

*** THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI**
*** THE HONOURABLE SRI JUSTICE SUBHENDU SAMANTA**

WRIT PETITION NO: 8105/2026

% 23.06.2026

#

.....petitioner

And:

\$ The State of A.P., & 4 others

.... respondents

!Counsel for the petitioner

: Sri Ms. Geetha Nallam

^Counsel for the respondents

: Sri Krishna Praneeth, learned
AGP for respondent Nos.1 to 4
Sri Venkata Durga Rao Anantha,
learned counsel for respondent
No.5

<Gist:

>Head Note:

? Cases referred:

1. (2019) 7 SCC 42
2. (2024) 12 SCC 419
3. (2024) 10 SCC 595
4. (2024) 10 SCC 588
5. (2025) 4 SCC 342

HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

* * * *

WRIT PETITION NO: 8105/2026

Between:

..... PETITIONER

AND

The State of A.P., & 4 others

....RESPONDENTS

DATE OF JUDGMENT RESERVED :

DATE OF JUDGMENT PRONOUNCED : 23.06.2026

DATE OF JUDGMENT UPLOADED : 30.06.2026

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

&

THE HONOURABLE SRI JUSTICE SUBHENDU SAMANTA

- | | |
|---|--------|
| 1. Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2. Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3. Whether Your Lordships wish to see the fair copy of the Judgment? | Yes/No |

RAVI NATH TILHARI,J_____
SUBHENDU SAMANTA,J

THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI
THE HONOURABLE SRI JUSTICE SUBHENDU SAMANTA

WRIT PETITION NO: 8105/2026

ORDER: *(per Ravi Nath Tilhari, J)*

Heard Ms.Geetha Nallam, learned counsel appearing for the petitioner through virtual mode; Sri Krishna Praneeth, learned counsel for respondent Nos.1 to 4 and Sri Venkata Durga Rao Anantha, learned counsel for respondent No.5.

2. This writ of Habeas Corpus has been filed by the father, with respect to his two minor daughters now aged about 5 & 3 years respectively who are with the maternal grandmother – respondent No.5. The mother of the minors died under suspicious circumstances and an FIR No.31 of 2024 under Sections 428A & 306 IPC was registered against the petitioner. Subsequently the petitioner has also lodged an FIR NO.11 of 2025 against the respondent No.5.

3. The petitioner has already filed GWOP.No.50 of 2025 under Section 25 R/w. Section 10 & 17 of the Guardian & Wards Act, 1890, which is pending in the Court of XIII Additional District Judge, Narasaraopet.

4. Objection has been raised by learned counsel for the respondent that in view of GWOP.No.50 of 2025, the writ of Habeas Corpus is not maintainable.

5. The point for consideration is maintainability of the writ of habeas Corpus in child custody matters and also its entertainability by this Court.

6. 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 according to the personal law, is not his legal or natural guardian, in appropriate cases, the writ court has the jurisdiction.

7. In ***Tejaswini Gaud v. Shekhar Jagdish Prasad Tewari***¹, the Hon'ble Apex Court held that in child custody matters, the writ of Habeas Corpus is maintainable when it is proved that the detention of a minor child by a parent or others was illegal and without any authority of law. It was further held that in child custody matters, the ordinary remedy lies only under the Hindu Minority and Guardianship Act or the Guardians and Wards Act as the case may be. In cases arising out of the proceedings under the Guardians and Wards Act, the jurisdiction of the court is determined by whether the minor ordinarily resides within the area on which the court exercises such jurisdiction. There are significant differences between the enquiry under the Guardians and Wards Act and the exercise of powers by a writ court which is summary in nature. What is important is the welfare of the child. In the writ court, rights are determined only on the basis of affidavits. Where the court is of the view that a detailed enquiry is required, the court may decline to exercise the

¹ (2019) 7 SCC 42

extraordinary jurisdiction and direct the parties to approach the civil court. It is only in exceptional cases, the rights of the parties to the custody of the minor will be determined in exercise of extraordinary jurisdiction on a petition for habeas corpus.

8. It is apt to refer Para 19 & 20 of ***Tejaswini Gaud*** (supra) as under:

“**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.

20. In child custody matters, the ordinary remedy lies only under the Hindu Minority and Guardianship Act or the Guardians and Wards Act as the case may be. In cases arising out of the proceedings under the Guardians and Wards Act, the jurisdiction of the court is determined by whether the minor ordinarily resides within the area on which the court exercises such jurisdiction. There are significant differences between the enquiry under the Guardians and Wards Act and the exercise of powers by a writ court which is summary in nature. What is important is the welfare of the child. In the writ court, rights are determined only on the basis of affidavits. Where the court is of the view that a detailed enquiry is required, the court may decline to exercise the extraordinary jurisdiction and direct the parties to approach the civil court. It is only in exceptional cases, the rights of the parties to the custody of the minor will be determined in exercise of extraordinary jurisdiction on a petition for habeas corpus.”

9. The same principle has been reaffirmed by Hon’ble Apex Court in ***Jose Antonio Zalba Diez Del Corral v. State of W.B.***², ***Nirmala v. Kulwant Singh***³, ***Gautam Kumar Das v. State (NCT of Delhi)***⁴ and ***Vivek Kumar Chaturvedi v. State of U.P.***⁵.

² (2024) 12 SCC 419

³ (2024) 10 SCC 595

⁴ (2024) 10 SCC 588

⁵ (2025) 4 SCC 342

10. In ***Nirmala*** (supra) the Hon'ble Apex Court held that no hard-and-fast rule can be laid down insofar as the maintainability of a habeas corpus petition in the matters of custody of a minor child is concerned. As to whether the writ court should exercise its extraordinary jurisdiction under Article 226 of the Constitution of India or not will depend on the facts and circumstances of each case. Since a detailed enquiry including the welfare of the minor child was involved it was held that such an exercise could be done only in a proceedings under the provisions of the Guardians and Wards Act and such an exercise would not be permissible in the extra-ordinary jurisdiction under Article 226 of Constitution of India.

11. In ***Gautam Kumar Das*** (supra) the Hon'ble Apex Court held as under:

“25. Recently, this Court, in *Nirmala* [*Nirmala v. Kulwant Singh*, (2024) 10 SCC 595 : 2024 INSC 370] in para 27 has also observed that no hard-and-fast rule can be laid down insofar as the maintainability of the habeas corpus petition in the matters of custody of minor child is concerned. It has been held that as to whether the writ court should exercise its jurisdiction under Article 226 of the Constitution of India or not will depend on the facts and circumstances of each case.”

12. We are of the considered view that in the facts and circumstances of the case, the minors being daughters aged 5 and 3 years, their mother having died, there been an FIR against the petitioner – father under Sections 498A & 306 IPC, and the minors being in the custody of the maternal grandmother, it is not apt case to invoke the extra-ordinary powers under Article 226 of the Constitution of India in a writ of Habeas Corpus. A detailed enquiry including the most, welfare of the minors, deserve to be conducted in the proceedings under the Guardians and Wards Act, which cannot be made effectively at this stage, in a summary enquiry under Article 226 of Constitution of India.

13. The petitioner has already filed GWOP No.50 of 2025 which is pending in the Court of learned XIII Additional District Judge, Narasaraopet and so, he is already availing the most efficacious statutory remedy.

14. In ***Jose Antonio Zalba Diez Del Corral*** (supra) the Hon'ble Apex Court held that the statutory remedy available under the Guardians and Wards Act was the appropriate remedy, which had already been availed by the petitioner and dismissed the writ petition on the ground of maintainability.

15. Para Nos.12, 15 & 16 in ***Jose Antonio Zalba Diez Del Corral*** (supra) reproduced as under:

“12. It cannot be disputed that both the parents may have a right for custody of their children but the said question of custody is to be considered and decided after evidence is adduced by the parties, and after following the due procedure, which would be under the provisions of the Guardians and Wards Act; and the petitioner has already filed a petition under the said Act, which matter is pending consideration before the trial court in Kolkata.

.....

15. In the present case, the admitted facts being that the mother has the custody of two minor children, for which the petitioner (father) has already filed a petition under Section 12 of the Act, which is pending consideration; and the custody of the children with the mother, who is a natural guardian, cannot be said to be illegal and, thus, the petition for habeas corpus would not be maintainable and that too directly under Article 32 of the Constitution of India. While saying so, we are not going into the question whether the maintenance amount directed by the trial court in the proceedings under the Protection of Women from Domestic Violence Act, 2005 has been paid or not. The statutory remedy available under the Guardians and Wards Act is the appropriate remedy, which has already been availed by the petitioner.

16. There are no extraordinary or exceptional circumstances in the present case requiring this Court to exercise its jurisdiction under Article 32 of the Constitution of India. The remedy already availed by the petitioner is an appropriate and effective remedy, where all the questions raised herein regarding the welfare and well-being of the children can be considered in accordance with law, after appreciation of the evidence, which may be led by the parties.”

16. The writ petition for Habeas Corpus is dismissed but clarifying that we have not entered into the merits of the petitioner's claim for custody which as

stated above deserves consideration in accordance with law in the pending GWOP.No.50 of 2025.

No order as to costs.

As a sequel thereto, miscellaneous petitions, if any pending, shall also stand closed.

RAVI NATH TILHARI,J

SUBHENDU SAMANTA,J

Dated:23.06.2026

Note: L.R. copy be marked

B/o.

AG

Whether the Order is:

Speaking		Reasoned	✓
Reportable	✓	Non-reportable	

154

THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI
THE HONOURABLE SRI JUSTICE SUBHENDU SAMANTA

WRIT PETITION NO: 8105/2026

Dated:23.06.2026
AG