



2026:AHC:72679-DB

AFR

HIGH COURT OF JUDICATURE AT ALLAHABAD

SPECIAL APPEAL No. - 1205 of 2025

Smt. Rinku Ram @ Rinku Devi and another

.....Appellant(s)

Versus

State of U.P. and 7 others

.....Respondent(s)

Counsel for Appellant(s)	: Kamla Kant Mishra, Varun Mishra
Counsel for Respondent(s)	: Rakesh Pande (Sr. Adv.) with Ram Kesh, Rajiv Singh (S.C.), Virendra Pratap Pal

Chief Justice's Court

**HON'BLE ARUN BHANSALI, CHIEF JUSTICE
HON'BLE KSHITIJ SHAILENDRA, J.**

1. Heard Shri Kamla Kant Mishra, learned counsel for the appellants, learned Standing Counsel for respondents no. 1 to 5 and Shri Rakesh Pande, learned Senior Counsel assisted by Shri Ram Kesh for respondent no. 6.
2. This appeal is directed against order dated 06.11.2025, whereby learned Single Judge has dismissed Habeas Corpus Writ Petition No. 931 of 2025 filed by the appellants.
3. The writ petition was filed by Smt. Rinku Ram (appellant no. 1), mother of (minor) (appellant no. 2), stating that the appellant no. 2 was born on 13.08.2024 out of the wedlock between appellant no. 1 and respondent no. 6 and matrimonial dispute arose between the parties to the marriage wherein some proceedings were allegedly sought

to be initiated/undertaken at the instance of respondent no. 6. It was further stated that the child had been forcibly taken away by the respondent no. 6 and despite an order dated 10.09.2025 passed by the Child Welfare Committee ('C.W.C.'), whereby the respondent no. 6 was directed to handover custody of the child to the appellant no. 1, child was not handed over to her.

4. The learned Single Judge, on the first date of consideration of the writ petition, dismissed the same with the following observations:

“5. A writ of habeas corpus is a prerogative writ aimed at safeguarding an individual's liberty by providing an immediate and effective remedy for release from unlawful or improper detention. The writ can also be invoked to restore the custody of a minor to their lawful guardian if they have been wrongfully deprived of it. The detention of a minor by a person not entitled to legal custody is considered equivalent to illegal detention, warranting the issuance of a writ for the minor's custody.

6. The law governing guardianship and custody matters is primarily encapsulated in the Guardians and Wards Act, 1890, under which a guardian may be appointed or entitled to custody upon a proper application filed by a person asserting such a claim.

7. Upon careful review of the facts in the present case, no evidence has been presented to establish that the custody of petitioner no.2 is illegal or improper. Therefore, the writ of habeas corpus, which is invoked for the release from illegal custody, is not applicable in the present case.

8. As regards the issue of custodial rights, it is open to the parties to approach the appropriate forum for the determination of such rights in accordance with the law.”

5. This Court, by order dated 11.12.2025, issued notice to respondents no. 6 to 8, pursuant whereto, appearance was put by them through counsel. On 02.02.2026, the Court granted time to the learned Standing Counsel to obtain instructions as to why the directions of the C.W.C. had not been complied with. Pursuant thereto, instructions were

furnished by the learned Standing Counsel and following order was passed on 25.02.2026:-

- “1. On 02.02.2026, learned Standing Counsel was granted time to obtain instructions as to why directions of the Child Welfare Committee (Annexure-3) have not been complied with, pursuant to which, instructions have been produced inter alia indicating that the SHO, Haldi, Ballia gave a report to the Superintendent of Police, Ballia regarding non-compliance based on which, the Superintendent of Police, Ballia has written a communication to the Superintendent of Police, Jaunpur where respondent no. 7 is posted requiring him to take appropriate steps.
2. It is surprising that despite the orders passed by this Court, the officers are busy in writing letters to one another and the child, contrary to the order passed by the Child Welfare Committee, is at Police Lines, Jaunpur.
3. Learned Standing Counsel prays for time to obtain further instructions in the matter.
4. If appropriate instructions are not produced by the next date, the Court will be constrained to summon Superintendent of Police”

6. The appeal was heard on 11.03.2026 and matter was adjourned after some hearing, on the request of the learned Senior Counsel appearing for respondent no. 6 and following order was passed:-

- “1. Learned Senior Counsel appearing for respondent no. 6 submits that he has been briefed this morning only and seeks time to make submissions after getting full information qua the subject matter.
2. Learned Standing Counsel has produced factual reports of Senior Superintendent of Police, Jaunpur and S.H.O., Police Station Haldi, Ballia. Both the reports reinforce the observations/opinion of the Court that the officers of respondent no. 6, Police Constable, are providing full protection to the said respondent no. 6 in violating the directions of C.W.C., which conduct of the officers cannot be appreciated and appropriate orders in this regard would be passed while dealing with the main matter.
3. List on 18.03.2026, as fresh.”

7. Thereafter, on 25.03.2026, learned Senior Counsel appearing for respondent no. 6 made a statement that the department had initiated proceedings against respondent no. 6 for not obeying the directions issued by the C.W.C., however, respondent no. 6 has challenged the order dated 10.09.2025 passed by C.W.C. by way of appeal, which is pending. He also expressed his concern about the custody of minor child and made a statement that he would try to convince his client to act in the interest of the family.

8. Today, learned Senior Counsel has made submissions that this Court may explore possibility of amicable settlement of the matrimonial discord between the parties through process of mediation and conciliation so that they may sit together and explore terms of settlement. He also submitted that his client is inclined to divorce the appellant no. 1, though no such proceedings have yet been initiated.

9. To this contention, learned counsel for the appellants made vehement submissions that proceedings of any other nature may or may not take place in future but, in so far as the present matter is concerned, the same is confined to custody of the minor child, who is of such a tender age of 15 months that it is only his mother, i.e. the appellant no. 1, who can take care of him.

10. Considering the stands taken by the counsel for the parties, we proceeded to hear the matter on merits.

11. Learned counsel for the appellants has made submissions that the respondent no. 6 was bound to obey the order passed by the C.W.C. and when the same was not obeyed, the learned Single Judge should have issued a writ of habeas corpus for production of appellant no. 2 before the Court and handover his custody to appellant no. 1, who is his mother

and natural guardian. Further submission has been made that dismissal of the writ petition on the ground that remedy is available under the provisions of Guardians and Wards Act, 1890 is contrary to the position of law settled to the effect that a petition for habeas corpus cannot be dismissed only on this ground.

12. It is further submitted that the respondent no. 6, being in police service, has throughout been influential to a great extent so as to manage 'no action' against him, either by the Department or otherwise. Further submission has been made that the welfare of the son aged 15 months is always with his mother and, therefore, in the facts and circumstances of the case, interference by the writ court was warranted but the same has been denied on a ground which is not sustainable. In support of his submissions, learned counsel has placed reliance on the following judgments:-

(i) **Arvinder Kaur Vs. State of Punjab and others**: CRWP 5617 of 2020, decided on 09.11.2020;

(ii) **Gohar Begum Vs. Suggi**: AIR 1960 SC 93;

(iii) **xxxxxx Vs. State of Kerala and others**, Writ Petition (Civil) No. 35211 of 2024, 2024:KER:79513; decided on 25.10.2024;

(iv) **Mohd. Irfan Vs. State of U.P. and 2 others**: Special Appeal No. 1015 of 2014, decided on 11.12.2014;

(v) **Kanchan Akshay Shinde Vs. The State of Maharashtra and others**: Writ Petition No. 737 of 2026, decided on 10.03.2026

(vi) **Manju Tiwari Vs. Rajendra Tiwari**: AIR 1990 SC 1156;

(vii) **Syed Saleemuddin Vs. Dr. Rukhsana**: 2001 (2) R.C.R. (Criminal) 591;

(viii) **Tejaswini Gaud and others Vs. Shekhar Jagdish Prasad Tewari and others: 2019 (3) R.C.R. (Civil) 104;**

(ix) **Smt. Nandita Virmani Vs. Raman Virmani (Deli HC): 1983 Cri. L.J. 794;**

(x) **Durgesh Kumar Ahuja Vs. Vineet Khurana and another (Delhi HC): 1985 Cri. L.J. 1195**

13. Per contra, learned Senior Counsel appearing for respondent no. 6 has made submissions that the basis of the writ petition was an ex-parte order dated 10.09.2025 passed by the CWC and once the same is under challenge in appeal, no interference is warranted by this Court. It is further submitted that custody of the minor son with the respondent No. 6 cannot be said to be illegal as he, being his father, is also his natural guardian entitled to custody of the child and, therefore, the writ petition was otherwise not maintainable. He also made submission that welfare of the child is with the respondent No. 6 and not with the appellant No. 1 who cannot arrange funds for the well being of her son.

14. We have considered the submissions made and perused the material available on record.

15. We find that the claim of the appellant No. 1 to get custody of her minor son, who is now aged about 20 months, has not been considered by the writ court on merits and the opinion formed by the learned Single Judge is that availability of remedy under Guardians and Wards Act, 1890, renders the petition for Habeas Corpus either not maintainable or the writ court as not an appropriate forum.

16. In our opinion, the view taken by the learned Single Judge is contrary to the decision of the Hon'ble Supreme Court in **Yashita Sahu Vs. State of Rajasthan and others: (2020) 3 SCC 67**, wherein, after

placing reliance on judgments in **Elizabeth Dinshaw Vs. Arvand M. Dinshaw and others: (1987) 1 SCC 42**, **Nithya Anand Raghavan Vs. State (NCT of Delhi) and another: (2017) 8 SCC 454** and **Lahari Sakhamuri Vs. Sobhan Kodali: (2019) 7 SCC 311**, it has been held that it is too late in the day to urge that a writ of habeas is not maintainable if the child is in the custody of another parent and the court can invoke its extraordinary writ jurisdiction for the best interest of the child.

17. The Hon'ble Supreme Court, in the case of **Gohar Begum (supra)**, quoted observations of **Lord Denman C. J.**, in **R. Vs. Greenhill, (1836) 4 Ad and El at p. 640: 111 ER at p. 927**, as under:-

"When an infant is brought before the Court by habeas corpus, if he be of an age to exercise a choice, the Court leaves him to elect where he will go. If he be not of that age, and a want of direction would only expose him to dangers or seductions, the Court must make an order for his being placed in the proper custody."

.....

"Where, as frequently occurs in the case of infants, conflicting claims for the custody of the same individual are raised, such claims may be enquired into on the return to a writ of habeas corpus, and the custody awarded to the proper person."

18. There is no need to refer judgments on the settled proposition of law that in custody matters, it is only the welfare of the child that is of paramount consideration and once we have arrived at a conclusion that writ petition could not be dismissed as not maintainable or the forum of the writ court as not the appropriate one, the matter has to be considered by the writ court on merits where the parties would have their full say.

19. The special appeal is, accordingly, **allowed**.

20. The order dated 06.11.2025 passed by the learned Single Judge is **set aside.**

21. **Habeas Corpus Writ Petition No. 931 of 2025** is restored to its original number and status and the same shall be listed before appropriate Bench on **16.04.2026** as a **fresh case.**

(Kshitij Shailendra,J.) (Arun Bhansali,CJ.)

April 03, 2026

AKShukla/-