

Bombay High Court**Pravin Nathalal Parghi S/O Late Mr ... vs State Of Maharashtra And Ors on 4 September, 2025****Author: Ravindra V. Ghuge****Bench: Ravindra V. Ghuge**

2025:BHC-AS:37140-DB

2374-25.odt
BOMBAY
JURISDICTION LAXMI SUBHASH SONTAKKE

IN THE HIGH COURT OF JUDICATURE AT
CRIMINAL APPELLATE

WRIT PETITION NO. 2374 OF 2025

Digitally signed by LAXMI SUBHASH SONTAKKE Date: 2025.09.04 18:49:05 +0530
Pravin Nathalal

Parghi

Versus

.. Petitioner

The State of Maharashtra &

Ors.

.. Respondent

Ms. M.

J. Reena Rolland a/w Aishwarya Bhandary for the Petitioner.

Mr. Mayur Sonavane, APP for Respondent Nos. 1 to 4.

Ms.

Parul Shah i/b. Pratibha Bangera for Respondent Nos. 5 to 8.

Mr. Mohd. Rafik Gavandi, P.S.I., Malad Police Station,

Mumbai.

CORAM: RAVINDRA

V. GHUGE &

GAUTAM A.

ANKHAD, JJ.

RESERVED ON: AUGUST 22, 2025

PRONOUNCED ON: SEPTEMBER 04, 2025

JUDGMENT (PER: GAUTAM A. ANKHAD, J.)

1. Rule. Rule is made returnable forthwith and the matter is heard finally with the consent of the parties.
2. The Petitioner is the biological father of 5-year-old twins. Respondent No. 5 is the mother of the Petitioner, and Respondent Nos. 6 to 8 are the sisters of the Laxmi wp 2374-25.odt Petitioner. One son (Mst. Lakshya Parghi) is in the custody of the Petitioner, whereas the other (Mst. Lavya Parghi) is admittedly in the custody of Respondent No. 5.
3. The present Petition seeks a Writ of Habeas Corpus directing Respondent No. 4 (Police) to procure the custody of the Mst. Lavya Parghi from Respondent No.5 and hand him over to the Petitioner.
4. The facts in a nutshell are as follows:-

(i) The Petitioner is presently working as a 'Mukadam' at the P/North Ward office of the Municipal Corporation of Greater Mumbai (MCGM). His job was secured a few years ago with MCGM under a retirement-linked preferential employment scheme availed by the Petitioner through Respondent No. 5, who was a former employee of MCGM.

(ii) The Petitioner was married on 6th December, 2014 and the twins were born on 12th November, 2019 to the Petitioner and his wife through surrogacy. The twins had health complications at birth. It was then agreed by the Petitioner that Mst. Lavya Parghi would stay under the care of Respondent No.5 (his mother). After the lockdown imposed under COVID-19 pandemic eased, several disputes arose between the Petitioner and his parents. This resulted in:

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a) The Petitioner filing Case No. 106/D/2023 before the Family Court under Section 25 of the Guardians and Wards Act, 1890, against his father (now deceased) for obtaining custody of his minor

son. The Petitioner has also filed Petition No. D/51/2025 in the Family Court seeking custody of child; and

b) Respondent No.5 filing FIR No. 841/2024 with the Malad Police Station under Sections 115(2), 126(2), and 352 of the Bharatiya Nyaya Sanhita, 2023 and Section 24 of the Maintenance and Welfare of Parents and Senior Citizens Act 2007, against the Petitioner and his brother.

The Family Court proceedings are pending. It is an admitted position that Respondent No. 5 has informed the Family Court that the Petitioner's son resides with Respondent No. 5 at their residence.

(iii) Between 7th and 20th February 2025, the parties exchanged legal notices inter-alia on the custody of the child. The Petitioner also filed several complaints before the police, including on 3rd, 10th and 19th March 2025 requesting for their intervention in the custody dispute.

(iv) As Respondent No. 5 has refused to hand over the custody of the child, the present petition has been filed.

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5. We have heard Ms. Rolland, learned advocate for the Petitioner, Mr. Sonavane, learned APP for Respondent Nos. 1 to 4 and Ms. Bangera learned advocate for Respondent Nos. 5 to 8.

6. Ms. Rolland submitted that there is no marital discord between the Petitioner and his wife. As the biological father and natural guardian, the Petitioner and his wife have a rightful claim to the custody of their son. He is gainfully employed and fully capable of ensuring his care and well-being. She further contended that the twins should not be separated at the instance of Respondent Nos. 5 to 8. The allegations of Respondent No. 5 regarding the Petitioner's inability to look after the child's health and welfare are unfounded. The son ought to be reunited with his biological parent and twin brother. Respondent No. 5 has no superior right in law to retain custody over the biological father. It was further submitted that a writ of Habeas Corpus can be exercised in exceptional circumstances even if the custody proceedings are pending. Reliance was placed on the judgments of the Hon'ble Supreme Court in Tejaswini Gaud vs. Shekhar Tiwari (2019) 7 SCC 42 and Gautam Kumar Das vs. NCT of Delhi (2024 INSC 610) in support of the above submissions.

7. Ms. Bangera and Ms. Racheeta Dhuru, learned counsels for Respondent Nos. 5 to 8, opposed the submissions advanced on behalf of the Petitioner and relied upon the affidavits dated 18 th June, 2025 and 6th August, 2025 filed on behalf of Respondent No. 5 and Respondent Nos. 6 to 8, respectively. It was Laxmi wp 2374-25.odt submitted that the Petitioner's wife has shown no emotional or parental bond with her sons. At the time of birth, the Petitioner and his wife declined to take custody of the twins, describing them as a 'burden'. The Petitioner voluntarily entrusted the custody of his son Lavya to Respondent No. 5 and her husband (now deceased), and since birth, he has remained in their care, love, and guardianship. He is now emotionally attached to Respondent No. 5. It was further submitted that the other son (Mst. Lakshya Parghi) suffers from cerebral palsy, and the Petitioner and his wife are financially as well as emotionally incapable of caring for both children. According to Respondent No.5, the Petitioner's real interest lies in the property of Respondent No. 5, and he had even offered to relinquish custody of his custody claims in exchange for such property. The filing of the present petition nearly five years after the child's birth was stated to be a mala fide attempt to harass Respondent No. 5 on account of the property dispute. Reliance was placed on the judgments of Tejaswini Gaud (supra) and Gaurav Nagpal vs. Sumedha Nagpal (2009) 1 SCC 42 to oppose the petition.

8. Ms. Bangera further submitted that the Petitioner had already invoked the provisions of the Guardians and Wards Act 1890, by filing applications before the Family Court seeking custody of the child. The same is pending for adjudication. Hence, this petition cannot be entertained in view of the alternate statutory remedy already pursued by the Petitioner.

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9. Respondent Nos. 6 to 8 have filed almost identical affidavits stating that they have not assumed or exercised rights or responsibilities of a custodian or legal guardian of the Petitioner's child. They are residing independently and maintaining a separate household. Nevertheless, they support Respondent No. 5 and have sought dismissal of the present petition.

10. We have heard learned counsel for the parties, considered their rival submissions, and examined the judgments relied upon by them. The issue that arises for determination is whether this Court ought to exercise its Writ jurisdiction in Habeas Corpus to hand over custody of the 5 years old twin child to the biological parents, notwithstanding the pendency of custody proceedings before the Family Court.

11. The Hon'ble Supreme Court in Tejaswini Gaud (supra) has considered several earlier judgments including Gaurav Nagpal (supra) and has held 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 Laxmi wp 2374-25.odt according to the personal law, is not his legal or natural guardian, in appropriate cases, the writ court has jurisdiction.

15. In Gohar Begam [Gohar Begam v. Suggi, AIR 1960 SC 93 : 1960 Cri LJ 164] where the mother had, under the personal law, the legal right to the custody of her illegitimate minor child, the writ was issued. In Gohar Begam [Gohar Begam v. Suggi, AIR 1960 SC 93 : 1960 Cri LJ 164], the Supreme Court dealt with a petition for habeas corpus for recovery of an illegitimate female child. Gohar alleged that Kaniz Begum, Gohar's mother's sister was allegedly detaining Gohar's infant female child illegally. The Supreme Court took note of the position under the Mohammedan Law that the mother of an illegitimate female child is entitled to its custody and refusal to restore the custody of the child to the mother would result in illegal custody of the child. The Supreme Court held that Kaniz having no legal right to the custody of the child and her refusal to make over the child to the mother resulted in an illegal detention of the child within the meaning of Section 491 CrPC of the old Code. The Supreme Court held that the fact that Gohar had a right under the Guardians and Wards Act, 1890 is no justification for denying her right under Section 491 CrPC. The Supreme Court observed that Gohar Begum, being the natural guardian, is entitled to maintain the writ petition and held as under : (Gohar Begam case [Gohar Begam v. Suggi, AIR 1960 SC 93 : 1960 Cri LJ 164], AIR pp. 95-96, paras 7-8 & 10) "7. On these undisputed facts the position in law is perfectly clear. Under the Mohammedan law which applies to this case, the appellant is entitled to the custody of Anjum who is her illegitimate daughter, no matter who the father of Anjum is. The respondent has no legal right whatsoever to the custody of the child. Her refusal to make over the child to the appellant therefore resulted in an illegal detention of the child within the meaning of Section 491. This position is clearly recognised in the English cases concerning writs of habeas corpus for the production of infants. In R. v. Clarke [R. v. Clarke, (1857) 7 EL & BL 186 : 119 ER 1217] Lord Campbell, C.J., said at EL & BL pp. 193-94 : (ER p. 1220) 'But with respect to a child under guardianship for nurture, the child is supposed to be unlawfully imprisoned when Laxmi wp 2374-25.odt unlawfully detained from the custody of the guardian; and when delivered to him, the child is supposed to be set at liberty.' The courts in our country have consistently taken the same view. For this purpose the Indian cases hereinafter cited may be referred to. The terms of Section 491 would clearly be applicable to the case and the appellant entitled to the order she asked.

*8. We therefore think that the learned Judges of the High Court were clearly wrong in their view that the child Anjum was not being illegally or improperly detained. The learned Judges have not given any reason in support of their view and we are clear in our mind that view is unsustainable in law. ****

10. We further see no reason why the appellant should have been asked to proceed under the Guardian and Wards Act for recovering the custody of the child. She had of course the right to do so. But she had also a clear right to an order for the custody of the child under Section 491 of the Code. The fact that she had a right under the Guardians and Wards Act is no justification for denying her the right under Section 491. That is well established as will appear from the cases hereinafter cited."

(emphasis supplied)

16. In Veena Kapoor [Veena Kapoor v. Varinder Kumar Kapoor, (1981) 3 SCC 92 : 1981 SCC (Cri) 650], the issue of custody of child was between the natural guardians who were not living together. Veena, the mother of the child, filed the habeas corpus petition seeking custody of the child from her husband alleging that her husband was having illegal custody of the one and a half year old child. The Supreme Court directed the District Judge concerned to take down evidence, adduced by the parties, and send a report to the Supreme Court on the question whether considering the interest of the minor child, its mother should be given its custody.

17. In Rajiv Bhatia [Rajiv Bhatia v. State (NCT of Delhi), (1999) 8 SCC 525], the habeas corpus petition was filed by Priyanka, mother of the girl, alleging that her daughter was in Laxmi wp 2374-25.odt illegal custody of Rajiv, her husband's elder brother. Rajiv relied on an adoption deed. Priyanka took the plea that it was a fraudulent document. The Supreme Court held that the High Court was not entitled to examine

the legality of the deed of adoption and then come to the conclusion one way or the other with regard to the custody of the child.

18. In Manju Malini [Manju Malini Seshachalam v. Vijay Thirugnanam, 2018 SCC OnLine Kar 621 : (2018) 4 AIR Kant R 166] where the mother filed a habeas corpus petition seeking custody of her minor child Tanishka from her sister and brother-in-law who refused to hand over the child to the mother, the Karnataka High Court held as under : (SCC OnLine Kar para 26) "26. The moment Respondents 1 and 2 refused to hand over the custody of minor Tanishka to the petitioner the natural and legal guardian, the continuation of her custody with them becomes illegal detention. Such intentional act on the part of Respondents 1 and 2 even amounts to the offence of kidnapping punishable under Section 361 IPC. Therefore there is no merit in the contention that the writ petition is not maintainable and Respondents 1 and 2 are in legal custody of baby Tanishka."

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.

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12. It is well-settled law that a Writ of Habeas Corpus may be issued to restore the custody of a minor to the parents where they have been unlawfully deprived of it. Ordinarily, child custody disputes are to be addressed under the Guardians and Wards Act, 1890, through a comprehensive inquiry by the competent Court. However, in exceptional circumstances, the questions of custody can be examined within the limited scope of Writ jurisdiction. We are of the view that the present matter falls within such an extraordinary category.

13. In the present case, while the custody of the son (one of the twins) rests with the Petitioner, the custody of his other son remains with Respondent No. 5. In our view, the Petitioner being the biological father and natural guardian, has an undisputed legal right to claim custody of his child. The contention of Respondent No. 5 that the Petitioner is emotionally and financially incapable of caring for the twins cannot be accepted. Custody cannot be denied on the basis of these allegations. The wife of the Petitioner, mother of the said child, is living together with the Petitioner. Though Respondent No. 5 may share an emotional bond with the child, such attachment does not confer upon her a superior right to custody over that of the biological parent. While due regard must be given to the rights of the father and mother as the natural guardian, such rights may be curtailed only if it is shown that his custody would be detrimental to the child's welfare. Admittedly, there is no marital discord between the Petitioner and his wife, and that the Petitioner is Laxmi wp 2374-25.odt employed with the MCGM. There is nothing on record to suggest that the Petitioner is incapable of caring for his child. Significantly, the other twin, who suffers from cerebral palsy, is already in his care. The child cannot be denied the care of his parents merely because of disputes between the Petitioner and Respondent No. 5, nor can property-related disputes deprive the biological parents of their lawful custody. In our view, Respondent No. 5 has no legal entitlement to retain custody of her grand-child vis-à-vis the Petitioner, more so when she is 74 years of age and herself has filed a complaint inter alia seeking maintenance from the Petitioner.

14. The Petitioner's reliance on the recent judgment of the Hon'ble Supreme Court in Gautam Kumar Das (supra) is well-founded, wherein the Hon'ble Court has considered almost similar facts. In that case, the custody of the child was handed over by the father to the sisters of his deceased wife. The Hon'ble Court held that there was nothing on record to show that the father, who had re-married, was incapable of taking care of her child and consequently directed the handover of the custody to the father. The ratio squarely applies to this case. Infact, the case in hands is on a stronger foundation since the couple is together and capable of taking care of their twin child.

15. The judgment of Hon'ble Supreme Court in Gaurav Nagpal (supra) is of no assistance to Respondent No.5. That was a case of a custody battle of a sole child between a husband and wife. It reiterates the well settled law on the issuance of Laxmi wp 2374-25.odt Writs of Habeas Corpus. In any case the same is considered in Tejaswini Gaud (supra) referred to above by us.

16. In view of the above, the Petition is partly allowed in terms of prayer

(a). Respondent No. 4 is directed to secure custody of Mst. Lavya Parghi from Respondent No. 5 and hand him over to the Petitioner within two weeks from the date of this order.

17. While some initial adjustment issues may arise, we are of the view that these will ease over time. The welfare of the child is the paramount consideration in custody matters. The Petitioner shall ensure that Mst. Lavya Parghi's schooling and current extra-curricular activities remain undisturbed during the ongoing academic year. To facilitate a smooth transition, subject to the child's school/ classes etc, Respondent No.5 shall be permitted to meet the child on any weekday between 9:00 a.m. and 6:00 p.m at the Petitioner's residence/ society. This shall be initially for a period of three months. Respondent Nos. 6 to 8 are at liberty to accompany Respondent No.5 during the interactions with the child. The Petitioner, by himself or through his wife, shall not create obstacles/ issues during these meetings. Both parties are directed to extend full cooperation to safeguard the welfare and best interests of the child. In case of any difficulty, it shall be open to either party to approach the Family Court for appropriate directions. Laxmi wp 2374-25.odt

18. Rule is made partly absolute in the above terms. There shall be no order as to costs.

[GAUTAM A. ANKHAD, J.]

[RAVINDRA V. GHUGE, J.] Laxmi

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