



2026:AHC:99586

HIGH COURT OF JUDICATURE AT ALLAHABAD

HABEAS CORPUS WRIT PETITION No. - 931 of 2025



.....Petitioner(s)

Versus

State Of U.P. And 7 Others

.....Respondent(s)

Counsel for Petitioner(s) : Ajay Singh Sengar, Kamal Dev Singh Chanchal, Kamla Kant Mishra, Varun Mishra

Counsel for Respondent(s) : G.A., Mariya Khatoon, Ram Kesh

Court No. - 53

HON'BLE SANDEEP JAIN, J.

1. The supplementary rejoinder affidavit has been filed in Court today and is taken on record.

2. Heard Shri K.K. Mishra, learned counsel for the petitioners, and Shri Rakesh Pande, learned Senior Advocate, assisted by Shri Ram Kesh, learned counsel for respondent no.6.

3. The instant dispute concerns the custody of the minor corpus, [REDACTED], who is approximately 21 months old and is presently in the custody of his father, respondent no.6, [REDACTED], a constable in the U.P. Police posted in District Jaunpur.

4. Earlier, by order dated 06.11.2025, a Coordinate Bench of this Court had dismissed the instant writ petition on the ground that the parties could seek custody of the minor under the Guardian and Wards Act, 1890. That order was challenged by the petitioner by filing Special Appeal No.1205 of 2025 ([REDACTED] & Anr. v. State of U.P. & Ors.), which was allowed by a Division Bench of this Court vide order dated 03.04.2026, and the matter has been restored to its original number for adjudication on merits.

5. The Division Bench after considering the various precedents of the Apex Court has concluded that in a habeas corpus petition for the custody of the minor only the welfare of the child is paramount and the Court has to examine this aspect. It was held that on the ground of alternative remedy, the habeas corpus petition cannot be dismissed.

6. Another factor, which influenced the decision of the Division Bench was an ex parte order dated 10.09.2025 passed by the Child Welfare Committee, whereby the custody of the minor was handed to the petitioner, but during the pendency of this appeal that order has been set aside in Criminal Appeal No.47 of 2026 (██████████ vs. State of U.P. and others), passed by the Children Court/Special Judge (POCSO Act), Court No.8, Ballia dated 21.04.2026. In view of this, at present there is no judicial order in favour of the petitioner, whereby, the legal custody of the minor has been handed to the petitioner.

7. Learned counsel for the petitioner submitted that the petitioner Smt. ██████████ @ ██████████ marriage with respondent no.6 was solemnized on 04.12.2023; however, due to illegal demands for dowry, the petitioner was subjected to mental and physical harassment, and acts of cruelty were committed against her. It was further submitted that on 31.08.2024, the petitioner gave birth to the corpus ██████████, who is now about 21 months old, who is in the illegal custody of respondent no.6. It was further submitted that the corpus has been illegally taken away by the respondent on 19.08.2025 regarding which, an FIR has been registered on 07.03.2026, under Section 75 of the Juvenile Justice (Care and Protection of Children) Act, 2015 at Police Station Haldi, District Ballia against respondent, ██████████. It was submitted that the respondent has been suspended by the S.S.P., Jaunpur by order dated 12.03.2026 for his illegal act and acting in defiance of the orders of the Child Welfare Committee dated 10.09.2025, whereby he was directed to handover the custody of the minor to the petitioner.

8. Learned counsel submitted that the minor, being only 21 months old, is wholly dependent on the petitioner, Smt. Rinku Ram @ Rinku Devi, for his nutritional and other essential needs. Further, in terms of Section 6 of the Hindu Minority and Guardianship Act, 1956, up to the age of five years, the mother is considered the best guardian of the minor. In view of the paramount welfare of the minor, the petitioner is, therefore, entitled to the custody of the minor corpus. He further submitted that the respondent is having an affair with another woman, which is evident from the WhatsApp chats submitted by the petitioner; as such, this fact alone disentitles the respondent from claiming custody of the minor corpus.

9. In support of his contention, learned counsel for the petitioner has relied upon the following judgments:

1. *Manju Tiwari vs. Rajendra Tiwari 1990 LawSuit(SC)24.*
2. *Gohar Begum vs. Suggi 1959 LawSuit(SC)144.*
3. *Arvinder Kaur vs. State of Punjab and Others CRWP-5617 of 2020.*
4. *Master Atharva(Minor) and Another vs. State of UP and 7 Others Neutral Citation No.2020:AHC:92812.*
5. *Mohd. Irfan vs. State of UP and 2 Others Neutral Citation No.2014:AHC:221825-DB.*
6. *xxxxxxx vs. State of Kerala and Others 2024 SCC OnLine Ker 6166.*
7. *Prabha Rani Das vs. State of Tripura and Others 2026 SCC OnLine Tri 97.*
8. *Kanchan Akshay Shinde vs. The State of Maharashtra 2026 NCBHC-AS 11768.*
9. *Master Samarjeet Singh (Minor Detenue) And Another vs. State of UP and 4 others Neutral Citation No.2019:AHC:180361-DB.*
10. *Dr. Dinesh Kumar Agarwal and Others vs. State of UP and Others 2026(2) ADJ 400(DB)(LB).*

10. Per contra, Shri Rakesh Pande, learned Senior Counsel, submitted that earlier the custody of the minor corpus had been handed to the petitioner by the Child Welfare Committee by order dated 10.09.2025; however, the same was set aside in appeal preferred under Section 101 of the Juvenile Justice (Care and Protection of Children) Act, 2015 by the respondent. The said appeal was allowed by the Children Court/Special Judge (POCSO Act), Court No. 8, Ballia, on 21.04.2026. Accordingly, there is no judicial order presently in existence whereby custody of the minor corpus has been granted to the petitioner.

11. It was further submitted that the petitioner has education only up to the intermediate level, is unemployed, has no independent income, and is wholly dependent on her parents for assistance; as such, she is not capable of looking after the interests of the minor.

12. He further submitted that as per medical prescriptions of the petitioner filed by the respondent, it is apparent that she is addicted to Gul, is alcoholic and is further having psychiatric problems, who is not in stable mental condition, which disentitles her to claim the custody of the corpus. It was further submitted that the respondent, who is in a government job is

having a stable income, who is the father of the corpus and who is fully capable of ensuring the welfare of the corpus, as such, the custody of the corpus be remained with his father. It was further submitted that complicated questions are involved, as such the parties be relegated to pursue their remedy in accordance with the Guardian and Wards Act, 1890 for claiming the custody of the minor, which cannot be adjudicated in this writ petition.

13. In support of his contention, learned counsel has relied upon the following case law:

1. *Tejaswini Gaud and Others vs. Shekhar Jagdish Prasad Tewari and Others* (2019) 7 SCC 42.

2. *Nirmala vs. Kulwant Singh and Others* (2024) 10 SCC 595.

3. *Smt. Deeksha and Another vs. State of UP and Others Neutral Citation No.2026:AHC:89038*.

14. I have heard the learned counsel for the parties and perused the record and the documents submitted by them through affidavit.

15. It is evident that earlier the habeas corpus petition was dismissed on the ground of availing alternative remedy under the Guardian and Wards Act, 1890 on 06.11.2025, but that order was challenged by the petitioner by filing Special Appeal No.1205 of 2025 (██████████@ ██████████& Anr. v. State of U.P. & Ors.), which was allowed by the Division Bench of this Court vide order dated 03.04.2026, wherein the matter has been restored on its original number and as such, this Court has to decide the habeas corpus petition on merits.

16. It is also apparent that since the earlier order of the Child Welfare Committee dated 10.09.2025 in favour of the petitioner has been set aside by the Appellate Court on 21.04.2026, as such, the custody of the minor has not been assigned to any party by judicial order.

17. In view of this, this Court is tasked with determining what serves the best interests of the minor corpus and, accordingly, who is entitled to his custody. The authorities cited by both parties emphasize that the paramount consideration in matters of child custody is the welfare of the minor child. It is incumbent upon the Court to identify the individual best suited to safeguard the minor's well-being and interests. Guided by this

principle, the Court proceeds to adjudicate the issue of custody in the instant case.

18. Section 6 of the Hindu Minority and Guardianship Act, 1956, reads as under:

“6. Natural guardians of a Hindu minor.- The natural guardian of a Hindu minor, in respect of the minor's person as well as in respect of the minor's property (excluding his or her undivided interest in joint family property), are-

(a) in the case of a boy or an unmarried girl-the father, and after him, the mother: provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother;

(b) in the case of an illegitimate boy or an illegitimate unmarried girl-the mother, and after her, the father;

(c) in the case of a married girl-the husband;

Provided that no person shall be entitled to act as the natural guardian of a minor under the provisions of this section-

(a) if he has ceased to be a Hindu, or

(b) if he has completely and finally renounced the world by becoming a hermit (vanaprastha) or an ascetic (yati or sanyasi).”

19. It is well-established that, ordinarily, the custody of a minor who has not attained the age of five years is entrusted to the mother. This principle has been recognized and codified by the legislature through the above relevant statutory provision. The legislative intent underlying this enactment reflects a recognition of the unique nutritional, emotional, and developmental needs of the minor, which, in the formative years, can best be met by the mother. While the father plays an essential role in the child's upbringing, it is the mother who, by reason of biological and nurturing considerations, is ordinarily best positioned to secure the physical and emotional welfare of the minor. Accordingly, in adjudicating the present habeas corpus petition, the Court must be guided by the paramount consideration of the minor's welfare.

20. In the instant case, keeping in view the allegations levelled by the

parties against each other, in the opinion of the Court, at this stage, there is no possibility of reconciliation between the parties. It is apparent that the husband is not paying any maintenance to the wife, to which he is legally obliged and, as such, the petitioner is dependent on her parents. The petitioner has filed an affidavit, in which, she has stated that her mother Lalita Devi is in government service working in Vikas Khand Revati, District Ballia under District Panchayat Raj Adhikari, Ballia and was getting a salary of Rs.47,000/- per month, whereas her father was retired government employee getting a pension of Rs.30,000/- per month. The petitioner has filed the relevant documents to establish that her mother is a government employee and her father is a retired government servant.

21. The respondent has levelled certain allegations against the petitioner that she is an addict, alcoholic and is not in a fit mental condition to have the custody of the minor corpus and to substantiate these allegations some prescriptions issued by District Hospital, Varanasi dated 04.06.2025 and 02.07.2025 have been filed, which only mention that the petitioner was suffering from abdominal pain, as such, she approached the doctor for treatment alongwith her husband.

22. Keeping in view, the abdominal pain, the doctor advised her to refrain from taking spicy food. No such definite opinion has been expressed in any prescriptions that the mental condition of the petitioner is unsound or she is alcoholic. On the basis of the above prescriptions, it cannot be said that the petitioner is not in a fit physical and mental condition to look after the welfare of the minor corpus.

23. The petitioner has also brought to the Court's notice a WhatsApp chat of the respondent, in which he disclosed that he has solemnized marriage with another woman and is residing with her. The WhatsApp chat also contains photographs of the respondent and the said woman. The respondent is present in Court today, and upon perusal of the photographs in the WhatsApp chat, this Court is of the opinion that the respondent was in the company of another woman. However, this Court is not expressing any opinion regarding the nature of their relationship.

24. Certain documents are available on record, which reflect the conduct of the respondent, who forcibly snatched the corpus from the custody of the petitioner regarding which a complaint was made to the Superintendent of Police, District Ballia. The Child Welfare Committee

had directed by order dated 10.09.2025 to handover the custody of the minor corpus to the petitioner, but that order was not deliberately complied with by the respondent and this fact was noticed by the Division Bench while allowing the special appeal of the petitioner.

25. It is further apparent that when the Division Bench directed the State to intimate the steps taken to comply with the order dated 10.09.2025, then action was taken only after much hesitation, deliberation, and reluctance. The respondent was suspended by the S.S.P., Jaunpur, on 12.03.2026, which reflects the respondent's conduct. This attitude and behavior demonstrate that he is not at all concerned with the orders of this Court, which is particularly distressing given that he is a member of the disciplined force as a police constable, who has shown open defiance of the Court's orders.

26. It is apparent that as of now, keeping in view the tender age of the corpus, it is in the best interest that his custody is handed to the petitioner [REDACTED] @ [REDACTED] because for the nutritional needs, he is fully dependent on the petitioner. It will be an injustice to deprive the corpus from the custody of his mother.

27. Accordingly, the instant habeas corpus petition has merit and is liable to be allowed.

28. Respondent No. 6, [REDACTED], is directed to hand over the custody of the minor, [REDACTED], to the petitioner, [REDACTED] @ [REDACTED] [REDACTED] within three days.

29. However, to preserve the emotional bond between the minor and his father, the respondent is entitled to have visitation rights.

30. The Court interacted with the respondent and inquired about the specific dates on which he would like to visit. The respondent replied that he could not specify exact dates or days, but prayed that he be allowed to visit the minor twice a month.

31. In view of this, the respondent is permitted to exercise visitation rights and may visit the minor twice a month after informing the petitioner in advance. The visits shall take place at the nearest police station.

32. Learned counsel for the petitioner submits that the petitioner will not

create any obstruction and will fully cooperate, making all efforts to ensure that the respondent is able to meet his minor son.

33. Accordingly, the instant habeas corpus petition is **allowed**.

(Sandeep Jain,J.)

April 30, 2026
Mayank

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