



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

CRIMINAL WRIT PETITION NO. 530 OF 2026

- 1) Nilima Dilip Kannurwar,
Aged about 39 years, Occ. Housewife.
- 2) Dilip Ganpat Kannurwar,
Aged about 42 years, Occ.: Private.

Both R/o. At Po: Nokari Palgaon,
Tq. Korpana, Dist. Chandrapur.

.... **PETITIONERS**

VERSUS

- 1) Child Welfare Committee,
Through its Chairperson –
(~~Sau. Kshama V. Basarkar~~ -
Deleted as per Order dated 21.07.2026)
- 2) Child Welfare Committee,
Through its Member -
(~~Dr. Jyotsna S. Mohitkar~~ -
Deleted as per Order dated 21.07.2026)

Nos. 1 & 2 having their office at
Dr. Allurwar Building, Bal Naya Mandal
Campus, Government Children Home,
Mul Road, Chandrapur, Tq. & Dist.
Chandrapur.

- 3) Shubhangi Sunil Chhichude,
Aged about 29 years, Occ.: Housewife.
- 4) Sunil Vitthalrao Chichude,
Aged about 31 years, Occ.: Labour.

Nos. 3 & 4 R/o. At Po: Deoli,
Tq. & Dist. Wardha.

.... **RESPONDENTS**

Mr. S. N. Singh for the petitioner.
Mr. Amit Chutke, APP, for the respondent-State.

**CORAM : URMILA JOSHI-PHALKE &
NIVEDITA P. MEHTA, JJ.**

DATED : 31-07-2026

Corrected as
per Order
dated
04.09.2026

ORAL JUDGMENT : (PER : URMILA JOSHI-PHALKE, J.)

1. Heard.

2. **Rule.** Rule made returnable forthwith. Heard finally with the consent of learned Counsel for the respective parties.

3. By this petition, the petitioners are seeking directions to quash and set aside the impugned order dated 25th May, 2026 passed by Child Welfare Committee, Chandrapur. over the custody of the minor child “D” (the name of the child is not mentioned to maintain secrecy).

4. The petitioners are husband and wife, and permanent resident of Korpana, Dist. Chandrapur. The respondent Nos. 3 & 4 are the biological parent of the child. As per contention of the petitioners, petitioner No. 2 is working as a contract welder on daily wages at Ultratech Cement Company, Awarpur. He earns a respectable monthly income through his skills, enabling him to support and maintain his family. The petitioner Nos.1 & 2 are issueless, and even after many years of marriage, they did not receive blessing of a child. Therefore, with the hope of having a child, though they sought medical treatment, but all their efforts became futile and, therefore, they tried their level best to have a child by consulting medical specialists, however, they did not succeed. The petitioners and respondent Nos. 3 & 4 are having cordial and friendly relationship since now. The respondent Nos. 3 & 4 are having knowledge that the petitioners are issueless and they were having their third child. Therefore, they have decided to give their third child in adoption to petitioner Nos. 1 & 2, as the financial position of respondent No. 3 & 4 was very poor and it is difficult for them to maintain three children. Keeping in mind the child's

future, respondent Nos. 3 & 4 decided that they would voluntarily give their child in adoption to the petitioners according to Hindu customs and traditions of adoption and according to law.

5. On 21st March, 2026, the respondent No. 3 delivered a baby boy at District Women and Children Hospital, Yavatmal. By the mutual consent of respondent Nos. 3 & 4, in the month of April, 2026 the adoption ceremony was solemnized at Mahakali Temple Turst, Chandrapur. According to hindu religious customs, rites and vedic rituals, in presence of close relatives and friends from both the parties, the parties to the adoption are Hindu by caste and community, and in view of that, the entire adoption ceremony was completed. After completing all the ceremony and rituals in the aforesaid temple, the parties to the adoption have executed and signed a valid adoption deed which was notarised before the notary. Thus, the child of respondent Nos. 3 & 4 voluntarily adopted by petitioner Nod. 1 & 2 without any consideration, pressure or inducement of fraud. On 25th May, 2026, respondent Nos. 1 & 2 called the petitioners as well as respondent Nos. 3 & 4 to their office by giving notice to them, and passed the order and again handed over the child to the biological parents. Being aggrieved with the same, the present petitioners approached to this Court on the contention that taking the custody of the child by the Child Welfare Committee (hereinafter referred to as "CWC"), i.e., respondent Nos. 1 & 2 and again handing over to the biological parents, though the adoption deed is already executed between the petitioners and respondent Nos. 3 & 4, is illegal and without any authority. It is contented that the CWC has no role to play either in taking the child in custody or handing it over to the

biological parents. Therefore, the order passed by the CWC handing over the child to the biological parents is illegal and liable to be quashed and set aside.

6. The present petition is strongly opposed by the State on behalf of the CWC and it is contended by the State that without following a due procedure for adoption, the child was handed over to the petitioners and, therefore, the act of the respondent Nos. 3 & 4 as well as the petitioners entering into the adoption deed is contrary to the law. Hence, the present petition deserves to be dismissed.

7. Heard learned counsel for the petitioners, who vehemently submitted that the child was neither an abandoned child or an orphan child, therefore, the CWC has no role to play. Admittedly, the procedure is not followed by the petitioners as well as respondent Nos. 3 & 4 in view of the Central Adoption Resource Authority Guidelines (hereinafter referred to as CARA). However, the child is not orphan or abandoned child and, therefore, the CWC has no right to keep the child in their custody and thereafter handing over to the biological parents. Therefore, the entire action on the part of the CWC is wrong, illegal and liable to be quashed and set aside.

8. The respondent Nos. 3 & 4 supported the contention of the petitioners that they have given their child in adoption by executing the adoption deed in favour of the petitioners.

9. The Learned APP for the respondent-State opposed the present petition on the ground that the petition in the form of a writ of habeas corpus is itself not maintainable, as it is not an illegal custody and the

child is already handed over to the biological parents. On the contrary, the deed of adoption to which the parties have entered into is illegal, as the adoption deed was never produced before the CWC, Since the child has already been handed over to the biological parents, the question of illegal detention does not arise and, therefore, no interference is called for.

10. Prior to the filing of this petition, the child was handed over to the biological parents, therefore, the learned counsel for the petitioners has not pressed his prayer clause (b).

11. Learned counsel for the petitioners vehemently submitted that, even accepting that the adoption is not as per the CARA Guidelines, the biological parents and the petitioners entered into an agreement, and by the consent of the parties, the child was adopted. In view of provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015, the child is not within the definition of “abandoned”, or “orphan”, and, therefore, the contention of learned APP for respondent-State is not sustainable. He further submitted that the biological parents as well as the petitioners both are present before this Court.

12. We have verified the terms of the deed of adoption from the biological parents of the child as well as from the petitioners. They have accepted and agreed that they have given the child in adoption by their own consent.

13. Admittedly, the deed of adoption was not registered, but it is notarised. We have made an attempt to ascertain as to whether the petitioners are acquired the custody of the child by adopting procedure prescribed in law. Unfortunately, the deed of adoption executed between

the parties is not registered, and merely notarising the same does not amount to a valid adoption.

14. The procedure as per the CARA, constituted under the Ministry of Women and Child Development, Government of India, which has now received statutory recognition under the Juvenile Justice (Care and Protection of Children) Act, 2015 has not been followed. The traditional Hindu Adoptions and Maintenance Act, 1956 (HAMA), which has its own limitations, as it is available only for particular region, and the Guardians and Wards Act, 1890, which only provides for guardianship, but not for adoption which are otherwise deficient in its application. The said issue is now taken care by CARA, which primarily deals with adoption of the orphan, abandoned and surrendered children through the recognized adoption agencies.

15. We have also considered the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015, which states about the type of children which could be brought within the ambit of its provisions. The Act intends to offer protection to two categories of children, i.e., children in conflict with law and children in need of care and protection.

16. Chapter III of the Act provides for constitution of Juvenile Justice Board (JJB) for exercising the powers and discharging the functions relating to children in conflict with law under the Act. The procedure to be followed by the Board along with its powers, functions and responsibilities are specifically enumerated.

17. Chapter IV, prescribe the procedure in relation to the children in conflict with law and the term, 'child in conflict with law', is defined under

Section 2(13), which is reproduced as under:-

"(13) 'child in conflict with law' means a child who is alleged or found to have committed an offence and who has not completed eighteen years of age on the date of commission of such offence."

18. Chapter VI of the Act, on the other hand, has set out the procedure in relation to the children in need of care and protection and Section 2(14) define the term, 'child in need of care and protection' as under :-

"(14) 'child in need of care and protection' means a child -

(i) who is found without any home or settled place of abode and without any ostensible means of subsistence; or

(ii) who is found working in contravention of the provisions of this Act or labour laws for the time being in force or is found begging, or living on the street; or

(iii) who resides with a person (whether a guardian of the child or not) and such person-

(a) has injured, exploited, abused or neglected the child or has violated any other law for the time being in force meant for the protection of child; or

(b) has threatened to kill, injure, exploit or abuse the child and there is a reasonable likelihood of the threat being carried out; or

(c) has killed, abused, neglected or exploited some other child or children and there is a reasonable likelihood of the child in question being killed, abused, exploited or neglected by that person; or

(iv) who is mentally ill or mentally or physically challenged or suffering from terminal or incurable disease, having no one to support or look after or having parents or guardians unfit to take care, if found so by the Board or the Committee; or

(v) who has a parent or guardian and such parent or guardian is found to be unfit or incapacitated, by the Committee or the Board, to care for and protect the safety and well-being of the child; or

(vi) who does not have parents and no one is willing to take care of and protect or who is abandoned or surrendered;

(vii) who is missing or run away child, or whose parents cannot be found after making reasonable inquiry in such manner as may be prescribed; or

(viii) who has been or is being or is likely to be abused, tortured or exploited for the purpose of sexual abuse or illegal acts; or

(ix) who is found vulnerable and has been or is being or is likely to be inducted into drug abuse or trafficking; or

(x) who is being or is likely to be abused for unconscionable gains;

or

(xi) who is victim of or affected by any armed conflict; civil unrest or natural calamity; or

(xii) who is at imminent risk of marriage before attaining the age of marriage and whose parents, family members, guardian and any other persons are likely to be responsible for solemnization of such marriage."

19. The Child Welfare Committee constituted under Chapter V of the Act is empowered to exercise the powers and discharge the duties conferred in relation to the child in need of care and protection and the functions and responsibilities of the Committee include to take cognizance of and receive the children produced before it and conduct an inquiry on all the issue regarding the safety and well-being of the child. It is pertinent to note that the Child Welfare Committee would exercise its power only in relation to the children in need of care and protection, as defined in Section 2(14).

20. Under Chapter VI, when such a child is produced before the CWC, by any person, including any police officer or special juvenile police unit, public servant, Childline Services or any voluntary or NGO or a Child Welfare Officer or Probation Officer, any social worker or by the child himself, the procedure prescribed therein shall be adopted.

21. The learned counsel for the petitioner submitted that the issue involved in the petition is already covered by the judgment of this Court at Principal Seat of the Bombay High Court in ***Criminal Writ Petition No.2487 of 2024 and other connected matters (Leelendra Deju Shetty and Anr. Vs. State of Maharashtra and others)*** decided on 22nd July, 2024 and submitted that in the said judgment, this Court has considered in detail the provisions of the of the Juvenile Justice (Care and Protection of

Children) Act, 2015 and held that, "since all the three children before us cannot be termed as 'orphan' or 'abandoned' and, they do not fall in the category of the children in need of care and protection, as defined in Section 2 (14) of the Act of 2015, the orders passed by CWC handing over their custody to respondent no. 3 is illegal, as CWC was not competent to exercise jurisdiction over the said children and transfer the children to respondent no. 3 - Bal Asha Trust.

It is further held by this Court that, "the case is not made out by the petitioners in all the three petitions and directed to hand over the custody of the child to the parents who have adopted the said child".

22. Learned counsel for the petitioners submitted that similarly in the present case also the child is not 'abandoned' or 'orphan' and, therefore, the CWC has no right to take the custody of the child and, hence, the issue in the present petition is covered by the said judgment. In view of that, the petition deserves to be allowed.

23. It is well accepted proposition in law that a writ of nature of habeas corpus is a prerogative writ is an extraordinary remedy and shall be granted only in exceptional cases where the ordinary remedy provided by the law is either unavailable or is ineffective. Here now, the petitioner has already not pressed the prayer (b) and, therefore, no discussion is required as far as the issuance of writ of habeas corpus is concerned.

24. There is no dispute that the biological parents have given the child in adoption to the present petitioners. However, they have not followed the proper procedure. Under the Guardians and Wards Act, 1890 a 'guardian' is defined under Section 4 (2) to mean a person having the care

of the person of a minor, or his property, or of both his person and property. Under the said Act, it is the power of the Court to make order as to guardianship, when the Court is satisfied that it is in the welfare of the minor that an order should be made, appointing a person or declaring a person to be such guardian. It is only upon an application being preferred before the Court that such power is permitted to be exercised.

25. As already observed by us that admittedly the proper procedure is not followed by the petitioners and the biological parents while handing over the child in adoption. However, admittedly, the child is neither “orphan” nor “abandoned.”

26. In the light of the above said facts, admittedly, the biological parents after giving birth to the male child, decided to give the child in adoption as they were already having two children. The petitioners have accepted the child and decided to take care of the child by obtaining custody of the child by adoption. The notarised document is deed of adoption. As per the provisions of HAMA, merely by executing the notarised adoption deed, the petitioners cannot claim they have right to hold the custody of the male child. However, since we have already considered that the children involved in do not fall in the category of children in need of care and protection, the custody obtained by the CWC and passing order by the CWC handing over the child again to the biological parents is not justified. The CWC. itself does not get any power to deal with the child who is neither abandoned or orphan.

27. Since only limited issue at this stage is for the issuance of writ of habeas corpus and the direction to hand over the child to the petitioners,

the prayer for issuance of writ of habeas corpus is already not pressed and, therefore, the petition deserves to be allowed only to the extent of prayer clause (A). In view of that, the present petition deserves to be allowed. Accordingly, we proceed to pass following order.

ORDER

- i. The Criminal Writ Petition is allowed.
- ii. The order dated 25th May, 2026 passed by the Child Welfare Committee, Chandrapur, is hereby quashed and set aside.
- iii. The respondent Nos. 3 & 4, the biological parents, shall hand over the custody of the child “D” to the petitioners forthwith.

28. The Criminal Writ Petition stands disposed of.

29. Rule is made absolute in the above said terms.

(Nivedita P. Mehta, J.)

(Urmila Joshi-Phalke, J.)

MPBalekar