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IN THE HIGH COURT OF ORISSA AT CUTTACK

WPCRL No. 16 of 2026
CNR No. ODHC010131582026

…. **Petitioner**

-Versus-

…. **Opposite Parties**

Advocates appeared in this case:

For Petitioner : Mr. Rajat Kumar Panda,
Mr. Pravasha Pujaree Parida,
Ms. Kajal Dalal,
Ms. Adyasha Das,
Mr. Dhananjaya Panda, Advocates

For Opposite Parties-State : Ms. Aishwarya Dash,
Additional Standing Counsel

For Opposite Party Nos.1 to 3 : Mr. Gautam Mukherji, Senior Advocate along with
Mr. Sreejit Mohanty,
Mr. Supralik Acharya,
Mr. Sandipan Mohanty,
Mr. Sanjivan Mohanty, Advocates

CORAM:
HON' BLE THE CHIEF JUSTICE
AND
HON'BLE MR. JUSTICE CHITTARANJAN DASH

J U D G M E N T

Date of Hearing : 28th September, 2026
Date of Judgment : 10th November, 2026

HARISH TANDON, CJ.

1. The instant proceeding is at the behest of the mother of a minor girl for issuance of a writ of *habeas corpus* directing the production of the minor girl before this Court but also her custody in her favour.

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2. Admittedly, the petitioner is a Philippine citizen and presently residing and working as kindergarten teacher in Hanoi, Vietnam. She developed a relationship with the opposite party No.1 and continued in such a live-in relationship for a pretty long time and of the said relationship, the said minor girl was born on 26th November, 2023 in the city of Bengaluru, in the State of Karnataka, India. The birth certificate issued by the competent authority not only reflects the name of the opposite party No.1 as father, but also the petitioner as biological mother. The relationship subsequently got strained but the said minor girl remained in India as a citizen of this country and it is not disputed that the application for issuance of a passport in her favour was also applied, which was eventually granted on 1st January, 2026.

3. The petitioner filed the instant writ petition in the nature of *habeas corpus* alleging that she is not allowed to meet the minor girl, even on video calls and when she gets an opportunity to see the child on video calls with the help and assistance of the neighbours, she found that she is not being taken care of properly by the parents of the opposite party No.1. She alleged that the foundation leading to a strained relationship was founded upon a misrepresentation by the opposite party No.1, who suppressed his earlier relationship and a child therefrom.

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4. She further averred in the instant writ petition that after giving birth to the child, she has discharged all her duties and responsibilities as a biological mother by providing daily cares including breastfeeding, nutrition, hygiene and bathing, medical care and vaccination. However, since the Visa granted to the petitioner was not extended rather rejected, she returned back to the country of her origin and, in the meantime, it was noticed that the opposite party No.1 has put the minor child into the custody of the grandparents, who later on found not to have taken care of the said child in proper manner. It is further alleged that the opposite party No.1 frequently travels to Singapore and other countries and he is in fact at Bengaluru when the child is kept in the custody of her grandparents at Jajpur within the State.

5. The opposite party No.1 refuted the stand of the petitioner in the counter affidavit so filed by contending that since he is employed with Lumen Technologies Singapore as a Principal Technology Architect, the Cyber-security APAC, he frequently visits his parental house and takes care of the child. It is further averred that the petitioner was well aware that the child is taken care of by the grandparents and, in fact, it was agreed by executing an agreement that the custody would remain with the opposite party No.1.

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6. A specific stand is taken that the child is being well taken care of and, in fact, is going to the kindergarten school and all cares and precautions, which are required, are being ensured and, therefore, even if the petitioner is a biological mother, welfare of the child does not warrant the custody to be handed over to the petitioner. It is further stated in the said counter affidavit that the petitioner had children from the earlier marriage and those children are residing in the Philippines, whereas the petitioner is working in Vietnam on a work Visa and, therefore, being employed therein and in absence of any other person to take care of the said child during her professional engagement, it would not be conducive for the child to remain with her.

7. The opposite party No.1 relied upon the Whatsapp chats in support of the contention that the petitioner herself agreed the child to remain in the custody of the grandparents, as they are taking care of her in the best manner as expected from the petitioner. However, the petitioner in the rejoinder to the counter affidavit did not deny the custody agreement having entered into between the parties, but took a defence that the same was signed under coercion.

8. On the conspectus of the facts so unfurled, a preliminary point was taken on the maintainability of the writ in the nature of *habeas corpus,* more particularly, when the custody cannot be said to be illegal and/or

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unlawful. The said point in our opinion does not invite a deep scrutiny as the judgment rendered by the Courts, including the Apex Court, have unequivocally held that the writ in the nature of *habeas corpus* for custody of the child from the custody of the parents is maintainable.

9. The support can be lent to a judgment of the Apex Court in ***Yashita Sahu v. State of Rajasthan and others*** (Criminal Appeal No.127 of 2020 decided on 20th January, 2020) where the Apex Court held that there is no fetter put on the Court to invoke its extraordinary writ jurisdiction for the best interest of a child in the following:

> *"**9.** It is too late in the day to urge that a writ of habeas corpus is not maintainable if the child is in the custody of another parent. The law in this regard has developed a lot over a period of time but now it is a settled position that the court can invoke its extraordinary writ jurisdiction for the best interest of the child. This has been done in **Elizabeth Dinshaw** vs. **Arvand M. Dinshaw & Ors. (1987) 1 SCC 42**, **Nithya Anand Raghavan vs. State (NCT of Delhi) & Anr (2017) 8 SCC 454** and **Lahari Sakhamuri v. Sobhan Kodali (2019) 7 SCC 311** among others. In all these cases, the writ petitions were entertained. Therefore, we reject the contention of the appellant wife that the writ petition before the High Court of Rajasthan was not maintainable.*
>
> ***10.** We need not refer to all decisions in this regard but it would be apposite to refer to the following observations from the judgment in **Nithya Anand Raghavan** (supra):-*

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"46. The High Court while dealing with the petition for issuance of a writ of habeas corpus concerning a minor child, in a given case, may direct return of the child or decline to change the custody of the child keeping in mind all the attending facts and circumstances including the settled legal position referred to above. Once again, we may hasten to add that the decision of the court, in each case, must depend on the totality of the facts and circumstances of the case brought before it whilst considering the welfare of the child which is of paramount consideration. The order of the foreign court must yield to the welfare of the child. Further, the remedy of writ of habeas corpus cannot be used for mere enforcement of the directions given by the foreign court against a person within its jurisdiction and convert that jurisdiction into that of an executing court. Indubitably, the writ petitioner can take recourse to such other remedy as may be permissible in law for enforcement of the order passed by the foreign court or to resort to any other proceedings as may be permissible in law before the Indian court for the custody of the child, if so advised.

47. In a habeas corpus petition as aforesaid, the High Court must examine at the threshold whether the minor is in lawful or unlawful custody of another person (private respondent named in the writ petition)."

11. *Further, in the case of* ***Kanika Goel v. State of Delhi (2018) 9 SCC 578****, it was held as follows:*

"34. As expounded in the recent decisions of this Court, the issue ought not to be decided on the basis of rights of the parties claiming custody of the minor child but the focus should constantly remain on whether the factum of best interest of the minor child is to return to the native country or otherwise. The fact that the minor child will have better prospects upon return to his/her native country, may be a relevant aspect in a substantive proceedings for grant of custody of the minor child but not decisive to examine the threshold issues in a habeas corpus petition. For the purpose of habeas corpus petition, the Court ought to focus on the obtaining circumstances of the minor child having been removed from the native country and taken to a place to encounter alien environment, language, custom, etc. interfering with his/her overall growth and grooming and whether continuance there will be harmful.""

10. However, in the case of ***Rajeswari Chandrasekar Ganesh v. The State of Tamil Nadu and Others***, (Writ Petition (Criminal) No.402 of 2021, decided on 14th July, 2022) the Apex Court, while upholding the issue relating to maintainability of the writ of *habeas corpus,* succinctly held that the said jurisdiction is inhered into the Court distinct from the statutory jurisdiction conferred by any particular provision of the special statute in the following:

*"**91**. Thus, it is well established that in issuing the writ of habeas corpus in the case of minors, the jurisdiction which the*

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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."

11. The aforesaid proposition of law is also laid down by the Apex Court in the case of ***Vivek Kumar Chaturvedi and another v. State of U.P. and others***, reported in ***2025 INSC 159*** in the following:

*"**7**. It has to be specifically noticed that in Tejaswini Gaud v. Shekhar Jagdish Prasad Tewari (2019) 7 SCC 42, this Court had permitted the invocation of the extraordinary remedy seeking custody of the child under Article 226 of the Constitution of India since the custody was sought by the*

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father, the natural guardian of the minor child, from the sister and brother of the mother, who did not have any legal right to claim the custody of the child. Gautam Kumar Das v. State (NCT of Delhi), (2024) 10 SCC 588 relied on Tejaswini Gaud v. Shekhar Jagdish Prasad Tewari, (2019) 7 SCC 42 to enable the natural guardian, the father, custody of a minor child, who was with the maternal aunts; in a petition under Article 226 of the Constitution of India. Quoting Nirmala v. Kulwant Singh, 2024 INSC 370 it was also held that there can be no hard-and-fast rule insofar as the maintainability of a habeas corpus petition relating to custody of minor children; which would depend on the facts and circumstances of each case."

12. The law enunciated in the above report categorically held that there is no factor put into the Court to issue a writ of *habeas corpus* for custody of a minor child as the Court enjoins the inherent jurisdiction and not tramelled with any special jurisdiction conferred under the provisions of the special statute.

13. Apart from the exercise of inherent jurisdiction inheres into the writ Court, the *parens patriae* jurisdiction is also ingrained in it which ordains consideration, which would be in the best interest of a minor child. All the judgments relied upon the parties have uniformly held that the Court shall not be swayed by the fact that one of the parents being the natural guardian should be given custody but the paramount consideration is the welfare of the child.

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14. In the above quoted judgments, the Apex Court has applied the comity of the Courts in the special facts and circumstances where the foreign Courts have assumed the jurisdiction and in *seisin* of the custody matter, the directions have been passed but despite the same, the best interest of the child should be borne in mind and, in the event, the Court finds that it would harm the child or not in the welfare of the said child, there is no inhibition created into the Court in declining to grant the custody.

15. What would be the best interest of the child cannot be put into a straightjacket formula or as a Euclidean theorem as it largely depends upon the facts and circumstances of each case.

16. In the case of ***Vivek Singh v. Romani Singh***, reported in ***(2017) 3 SCC 231***, the Apex Court held that while considering the best interest of the child, the consideration must be taken on an optimal growth and the development of a child primacy over other considerations. The best conducive environment which would hold the potential and the future development should also be one of the relevant factors in the following:

> *"**12.** We understand that the aforesaid principle is aimed at serving twin objectives. In the first instance, it is to ensure that the child grows and develops in the best environment. The best interest of the child has been placed at the vanguard of*

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family/custody disputes according the optimal growth and development of the child primacy over other considerations. The child is often left to grapple with the breakdown of an adult institution. While the parents aim to ensure that the child is least affected by the outcome, the inevitability of the uncertainty that follows regarding the child's growth lingers on till the new routine sinks in. The effect of separation of spouses, on children, psychologically, emotionally and even to some extent physically, spans from negligible to serious, which could be insignificant to noticeably critical. It could also have effects that are more immediate and transitory to long lasting thereby having a significantly negative repercussion in the advancement of the child. While these effects do not apply to every child of a separated or divorced couple, nor has any child experienced all these effects, the deleterious risks of maladjustment remains the objective of the parents to evade and the court's intent to circumvent. This right of the child is also based on individual dignity.

13. *Second justification behind the "welfare" principle is the public interest that stand served with the optimal growth of the children. It is well recognised that children are the supreme asset of the nation. Rightful place of the child in the sizeable fabric has been recognised in many international covenants, which are adopted in this country as well. Child-centric human rights jurisprudence that has been evolved over a period of time is founded on the principle that public good demands proper growth of the child, who are the future of the nation. It has been emphasised by this Court also, time and*

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again, following observations in Bandhua Mukti Morcha v. Union of India (1997) 10 SCC 549 : (SCC p. 553, para 4)

> *"4. The child of today cannot develop to be a responsible and productive member of tomorrow's society unless an environment which is conducive to his social and physical health is assured to him. Every nation, developed or developing, links its future with the status of the child. Childhood holds the potential and also sets the limit to the future development of the society. Children are the greatest gift to humanity. Mankind has the best hold of itself. The parents themselves live for them. They embody the joy of life in them and in the innocence relieving the fatigue and drudgery in their struggle of daily life. Parents regain peace and happiness in the company of the children. The children signify eternal optimism in the human being and always provide the potential for human development. If the children are better equipped with a broader human output, the society will feel happy with them. Neglecting the children means loss to the society as a whole. If children are deprived of their childhood — socially, economically, physically and mentally — the nation gets deprived of the potential human resources for social progress, economic empowerment and peace and order, the social stability and good citizenry. The Founding Fathers of the Constitution, therefore, have emphasised the importance of the role of the child and the need of its best development."*

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17. It is, thus, no gain saying that the welfare principles are not restricted solely on the physical comfort and/or material advantages but founded upon a variety of factors, viz., general, psychological, spiritual and emotional welfare and above all, what would be the best for a healthy growth, development and education of the child so that she may be prepared to face the vagaries of life as a matured adult.

18. In the instant case, the child is admittedly under the custody of the grandparents and being a citizen of the country is taken care of by them. The opposite party No.1 frequently visits his parental house and takes care of the child, even the petitioner is interacting with the child through video calls, though she alleges that at times she is denied of the same. One of the factors which cannot be overlooked is that the petitioner, being a citizen of Philippines, is working for her livelihood in Vietnam and there is no other person who could look after the child while she is away to discharge her professional duties.

19. Undisputedly, the petitioner has other children from the first marriage and the children are staying in Philippines and, therefore, it would not be conducive for the development of the child to stay in another country when she is admittedly the citizen of this country. In Indian society, the grandparents also play a very important role in overall

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development of a child and it is commonly said that "they love the grandchild more than their own children".

20. The photographs annexed to the writ petition do not reveal that the child is facing any psychological problem rather appears to be happy in all respects. Apart from the same, the child since after few months of birth is admittedly living with the grandparents who are taking her care and, therefore, uprooting the child from the settled position could invite a cascading effect on her. Equally, we cannot overlook that the petitioner being the mother has every right to visit the child and interact with her and it is inconceivable that she would be denied of such valuable right.

21. In the decision rendered by the Apex Court as above, the Court may decline to exercise the extraordinary jurisdiction by issuing the writ of *habeas corpus,* if the welfare of the child warrants so. We, therefore, do not find it prudent to give the custody of the child to the petitioner and, hence, the prayer in this regard is refused.

22. However, we direct the opposite parties to permit the petitioner to interact with the child every day on video call depending upon the daily routine of the said child and ensuring that neither it causes any discomfort to her nor would disrupt the sleep order. Further, as and when the petitioner visits India, she will be permitted to spend time with the child.

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During such visit, she may be permitted to spend exclusive time with the minor daughter and before returning to Vietnam or Philippines, the child shall be handed over to the grandparents. The opposite party No.1 shall provide the Air Tickets and stay in the State of Odisha to the petitioner and shall provide all other facilities necessitated for her smooth visit to this country.

23. With these observations and directions, the instant writ petition is disposed of.

I agree.

(Chittaranjan Dash)
Judge

(Harish Tandon)
Chief Justice

Sisira
Jr. Steno

Signature Not Verified
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Signed by: SISIRA KUMAR BEHERA
Designation: Junior Stenographer
Reason: Authentication
Location: High Court of Orissa, Cuttack
Date: 11-Nov-2026 17:40:17

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