar Nagar, Hazrat Nizamuddin. It was also stated that the nanny or househelp who had accompanied the missing persons had alone returned. The entire event was described by the Petitioner No. 2 to the Police.

6. The Police had investigated the matter and as per the status report dated 24th May, 2024 filed in ***Crl.Rev.P. 79/2024*** being pursued by the Petitioner No. 1, which is on record, it was found that the Respondent No. 5 had left India on 16th August, 2018 along with her two children without intimation to the Petitioner No. 1. However, the status report also noted that an email had been sent by the Respondent No. 5 to Petitioner No. 1 sometime after her

flight had taken-off.

7. It is stated that proceedings of domestic violence and divorce had taken place in the USA and it is the admitted position on record that the Petitioner and his wife are now divorced. Thereafter, since 2018 both the children are staying with the Respondent no. 5 in the USA.

8. The present petition has been filed in 2025 seeking habeas corpus and certain other prayers which are as under:

> *"a) Pass appropriate writs, orders or directions in the nature of habeas corpus qua #####, currently incarcerated with Respondent No. 5 at 1543 Delaware Street, Berkeley, California, USA 94703, praying that the minor child, ##### be physically produced before this Honorable Court by Respondent No. 5 forthwith, and if required, subject to mirror Orders being passed by the Superior Court of California, Alameda County, USA in Case No. HF19011485, strictly without prejudice to the rights of the Petitioner No. 1;*
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> *b) Pass appropriate writs, directions and orders qua Respondents Nos. 1 [Ministry of Home Affairs] and 3 [Delhi Police], whether under the Mutual Legal Assistance Treaty dated 17 October 2001 between the Republic of India and the Government of the USA, or otherwise in accordance with law, seeking to implement the Orders of this Honourable Court and if required, subject to mirror Orders being passed by the Superior Court of California, Alameda County, USA in Case No. HF19011485, strictly without prejudice to the rights of the Petitioner No. 1;*
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> *c) Pass appropriate Writs, Orders or directions qua Respondent No. 2, i.e. the Ministry of External Affairs, Government of India, directing it to exercise*

its powers vested in it through the Allocation of Business Rules, with respect to Overseas Citizens of India and to provide all the possible support and assistance to the Petitioners/Petitioners Nos. 1 and 2 in connection with the present Writ Petition;

d) Pass appropriate Writs, Orders or directions qua Respondent No. 4, i.e. the Central Bureau of Investigation to implement the Orders of this Honourable Court overseas, with the assistance and cooperation of their counterparts in the USA and, if required, to travel to California, USA to bring back ##### to be reunited with his father, Petitioner No. 1 in New Delhi, and if required, subject to mirror Orders being passed by the Superior Court of California, Alameda County, USA in Case No. HF19011485, strictly without prejudice to the rights of the Petitioner No.1;

e) Pass any other Writs/Orders/Directions that this Honourable Court deems fit and appropriate in the present case."

9. The Court has heard the ld. Counsels for the Parties on several dates and has also interacted with the Respondent No. 5 on two occasions.

10. The daughter of the Petitioner No. 1 has now attained majority and the minor son has now been in the USA since 2018. The Respondent No. 5, being the mother as reflected in all the legal documents including the passport of the minor son, has allegedly taken away the children, as per the Petitioner, without any intimation.

11. However, on behalf of the Respondent No. 5 it is submitted that the *vide* email dated 16th August, 2018 she had informed the Petitioner that she was bringing the children to the Petitioner who is stated to have been in the

USA at the said time. Further it is the case of Respondent no.5 that the parties had together decided to move back to the US and towards this end, the Petitioner had taken a residential property as well. It is the same residence in California in which the Respondent no. 5 and the children are currently living.

12. Clearly, there are factual disputes between the parties and, in the opinion of the Court, the same cannot be gone into in a habeas corpus petition. The habeas corpus petition having been filed almost 8 years after the children were taken to the USA the disputed question of fact as to whether the Respondent No. 5 had intimated the Petitioner prior to taking the children cannot be determined in the present proceeding, especially, after significant period having lapsed. It is the settled legal position that the Habeas Corpus proceedings cannot be converted into custody battles for children. The Supreme Court in ***Tejaswini Gaud v. Shekhar Jagdish Prasad Tewari, (2019) 7 SCC 42,*** has held that the though a writ of Habeas Corpus would be maintainable in cases where a minor has been detained by a parent illegally or without authority of the law, however, availing the said extraordinary remedy would be subject to the ordinary remedy is either unavailable or ineffective. The relevant portion of the said judgement are extracted hereunder:

> *"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 matters, 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 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****."*

13. Thus, it is clear that in cases of custody the welfare of the child is of paramount concern irrespective of whether the proceedings are before this Court or before the Guardianship Courts. The Supreme Court in ***Nirmala v. Kulwant Singh, (2024) 10 SCC 595*** has considered the decision in ***Tejaswini Gaud (supra)*** and in the facts of the said case held that since a detailed inquiry

would be required as to the welfare of the child, the writ of Habeas Corpus ought not to be entertained. The relevant portion of the discussion is as under:

> ***"23.*** *It can thus be seen that this Court in* ***Tejaswini Gaud case [Tejaswini Gaud v. Shekhar Jagdish Prasad Tewari, (2019) 7 SCC 42 : (2019) 3 SCC (Civ) 433****] has held that the habeas corpus is a prerogative writ which is an extraordinary remedy. It has been held that recourse to such a remedy should not be permitted unless the ordinary remedy provided by the law is either not available or is ineffective. It has been held that 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. It has further been held that 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.*
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> ***24.*** *This Court in* ***Tejaswini Gaud case [Tejaswini Gaud v. Shekhar Jagdish Prasad Tewari, (2019) 7 SCC 42 : (2019) 3 SCC (Civ) 433****] further held that in child custody matters, the ordinary remedy lies only under the Hindu Minority and Guardianship Act or the Guardians and Wards Act as the case may be. It has been held that 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.* ***It has further been held that what is important is the welfare of the child. It has been further held that where the court is of the view that a detailed enquiry is required, the court may decline to exercise the extraordinary jurisdiction and direct the parties to approach the civil court.***

25. *In the facts of the said Tejaswini Gaud case [Tejaswini Gaud v. Shekhar Jagdish Prasad Tewari, (2019) 7 SCC 42 : (2019) 3 SCC (Civ) 433] , this Court found that the child being a minor, aged 1½ years, cannot express its intelligent preferences and in the facts and circumstances of said case, the father being the natural guardian was justified in invoking the extraordinary remedy seeking custody of the child under Article 226 of the Constitution of India.*

26. *The same legal position has been reiterated by this Court in Jose Antonio Zalba Diez Del Corral [Jose Antonio Zalba Diez Del Corral v. State of W.B., (2024) 12 SCC 419 : 2021 SCC OnLine SC 3434] and Rajeswari Chandrasekar Ganesh v. State of T.N. [Rajeswari Chandrasekar Ganesh v. State of T.N., (2023) 12 SCC 472]*

27. ***It can thus be seen that no hard-and-fast rule can be laid down insofar as the maintainability of a habeas corpus petition in the matters of custody of a minor child is concerned. As to whether the writ court should exercise its extraordinary jurisdiction under Article 226 of the Constitution of India or not will depend on the facts and circumstances of each case****.*

[…]

29. *It can thus be clearly seen that according to the case of the respondent father himself, in the peculiar facts and circumstances of the case, a family environment was required for the child especially from the grandparents and that he had placed the custody of the minor child with the appellant grandmother for taking his care. It can thus clearly*

be seen that it is not a case that the appellant grandmother had illegally kept the custody of the minor child. It is the respondent father who had placed the custody of the minor child with the appellant grandmother.

30. ***We are of the considered view that in the peculiar facts and circumstances of the case, the High Court ought not to have entertained the habeas corpus petition under Article 226 of the Constitution of India. Since a detailed enquiry including the welfare of the minor child and his preference would have been involved, such an exercise could be done only in a proceeding under the provisions of the Guardians and Wards Act, 1890****.*

31. *In any case, we are of the view that compelling a minor child at the tender age of 7 years to withdraw from the custody of his grandparents with whom he has been living for the last about 5 years may cause psychological disturbances.*

32. *In our view, an exercise for promoting the bond between the minor child and the respondent father in a graded manner and thereafter considering the grant of custody of minor child to the respondent father taking into consideration the paramount interest of the welfare of the minor child would be required to be done in the present matter. Such an exercise would not be permissible in the extraordinary jurisdiction under Article 226 of the Constitution of India.*

33. *We therefore find that the High Court was not justified in entertaining the petition under Article 226 of the Constitution of India. The impugned judgment and order of the Punjab and Haryana*

High Court dated 23-8-2022 in Kulwant Singh v. State of Haryana [Kulwant Singh v. State of Haryana, 2022 SCC OnLine P&H 4281] is quashed and set aside. The writ petition filed by the respondent father is dismissed."

14. Hence, it is clear from the above, that writ jurisdiction would not ordinarily be exercised by High Courts, for deciding custody issues, especially where a detailed inquiry would be required to ascertain the welfare of the child. In the opinion of the Court, in the present case, the minor child is with Respondent No. 5 who is recorded as his mother in all the official records. The minor child was born in USA and is an American Citizen, similar to the Petitioner No. 1 and Respondent No. 5. They also have Overseas Citizens of India card. The minor child has now been living in the USA for almost close to 8 years and hence, it would be necessary to consider all the facts and circumstances by conducting a detail inquiry as to whether the minor child's best interest lies in living in India or the USA.

15. At this stage, the Petitioner states that he has also approached the National Commission for Protection of Child Rights, Ministry of Women and Child Development, Government of India (hereinafter "*NCPCR*") for mediation of this matter. This body is specially constituted to deal with such transnational custody issues between spouses and families. Ld. Counsel submits that the application has been filed on 12th January, 2026 and the mediation cell is likely to be constituted shortly.

16. The Court has perused the Order dated 27th July, 2018 issued by the Ministry of Women and Child Development (Child Welfare-I Section), Government of India, whereby the Mediation Cell in NCPCR has been constituted to resolve cases of children who were taken by one of the spouse

without permission of the other spouse from either overseas countries to India or vice-versa, and for preparing a Parental Plan with mutual consent of the parties. The said direction has been passed pursuant to the provisions of Section 3(iii), (iv) and (v) of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter "*JJ Act*"), which form part of the general principles of care and protection of children read with Section 13(a) of the Commissions for Protection of Child Rights Act 2005 (hereinafter "*CPCR Act*"). The Mediation Cell in NCPCR consists of the following:

(i) Chairperson, NCPCR - Chairperson.

(ii) Member, NCPCR (in the field of Laws relating to children) – Member.

(iii) Member, NCPCR (in the field of child psychology or sociology) – Member.

17. In addition to the above, the NCPCR may engage and take assistance of one practicing child psychologist, one representative from National Legal Services Authority working in the field of child custody or any other expert whose services are necessary for participating the proceedings of the Mediation Cell. The local mission of the country where one of the spouses is residing may also be engaged by the Mediation Cell.

18. As per the procedure laid down in the Order dated 27th July, 2018, either of the parents, the present custodian of the child or the child herself/himself can file an application to Section Officer, Child Welfare-I Section, New Delhi (email: ina.childcustody-wcd@nic.in) in the format attached to the said Order. These cases would be considered by the Integrated Nodal Agency in the Ministry of Child Development, and depending on facts of the cases, the said agency will refer the matter to the Mediation Cell for developing a Parental

Plan. The mediation process may be completed within six months of the receipt of the application, failing which the same shall be considered to be over. The Integrated Nodal Agency may refer the case back to the Mediation Cell for one Review after recording its reasons. Upon completion of the process, the Mediation Cell shall furnish a report to the Integrated Nodal Agency which shall issue a speaking order on the basis of the same.

19. Under these circumstances, the NCPCR is a body which is now extensively dealing with such matters where the children are either brought to India or taken away from India by one of the parents. The NCPCR has a complete framework which is working for resolution of such matters through mediation.

20. Accordingly, in the opinion of this Court, the Petitioner ought to pursue his remedy before the NCPCR itself and this is not an ideal case for entertaining a Habeas Corpus petition under Article 226 of the Constitution of India.

21. The Petitioner is also permitted to pursue the criminal revision petition being ***Crl.Rev.P. 79/2024*** in accordance with law.

22. The petition is disposed of in the above terms. Pending applications, if any, are also disposed of.

PRATHIBA M. SINGH
JUDGE

MADHU JAIN
JUDGE

APRIL 23, 2026/*ys/msh*