



2026:AHC:89038

**HIGH COURT OF JUDICATURE AT ALLAHABAD**  
**HABEAS CORPUS WRIT PETITION No. - 442 of 2026**

Smt Deeksha And Another

.....Petitioner(s)

Versus

State Of U.P. And 5 Others

.....Respondent(s)

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Counsel for Petitioner(s)	:	Maohammd Nadeem
Counsel for Respondent(s)	:	G.A.

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**Court No. - 53**

**HON'BLE SANDEEP JAIN, J.**

**A.F.R.**

1. Learned counsel for the petitioners submits that the corpus, Deeksha, is the wife of Arvind Kumar and is in illegal custody of the State, being kept in a Rajkiya Bal Grah (Balika), Vrindavan, Mathura against her wishes. It is submitted that the petitioner, being the husband of the corpus, is entitled to her lawful custody.

2. Per contra, learned AGA submitted that a criminal case is pending against the petitioner, who allegedly solemnized marriage with the corpus while she was a minor, and, as such, she has been lawfully detained in Rajkiya Bal Grah (Balika), Vrindavan, Mathura. It is submitted that since the corpus is in lawful custody of the State in pursuance of a judicial order, the present habeas corpus petition is not maintainable.

3. I have heard the learned counsel of the parties and perused the record.

4. A Full Bench of this Court in the case of ***Rachna and Another vs. State of UP and Others 2021 SCC OnLine All 211***, held as under:-

*"80. We accordingly come on our conclusions in respect of question nos. 1, 2 and 3 for determination as follows:—*

*Question No. 1: "(1) Whether a writ of habeas corpus is maintainable against the judicial order passed by the Magistrate or by the Child Welfare Committee appointed under Section 27 of the Act, sending the victim to Women Protection Home/Nari Niketan/Juvenile Home/Child Care Home?;*

**Answer : If the petitioner corpus is in custody as per judicial orders passed by a Judicial Magistrate or a Court of Competent Jurisdiction or**

**a Child Welfare Committee under the J.J. Act. Consequently, such an order passed by the Magistrate or by the Committee cannot be challenged/assailed or set aside in a writ of habeas corpus.**

Question No. 2: "Whether detention of a corpus in Women Protection Home/Nari Niketan/Juvenile Home/Child Care Home pursuant to an order (may be improper) can be termed/viewed as an illegal detention?"

Answer : An illegal or irregular exercise of jurisdiction by a Magistrate or by the Child Welfare Committee appointed under Section 27 of the J.J. Act, sending the victim to Women Protection Home/Nari Niketan/Juvenile Home/Child Care Home cannot be treated an illegal detention.

Question No. 3: "Under the Scheme of the Juvenile Justice (Care and Protection of Children) Act, 2015, the welfare and safety of child in need of care and protection is the legal responsibility of the Board/Child Welfare Committee and as such, the proposition that even a minor cannot be sent to Women Protection Home/Nari Niketan/Juvenile Home/Child Care Home against his/her wishes is legally valid or it requires a modified approach in consonance with the object of the Act?"

Answer : Under the J.J. Act, the welfare and safety of child in need of care and protection is the legal responsibility of the Board/Child Welfare Committee and the Magistrate/Committee must give credence to her wishes. As per Section 37 of the J.J. Act the Committee, on being satisfied through the inquiry that the child before the Committee is a child in need of care and protection, may, on consideration of Social Investigation Report submitted by Child Welfare Officer and taking into account the child's wishes in case the child is sufficiently mature to take a view, pass one or more of the orders mentioned in Section 37 (1) (a) to (h)."

(emphasis supplied)

5. Similarly, a Coordinate Bench of this Court in the case of **Jayanti and Another vs. State of UP and others 2021 SCC OnLine All 760**, held as under:-

"26. Having regard to the foregoing discussion, the legal position which emerges is that in a case where the custody of the petitioner corpus as been handed over as per a judicial order passed by Judicial Magistrate or a court of competent jurisdiction or a CWC constituted under the JJ Act, the said order cannot be assailed in a petition seeking a writ of habeas corpus."

6. A Division Bench of this Court again in the case of **Mayank Ojha (Minor) vs. State of UP Thru. Home Secretary Lko. and others 2025 SCC OnLine All 6064**, held as under:-

**"25. It is trite in law that writ of habeas corpus would not be maintainable, if the detention in custody is pursuant to judicial orders passed by a Judicial Magistrate or a court of competent jurisdiction or by the Child Welfare Committee.** Section 27 of the Juvenile Justice Act defines the 'Child Welfare Committee' and provides that the State Government shall by notification in the Official Gazette constitute for every district, one or more Child Welfare Committees for exercising the powers and to discharge the duties conferred on such Committees in relation to 'child in need of care and protection' under the said Act. The powers of the Committee are defined in Section 27(9) of the Juvenile Justice Act. The said provision of the Act makes it clear that while passing such orders, the Committee exercises the power of Judicial Magistrate and functions as a Bench and shall have the powers conferred by the Criminal Procedure Code, 1973 (2 of 1974) on a Metropolitan Magistrate or, as the case may be, a Judicial Magistrate of First Class. The powers, functions and responsibilities of the Committee are defined under Section 29 and 30 of the Juvenile Justice Act. Section 30(vi) provides that it is the function of the Committee to ensure care, protection, proper rehabilitation or restoration of children in need of care and protection, based on the child's individual care plan and passing necessary directions to parents or guardians or fit persons or children's homes or fit facility in this regard. It further provides for selection of registered institution for placement of each children requiring institutional support, based on the child's age, gender, disability and needs and keeping in mind the available capacity of the institution. Further, the term 'Juvenile' has been defined in Section 2(35) of the Juvenile Justice Act to mean a child below the age of 18 years. The word 'Child' has been defined in Section 2(12) of the Juvenile Justice Act to mean a person who has not completed 18 years of. Age. The meaning of the phrase 'child in need of care and protection' is defined under Section 2(14) of the Juvenile Justice Act.

**26. The Juvenile Justice Act, 2015 provides a complete mechanism dealing with welfare of the child. The 'Child Welfare Committee' exercises the power of Magistrate in view of the provision of Section 27 of the Juvenile Justice Act, 2015 and for all purposes, the Committee acts like the Magistrate. Once the order has been passed by the Magistrate, then it can only be assailed before the appropriate Court by filing an appeal or any other remedy as provided under the law.**

27. At the cost of repetition, we reiterate that if the corpus is found a child, as defined under Section 2(12) of the Juvenile Justice Act, 2015, he/she would fall in the category of 'child in need of care and protection' in view of Clauses (iii), (viii) and (xii) of Sub-section (14) of Section 2 of the Juvenile Justice Act, 2015. Hence the order passed by the Child Welfare Committee placing the corpus in a protection home would be within its power conferred under Section 37 of the Juvenile Justice Act, 2015. **Thus, the person aggrieved by an order passed by the Child Welfare Committee can file an appeal under Section 101 of the Juvenile Justice Act, 2015. Further, the Juvenile Justice Act, 2015 provides the revisional forum before the High Court wherein the High Court may, at any time either on its own motion or an application received in this behalf, call for the record of any proceeding in which any Committee or Board or Children's Court, or court has passed an order, for the purpose of satisfying itself as to the legality or propriety of any such order and may pass such order in relation thereto as it thinks fit. Therefore, in such a situation, it cannot be presumed that in case the corpus is in Children's Home pursuant to an order passed by the 'Child Welfare Committee'; then the same is neither without jurisdiction nor illegal or perverse, keeping in mind the provisions of Juvenile Justice Act, 2015, the detention of the corpus cannot be said to be illegal and in case the petitioner is aggrieved by the order of the 'Child Welfare Committee', the petitioner is at liberty to take recourse of remedy of Appeal or Revision provided under Sections 101 & 102 of the Juvenile Justice Act.**

28.\*\*\*

29. **The order passed by the Committee pursuant to which the corpus has been sent to Children's Home is a judicial order and hence the detention of corpus cannot be termed to be illegal. Moreover, the order passed by the Committee is appealable.** Thus, the instant Habeas Corpus Petition being not maintainable is liable to be dismissed.

30.\*\*\*

31. Having regard to the foregoing discussion, the legal position which emerges is that **in a case where the custody of the petitioner corpus has been handed over as per the order passed by the 'Child Welfare Committee', constituted under the Juvenile Justice Act, 2015, the said order cannot be assailed in a petition seeking a writ of habeas corpus.**"

(emphasis supplied)

7. The Apex Court in the case of *Nirmala vs. Kulwant Singh and Others*

**(2024) 10 SCC 595**, held that in matters of child custody, a writ of habeas corpus would ordinarily not be maintainable when an efficacious alternative remedy is available. Such a writ would lie only where the detention of the child is illegal, unauthorized, and contrary to the welfare and best interests of the child. The relevant extract is reproduced as under:

*"23. It can thus be seen that this Court in Tejaswini Gaud case [Tejaswini Gaud v. Shekhar Jagdish Prasad Tewari, (2019) 7 SCC 42 : (2019) 3 SCC (Civ) 433] has held that the habeas corpus is a prerogative writ which is an extraordinary remedy. **It has been held that recourse to such a remedy should not be permitted unless the ordinary remedy provided by the law is either not available or is ineffective. It has been held that 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. It has further been held that 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.**"*

*(emphasis supplied)*

8. It is apparent that, as the corpus is in lawful custody of the State pursuant to judicial order passed by the Child Welfare Committee, Sambhal on 18.12.2025 under Section 27(9) of the Juvenile Justice (Care and Protection of Children) Act, 2015, the instant habeas corpus petition is not legally maintainable.

9. Accordingly, the habeas corpus petition is **dismissed**.

**April 22, 2026**  
Mayank

**(Sandeep Jain,J.)**