

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

WRIT PETITION NO: 16987/2026

% 29.06.2026

Mogal Shuaibulla Baig

.....petitioner

And:

\$ The State of A.P., & 3 others

.... respondents

!Counsel for the petitioner : Sri Y.Swaroop Sai

^Counsel for the respondents :

<Gist:

>Head Note:

? Cases referred:

1. (2020) 14 SCC 161
2. (2018) 16 SCC 602
3. (2018) 16 SCC 368

HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

* * * *

WRIT PETITION NO: 16987/2026**Between:**

Mogal Shuaibulla Baig

..... PETITIONER

AND

The State of A.P., & 3 others

....RESPONDENTS

DATE OF JUDGMENT RESERVED :**DATE OF JUDGMENT PRONOUNCED : 29.06.2026****DATE OF JUDGMENT UPLOADED : 08.07.2026****SUBMITTED FOR APPROVAL:****THE HON'BLE SRI JUSTICE RAVI NATH TILHARI****&****THE HONOURABLE SRI JUSTICE SUBHENDU SAMANTA**

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|---|--------|
| 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: 16987/2026

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

Heard Sri Y.Swaroop Sai, learned counsel for the petitioner.

2. This Writ of Habeas Corpus has been filed under Article 226 of Constitution of India by the petitioner for release of the daughter of respondent No.3 aged about 22 years living with respondent No.3 – mother and respondent No.4 – brother, on the allegation that she is in illegal detention of Respondent Nos.3 & 4.

3. Learned counsel for the petitioner submits that the petitioner has annexed the photographs of the petitioner and the alleged detainee as also the copy of the whatsapp messages between them to support their relationship. He further submits that both are majors and there is free will and consent of the detainee and they want to continue their future life together.

4. We have considered the aforesaid submissions and also perused the copy of photographs annexed vide Ex.P2 as also the whatsapp messages (chat) – Ex.P5. On perusal of those documents Ex.P2 & P5 it cannot be said that the detainee is in illegal detention of her mother and brother. The whatsapp messages neither show that respondent Nos.3 & 4 are detaining against the wish of the alleged detainee or that there is forceful detention. There is also nothing to communicate that the detainee has expressed any willingness to be out of the parental house, leaving the respondent Nos.3 & 4.

There is nothing on record even prima-facie that living of the detenue with the mother and brother in the parental house is against her will amounting to an illegal detention. The same is not born from the material filed along with the writ nor any such inference can be drawn from Ex.P2 & P5.

5. It is well settled principle of law that for the maintainability of Habeas Corpus petition, the detention should be illegal.

6. In ***Home Secretary (Prison) v. H.Nilofer Nisha***¹, the Hon'ble Apex Court held in para Nos.13 to 16 which read as under:

“13. It is a settled principle of law that a writ of habeas corpus is available as a remedy in all cases where a person is deprived of his/her personal liberty. It is processual writ to secure liberty of the citizen from unlawful or unjustified detention whether a person is detained by the State or is in private detention. As Hidayatullah, J. (as he then was) held: (SCC p. 1630, para 12)

“12. ... The writ of habeas corpus issues not only for release from detention by the State but also for release from private detention” [*Mohd. Ikram Hussain v. State of U.P.*, AIR 1964 SC 1625 : (1964) 2 Cri LJ 590] .

At the same time, the law is well established that a writ of habeas corpus will not lie and such a prayer should be rejected by the Court where detention or imprisonment of the person whose release is sought is in accordance with the decision rendered by a court of law or by an authority in accordance with law.

14. According to Dicey,

“if, in short, any man, woman, or child is, or is asserted on apparently good grounds to be, deprived of liberty, the Court will always issue a writ of habeas corpus to anyone who has the aggrieved person in his custody to have such person brought before the Court, and if he is suffering restraint without lawful cause, set him free.” [A.V. Dicey, *Introduction to the Study of the Law of the Constitution*, Macmillan and Co. Ltd., p. 215 (1915).]

15. In *Halsbury's Laws of England*, a writ of habeas corpus is described as “a remedy available to the lowliest subject against the most powerful” [*Halsbury's Laws of England* (4th Edn.), Vol. 11, para 1454, p. 769.] . It is a writ of such a sovereign and transcendent authority that no privilege of person or place can stand against it [V.G. *Ramachandran's Law of Writs*, revised by Justice C.K. Thakker & M.C. Thakker, Eastern Book Company, p. 1036, 6th Edn. (2006).] .

16. A writ of habeas corpus can only be issued when the detention or confinement of a person is without the authority of law. Though the literal meaning of the Latin

¹ (2020) 14 SCC 161

phrase habeas corpus is “to produce the body”, over a period of time production of the body is more often than not insisted upon but legally it is to be decided whether the body is under illegal detention or not. Habeas corpus is often used as a remedy in cases of preventive detention because in such cases the validity of the order detaining the detenu is not subject to challenge in any other court and it is only writ jurisdiction which is available to the aggrieved party. The scope of the petition of habeas corpus has over a period of time been expanded and this writ is commonly used when a spouse claims that his/her spouse has been illegally detained by the parents. This writ is many times used even in cases of custody of children. Even though, the scope may have expanded, there are certain limitations to this writ and the most basic of such limitation is that the Court, before issuing any writ of habeas corpus must come to the conclusion that the detenu is under detention without any authority of law.

7. In ***Home Secretary (Prison)*** (supra) the Hon’ble Apex Court has held that writ of Habeas Corpus can only be issued when the detention or confinement of a person is without the authority of law. The writ of Habeas Corpus is often used as a remedy in cases of preventive detention. However, the scope of the petition of habeas corpus has been expanded and this writ is commonly used when a spouse claims that his/her spouse has been illegally detained by the parents. It has been further held that many times this writ is used even in cases of custody of children. Here is not the case that the petitioner is the spouse of the alleged detenu.

8. The Hon’ble Apex Court further observed and held in the aforesaid case that, even though the scope of writ of habeas corpus may have been expanded there are certain limitations to this writ and the most basic of such limitation is that the Court, before issuing any writ of habeas corpus must come to the conclusion that the detenu is under detention without any authority of law.

9. The detenu (daughter) living with mother and brother in the parental house ordinarily is not an illegal detention. A strong case for an illegal

detention has to be made out so as, for the Court to come to such a conclusion. May be even prima facie, at this stage that the daughter is in an illegal detention against her wish and will and desires to be set free.

10. We have already recorded that in the present case there is no such material placed before us to arrive at any such conclusion even prima facie. The petitioner and the alleged detenu might have lived or living in a relationship and might have their intentions to marry in future but merely based thereon, there cannot be a right to maintain the Habeas Corpus unless the material placed before the Court is such that the Court comes to the conclusion that there is an illegal detention.

11. We are not oblivious of the law on locus standi to maintain a writ of Habeas Corpus but when it comes to seeking production or release of a girl living with the parents, and the writ petition is by a person claiming to be a boy friend, living in 'live in relationship' as alleged the very basic ingredient for issuance of a writ of Habeas Corpus deserves to be carefully and strictly scrutinized.

12. We are also not oblivious of the Judgment of the Hon'ble Apex Court in the case of **Nandakumar v. State of Kerala**² in which the Hon'ble Apex Court observed and held that it is sufficient that both were major even if they were not competent to enter into wedlock, which position itself was disputed, they had right to live together even outside wedlock. It was also observed that 'live-

² (2018) 16 SCC 602

in relationship' is recognized by the Legislature itself which finds place under the provisions of the Protection of Women from Domestic Violence Act, 2005. The Hon'ble Apex Court referred to its previous judgment in **Shafin Jahan vs. Asokan K.M.**³, in which it was observed that the Writ of Habeas Corpus is "a great constitutional privilege" or "the first security of civil liberty". The following observations as in Para 11 of **Nandakumar (supra)** are being reproduced as under:-

"11. In a recent judgment rendered by this Court in [Shafin Jahan v. Asokan K.M.](#) [(2018) 16 SCC 368], after stating the law pertaining to writ of Habeas Corpus, this writ has been considered as "a great constitutional privilege" or "the first security of civil liberty". The Court made the following pertinent observations:-

*"27. Thus, the pivotal purpose of the said writ is to see that no one is deprived of his/her liberty without sanction of law. It is the primary duty of the State to see that the said right is not sullied in any manner whatsoever and its sanctity is not affected by any kind of subterfuge. The role of the Court is to see that the detinue is produced before it, find out about his/her independent choice and see to it that the person is released from illegal restraint. The issue will be a different one when the detention is not illegal. What is seminal is to remember that the song of liberty is sung with sincerity and the choice of an individual is appositely respected and conferred its esteemed status as the Constitution guarantees. **It is so as the expression of choice is a fundamental right under Articles 19 and 21 of the Constitution, if the said choice does not transgress any valid legal framework.** Once that aspect is clear, the enquiry and determination have to come to an end.*

28. In the instant case, the High Court, as is noticeable from the impugned verdict, has been erroneously guided by some kind of social phenomenon that was frescoed before it. The writ court has taken exception to the marriage of the Respondent No. 9 herein with the appellant. It felt perturbed. As we see, there was nothing to be taken exception to. Initially, Hadiya had declined to go with her father and expressed her desire to stay with the Respondent No.7 before the High Court and in the first writ it had so directed. The adamant attitude of the father, possibly impelled by obsessive parental love, compelled him to knock at the doors of the High Court in another Habeas Corpus petition whereupon the High Court directed the production of Hadiya who appeared on the given date along with the appellant herein whom the High Court calls a stranger. But Hadiya would insist that she had entered into marriage with him. True it is, she had gone with the respondent No. 7 before the High Court but that does not mean and can never mean that she, as a major, could not enter into a marital

³ (2018) 16 SCC 368

relationship. But, the High Court unwarrantably took exception to the same forgetting that parental love or concern cannot be allowed to fluster the right of choice of an adult in choosing a man to whom she gets married. And, that is where the error has crept in. The High Court should have, after an interaction as regards her choice, directed that she was free to go where she wished to."

13. In ***Nandakumar (supra)***, the Habeas Corpus petition was filed by the father. The appellant No.1 therein had married the daughter of the respondent No.4 therein. There was no dispute with respect to the age of the 1st appellant and the daughter. Both were major. The question was about the marriageable age of the 1st appellant, the husband. He was less than 21 years of age. The daughter was of 19 years of age. She was of the marriageable age as the marriageable age of the females is 18 years. She was competent to marry. But with respect to the 1st appellant, husband, he was under 21 years of age which is the marriageable age for male. The Hon'ble Apex Court held that even if the 1st appellant was less than 21 years of age, marriage between the parties was not null and void. As per Section 12 of the Hindu Marriage Act, 1956 the marriage at the most would be a voidable marriage. It was in that context with respect to the spouses of the marriage, one of which was less than the marriageable age, but both were above the age of 18 years, that the right to live in, even outside the wedlock was considered. There, 'outside wedlock', was as the marriage was a voidable marriage only on the ground of the husband being under age of 21 years.

14. ***Nandakumar (supra)*** was not a case of the persons living in relationship but between married couples.

15. In ***Nandakumar (supra)***, it has been held that live-in relationship is recognized by the legislature itself which has found its place under the provisions of the Protection of Women from Domestic Violence Act, 2005.

16. Such recognition is for the protection of women to save her from the domestic violence. Such recognition of live-in relationship is for a specified purpose where the couple who live-in relationship, as husband and wife, and if some domestic violence takes place with the women, the husband or the family members cannot escape from the clutches of the Act 2005 on the ground that they were not married and consequently the provisions of the Act would not be attracted. The object of the Domestic Violence Act, 2005 in our view, in such recognition, cannot be to encourage live-in relationship nor to transgress any valid legal framework.

17. Filing of the present writ petition appears to us to be a device adopted to have a seal and signature of this Court on the living in relationship.

18. There is no factual foundation supported with sufficient material, to inspire confidence that it is a case of violation of one's fundamental right under Article 21 of the Constitution of India, or of any illegal custody of the detainee by her mother and brother.

19. We are of the view that the petitioner cannot claim his choice to live in relationship with the detainee by taking recourse to this writ of Habeas Corpus.

20. We are not inclined to invoke the writ jurisdiction for a Writ of Habeas Corpus, to direct production of the detainee, on such averments, transgressing

the personal liberty of the detainee by exposing her to public and asking her choice, on such bald allegations. The detainee also has fundamental right to live with dignity under Article 21 of the Constitution of India which cannot be put under attack by the petitioner by filing this petition. A Writ of Habeas Corpus cannot be issued in a routine manner for production of corpus of a person in Court. Reasonable grounds must be shown. Writ of Habeas Corpus though a writ of right its not a writ of course.

21. The Writ Petition is dismissed. However, leaving it open to the petitioner to seek such other appropriate remedy as may be open under law, if so advised.

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:29.06.2026

AG

Whether the order is :

Speaking Yes/No / Reasoned Yes/No

Reportable Yes/No / Non-Reportable Yes/No

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THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI
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