RAJASTHAN HIGH COURT
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HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

D.B. Habeas Corpus Petition No. 610/2026

CNR: RJHC011052892026 | URN: HC / 984U / 2026

Rajasthan High Court
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Mukesh S/o Shri Nanuram, Aged About 24 Years, R/o Dholiya, Udrasar, District Bikaner.

----Petitioner

Versus

1. The State of Rajasthan, Through The Secretary Department of Home And Affairs, Government of Rajasthan, Secretariat, Jaipur.
2. The Superintendent of Police, Bikaner.
3. The Station House Officer, Police Station Udrasar, District Bikaner.
4. Prakash S/o Malaram, R/o Dholiya, Udrasar, District Bikaner.
5. Asharam S/o Malaram, R/o Dholiya, Udrasar, District Bikaner.
6. Pawan S/o Prakash, R/o Dholiya, Udrasar, District Bikaner.
7. Sahi Ram S/o Prakash, R/o Dholiya, Udrasar, District Bikaner.
8. Babulal Alias Badar S/o Bhanwara Ram, R/o Dholiya, Udrasar, District Bikaner.

----Respondents

For Petitioner(s)	:	Mr. Dilip Kumar, Adv. Mr. Harsh Gupta, Adv. Mr. Jyoti K. Chauhan, Adv.
For Respondent(s)	:	Mr. Deepak Choudhary, GA-cum-AAG

HON'BLE MR. JUSTICE MUNNURI LAXMAN
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

Order

DATE OF CONCLUSION OF ARGUMENTS: 09/10/2016
DATE ON WHICH ORDER IS RESERVED : 09/10/2026
FULL ORDER OR OPERATIVE PART: FULL ORDER
DATE OF PRONOUNCEMENT: 15/10/2026

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[Per : Hon'ble Mr. Justice Munnuri Laxman]

1) The present writ petition has been filed seeking a writ of habeas corpus for the production of corpus 'X', who claims to be the petitioner's wife.

2) The pleadings in the writ petition reveal that the petitioner is the husband of the detenue, 'X', and that they are in love with each other. They entered into an agreement dated 01.10.2026 of their own free will and with the consent of both parties, expressing their intention to live in a live-in relationship. Both the petitioner and the detenue are majors. They have also filed a writ petition before this Court seeking protection and submitted representations to the concerned authorities, expressing apprehension of threats from the private respondents. Despite the representations and the complaint lodged with the police, no steps have been taken to secure the release of the corpus from the alleged illegal detention. In these circumstances, the petitioner has preferred the present writ petition seeking a writ of habeas corpus.

3) We have heard the writ petitioner at the admission stage as to the locus of the petitioner to seek writ of habeas corpus.

4) Learned counsel appearing for the petitioner submits that although the writ petition does not disclose the marital status of the corpus 'X' with one Sanwarma but there is a valid marriage in between the corpus and the said Sanwarmal. According to him, the petitioner has the right to file the present writ petition seeking a writ of habeas corpus, as the petitioner and the corpus have

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entered into a written agreement by mutual consent, agreeing to live together in a live-in relationship. He further submits that being adults, they have the right to live together in such a relationship, even if the corpus is married and her marriage continues to subsist. Learned counsel also submits that the concept of a live-in relationship has been recognised by the Hon'ble Supreme Court. Therefore, according to him, the consensual agreement confers locus standi upon the petitioner to maintain the present writ petition seeking a writ of habeas corpus.

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5) Learned Government Advocate-cum-Additional Advocate General, appearing for the State submits that the petitioner has suppressed material facts regarding the marriage of the corpus with a third party, which continues to subsist, and the fact that a child aged three months was born out of the said wedlock. He further submits that although the petitioner claims the corpus to be his wife, no such marital status has been conferred upon him under any law. It is also contended that the agreement is unlawful, being immoral and opposed to public policy, and that it involves injury to the rights of the corpus's lawful spouse. Since the agreement is void ab initio, it cannot confer any locus standi upon the petitioner to maintain the present writ petition.

6) The learned Government Counsel-cum-AAG also submits that a live-in relationship is a relationship in the nature of marriage. However, a live-in relationship between two persons cannot be recognised as a relationship in the nature of marriage when either or both of them are already married to other persons and their respective marriages continue to subsist. He further

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submits that the observations here and there made by various courts, including the Hon'ble Supreme Court, regarding live-in relationships involving adults who enter into such relationships when no subsisting marital relationship with another person exists in respect of either party, cannot be applied to every case of live-in-relationship.

7) It is also the submission of the learned Government Advocate-cum AAG that no material has been placed on record, particularly any evidence to indicate that the corpus was illegally detained by the private respondents. According to him, the allegation of illegal detention is based on mere assumption and is unsupported by any material on record. In the absence of any prima facie material substantiating the allegation of illegal detention, this Court cannot issue a writ of habeas corpus.

8) We have considered the contentions raised by both the parties and perused the material available on record.

9) The important question that arises for consideration in the present case is whether persons who enter into a live-in relationship on the basis of an agreement during the subsistence of a valid marriage of either or both parties, have the locus standi to maintain a writ petition seeking a writ of habeas corpus.

10) It is well settled that a writ of habeas corpus is available as a remedy in cases where a person is deprived of his or her personal liberty. It is a procedural writ intended to secure the liberty of a person against unlawful or unjustified detention, whether such detention is by the State or by a private individual. However, the writ cannot be issued where the detention or

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confinement of the person whose release is sought is pursuant to an order passed by a competent court of law or by an authority acting in accordance with law. A writ of habeas corpus may be issued where the detention or confinement of a person is without the authority of law.

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11) Ordinarily, where the corpus is residing with either parent, a brother, or a spouse, whether at the parental home or at the matrimonial home, such residence, by itself, does not constitute illegal detention. In such cases, cogent material must be placed on record to establish that the corpus is being illegally detained. The nature of the evidence required must be sufficient to justify the issuance of the writ, particularly where the relief sought would entail the removal of the corpus from the custody or control of the person with whom he or she is residing. The nature of such relief may be compared, to some extent, with a suit seeking mandatory injunction, as distinguished from one seeking a mere prohibitory injunction.

12) At the same time, this Court cannot remain oblivious to the question of the petitioner's locus standi, which, according to the petitioner, arises from an agreement executed between him and the corpus to live together in a live-in relationship. Broadly speaking, live-in relationships may be classified into two categories. The first category comprises relationships in which neither party has a subsisting valid marriage with another person, but the parties choose to live together without formally solemnising their marriage. Depending upon the facts and circumstances of the case, including the duration and nature of

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their relationship, such a relationship may be regarded as being in the nature of marriage and may attract certain legal rights and protections recognised under the law laid down by the Hon'ble Supreme Court and various High Courts. The second category comprises relationships in which either of both parties are married and their marriage still subsisting. The question that arises is whether such a relationship is entitled to legal recognition and whether recognising would prejudice or infringe the statutory and legal rights of the existing spouse.

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13) The matrimonial laws applicable to different religious communities recognise certain rights and obligations arising out of a valid marriage, including conjugal rights and the corresponding obligations between spouses. Where a valid marriage continues to subsist, the rights of the existing spouse cannot be disregarded merely because one of the parties has entered into a live-in relationship with another person. Further, a right claimed on the basis of an agreement must be examined in the light of the nature and legality of the agreement itself. If an agreement is ex facie opposed to public policy, or if its object is unlawful under the applicable law, it cannot be relied upon to claim a legal right. In particular, a relationship founded upon such an agreement cannot, merely by virtue of the agreement, override or defeat the legally enforceable rights of an existing spouse. The consequences of such a relationship for the rights and interests of the existing spouse must, therefore, be duly considered.

14) The mere fact that two adults have voluntarily entered into an agreement to live together does not, by itself, establish that

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every such relationship is entitled to recognition as a relationship in the nature of marriage. The law recognises certain rights and protections in respect of relationships that fall within the legally recognised category of relationships in the nature of marriage. However, such recognition cannot automatically be extended to every live-in relationship, irrespective of the subsistence of a valid marriage and the legal rights arising therefrom. The statutory rights of an existing spouse, including the right to claim maintenance and the corresponding obligation of the other spouse to provide maintenance, must also be taken into consideration while examining the legal consequences of such a relationship.

15) A Division Bench of this Court, in **Gorkha Ram v. State of Rajasthan** *[D.B. Habeas Corpus Petition No. 467/2024]*, decided on 04.12.2024, has specifically held that a person claiming a right under an agreement that is hit by Section 23 of the Indian Contract Act, 1872, does not acquire locus standi on the basis of such an agreement. The relevant paragraphs of the said judgment are reproduced hereinbelow:

> "11. The expression locus-standi is a Latin term that means "place of standing" and refers to the legal right of a person to bring a law suit or to participate in a legal proceeding. It ensures that only those with a genuine connection to the legal issues or legal rights are allowed to participate in the legal process. The writ of habeas corpus has always been looked upon as an effective means to ensure release of the detained person and any emotional or intellectual concern shall not of itself confer a standing on a person to maintain a habeas corpus petition. The traditional doctrine of locus-standi has no doubt been relaxed where a writ of habeas corpus is prayed for and the strict rule of pleadings can also be dispensed with but, in no case, a person who claims live-in relationship with a married woman who is his own sister and makes a vague statement that 'X' is under

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illegal confinement of her husband and uncle-in-law can maintain a habeas corpus petition. Plainly speaking, there is no fundamental right of a person to have a live-in relationship with a woman legally married to another man and, more particularly, when the woman appears to be his own sister. In our opinion, there is no fundamental right not even the right guaranteed under Article 21 of the Constitution of India that would provide a standing for the petitioner to maintain this habeas corpus petition. The Constitution of India or any other law in India does not sanctify an immoral act. The live-in relationship allegedly entered into between the petitioner and 'X' has no legal sanctity and must be held void ab initio in view of the provisions under Section 23 of the Indian Contract Act. We do not nurture a doubt even for a second that a petition seeking protection to life at the instance of any citizen of this country or even a foreign national notwithstanding his character, antecedents, etc. shall be maintainable by him or at his instance but a habeas corpus petition by a person like the petitioner seeking production of 'X' in the Court is not maintainable. We are of the considered opinion that the debate on constitutional morality vis a vis societal morality was addressed by the Hon'ble Supreme Court in "Navjot Singh Johar" in a different context and the observations made therein do not sanctify the relationship of the petitioner with 'X'.

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12. The powers under Article 226 of the Constitution are exercised for public good and in the public interest. Though the powers under Article 226 of the Constitution are plenary in nature, the writ Court exercises such powers in furtherance of the public interest having regard to the attending circumstances in the case. In our opinion, the writ Court cannot exercise its extraordinary discretionary powers in a matter which would only sanctify immorality in the society. May be the offence of adultery is not attracted against a woman, the very purpose of conferring high prerogative writs to the High Courts by the framers of the Constitution would be lost if this Court entertains this habeas corpus petition on the plea that the petitioner by living an adulterous relationship with a married woman did not commit a crime. This is too well settled a proposition in law that in appropriate cases the writ Court may refuse to entertain a writ petition even where some contentious issues are raised or an arguable point has been made out."

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16) We are in complete agreement with the law laid down by the coordinate Bench of this Court in ***Gorkha Ram*** (supra). Accordingly, we hold that the petitioner has no locus standi to maintain the present habeas corpus petition.

17) We have also examined the claim made by the petitioner in the writ petition. The pleadings suffer from suppression of material facts, particularly with regard to the subsistence of the corpus's marriage with another person, and the child born out of the said wedlock. Despite these facts, the petitioner instituted the present writ petition claiming the corpus as his wife. The corpus could acquire the status of the petitioner's wife only upon the dissolution of her previous marriage and the solemnization of a legally valid marriage with the petitioner or, at the very least, the establishment of a relationship in the nature of marriage. Where a person is already married and the marriage subsists, a subsequent live-in relationship with another person cannot ordinarily be regarded as a relationship in the nature of marriage. The writ petition, therefore, suffers from suppression of material facts.

18) We have also perused the entire pleadings in the writ petition. The petition does not disclose any prima facie material to indicate that the corpus has been illegally detained by her parents or relatives, i.e., the private respondents. Where the corpus is residing under the care and protection of her parents or husband, cogent and compelling evidence is required to establish that she is being illegally detained. The issuance of a writ of habeas corpus is not a routine exercise and may have serious consequences for the relationship between the corpus and her previous husband, as well

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as for the members of her family. Further, in the absence of any prima facie material indicating illegal detention, directing the State machinery to produce the corpus would unnecessarily burden the State's resources. In view of the foregoing, we are of the considered opinion that the present writ petition is devoid of merit and deserves to be dismissed with exemplary costs.

19) In the result, this habeas corupus petition is dismissed with a cost of Rs.25,000/-, payable to the Child Secretariat (Bank Account No.50200115050862) within a period of four weeks, failing which the Office shall register a suo moto contempt case against the petitioner.

(ASHUTOSH KUMAR),J (MUNNURI LAXMAN),J

Narendra

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