# IN THE HIGH COURT OF JUDICATURE AT BOMBAY
## CRIMINAL APPELLATE JURISDICTION

## CRIMINAL WRIT PETITION NO.2540 OF 2025

] <br>
] <br>
] <br>
] .. Petitioner

*Versus*

1. The State of Maharashtra ] <br>
] <br>
] <br>
,] <br>
] <br>
] <br>
] ..Respondents

Mr. Aman Hingorani, Senior Advocate, with Ms. Sushmita Sherigar and Ms. Krishna Barot, Advocates for the Petitioner.

Mr. Vikramaditya Deshmukh with Ms. Priya Chaubey, i/by Ms. Sapana Rachure, Advocates for Respondent No.2.

CORAM : RAVINDRA V. GHUGE &
GAUTAM A. ANKHAD, JJ.

Reserved on : 6th November 2025

Pronounced on : 18th December 2025

JUDGMENT (PER: GAUTAM A. ANKHAD, J.)

1. Rule. Rule is made returnable forthwith and the

matter is heard finally with the consent of the parties.

2. The Petitioner is an Indian citizen. Respondent no.2 is his wife and a citizen of Germany, holding a German passport. The Petitioner has filed this Petition under Article 226 of the Constitution of India seeking a writ of *Habeas Corpus* for the production and custody of his six-year-old son, who is presently in Germany with Respondent no.2. The Petitioner seeks the following reliefs:

> *"a. The Hon'ble Court, by exercising powers under Article 226 of the Constitution of India, may be pleased to direct the Respondent No.2 to produce their son, i.e. the minor child XYZ before this Hon'ble Court;* (name is masked)
>
> *b. The Hon'ble Court, by exercising powers under Article 226 of the Constitution of India, may be pleased to restore the custody of his son, i.e. the minor child - to the Petitioner."*

3. The relevant dates for the purpose of this Petition are as under:

a. The marriage between the Petitioner and Respondent no.2 was solemnized on 4th March 2017 at Goa and a marriage certificate was issued under the Gujarat Registration of Marriage Act, 2006. Neither party has

filed petition for divorce in any jurisdiction.

b. On 25th May 2019, the couple was blessed with a son. The parties applied for and obtained an Indian passport (no. T9810309) for the minor, which was valid until 19th November 2024.

c. On 29th January 2020, Respondent no.2 travelled to Germany with the minor to visit her family residing there. Travel restrictions due to Covid-19 were imposed in March 2020. Respondent No.2 and the minor did not return to India. However, the Petitioner visited them in Germany once in March 2022, once the travel restrictions eased.

d. On 28th March 2024, Respondent no.2 has initiated custody proceedings before the Würzburg District Court in Germany. Summons was issued to the Petitioner, but he did not participate in these proceedings. Respondent no.2 visited India between 26th July 2024 and 27th August 2024, along with the

minor. Apart from this brief visit, Respondent no.2 and the minor have continued to reside in Germany.

e. The Würzburg Court by its order dated 18th September 2024 initially appointed a procedural guardian, Mrs. Ulrike Hubmann, in accordance with German law. The scope of her duties involved representing the interests of the minor in the custody proceedings.

f. Around 21st September 2024, the petitioner filed the present petition. On 11th December 2024, this Court passed the following order:-

> *"1. In the Writ Petition filed for production of the Corpus, the minor child, who according to the Petitioner has been allegedly removed from his custody and taken to Germany by Respondent No.2, she has marked her appearance through the learned Counsel Mrs. Mrunalini Deshmukh, who has advanced arguments traversing the accusations in the Petition.*
>
> *However she is desirous of filing Affidavit in Reply, which we permit to be filed, on or before 08/01/2025, with a copy to be served in advance upon the learned counsel for the Petitioner.*
>
> *Upon the Affidavit being filed, Petitioner is at liberty to file Rejoinder, if necessary.*
>
> *2. Mrs. Deshmukh, the learned counsel for Respondent No.2, on instructions make a categorical statement that she has no objection if the Petitioner*

*intend to visit Frankfurt during Christmas Vacation to meet the Corpus.*

*She also makes a categorical statement that there is no prohibition on the Petitioner or his family members reaching to the Corpus through Video Conferencing, with advance intimation and the time for which shall be mutually decided by the parties.*

*Re-notify to 16/01/2025."*

g. On 16th December 2024, the Würzburg Court by its order granted interim parental custody of the minor to Respondent no.2. The Petitioner by his letter dated 14th June 2025 addressed directly to the learned Judge at Würzburg Court, protested to the custody proceedings. The Petitioner did not engage an attorney nor filed the necessary application as required under German law to object to the proceedings before the Würzburg Court.

h. On 18th August 2025, the Würzburg Court by its final order has granted sole custody to Respondent No.2 authorising her to take all decisions relating to the minor's education, health, and general welfare. The Petitioner has not challenged either the interim order dated 18th September 2024 or the final order dated 18th

August 2025 granting sole custody to Respondent no.2.

4. Mr. Hingorani, learned senior counsel for the Petitioner, submits that during a family holiday at Goa in July–August 2024, the Petitioner discovered for the first time that the minor had been issued an OCI (Overseas Citizen of India) card reflecting his nationality as “Deutsch” (German). The Petitioner was shocked to learn that Respondent no.2 had allegedly procured a German passport for the minor without his knowledge or consent. The Petitioner obtained a copy of the OCI card from the hotel records. The Petitioner later learnt that Respondent no.2 had applied for the minor’s German passport by falsely declaring her marital status as “single” and based on such misrepresentation, the German passport was issued. Thereafter, the minor’s Indian passport was surrendered in December 2023. According to the Petitioner, the minor’s nationality is changed fraudulently. The minor was originally an Indian citizen, domiciled in India and a permanent resident of Hawa Mahal, Gondal, Rajkot district, Gujarat. The minor is the only child and it is inconceivable that the minor is deprived of

Indian citizenship or alienated from Indian culture and traditions.

5. Mr. Hingorani further submits that on 27th August 2024, Respondent no.2 abruptly left India for Germany along with the minor, thereby unlawfully removing the minor from the Petitioner's access and custody. Respondent no.2 cannot unilaterally decide that the minor will continue to reside in Germany. The Petitioner's repeated request to return to India are declined and the minor's exact whereabouts are not known. He submits that the Würzburg Court lacks jurisdiction as the parties married as per Hindu law in India and orders passed therein are not binding on the Petitioner. It is only the Courts in India that will have jurisdiction over the disputes between the parties. Hence, the Petitioner has invoked the extraordinary writ jurisdiction of this Court seeking production of the minor and restoration of the *status quo ante*. In support of his submissions, Mr. Hingorani has relied upon *Elizabeth Dinshaw vs. Arvand Dinshaw (1987) 1 SCC 42, Tejaswini Gaud vs. Shekhar Jagdish Prasad Tewari (2019) 7 SCC 42, Y. Narasimha Rao vs. Y. Venkata Lakshmi (1991) 3 SCC 451* and

*Abhijit Singh Shingote vs. State of Maharashtra (2024 SCC OnLine Bom 1288)* and submits that Respondent no.2 cannot take advantage of her wrong-doing and this Court ought to order Respondent no.2 to return the minor to the Petitioner. The restoration of custody is consequential to the restoration of *status quo ante*. Accordingly, the petition deserves to be allowed with costs.

6. Mr. Deshmukh, learned counsel for Respondent no.2, denies the contentions and submits that the petition is not maintainable. He submits that the marriage between the parties was never consummated and that the minor was conceived through donor eggs and fertility treatment. Even after the child's birth, the relationship between the Petitioner, Respondent no.2 and her in-laws remained strained. Respondent no.2 is a German citizen by birth and in 2020 relocated to Germany with the minor to escape the cruelty inflicted upon her by the Petitioner and his family. Since then, the Gondal residence ceased to be her matrimonial home. Under German law, the minor automatically acquires German citizenship notwithstanding his place of birth, and a German passport was

issued on Respondent no.2's application. Owing to marital discord, Respondent no.2 is now permanently settled in Germany with the minor. Respondent No.2 visited India in July–August 2024 to resolve the disputes, but the efforts failed. Respondent no.2 thereafter returned to Germany with the minor to resume their normal life. The minor is enrolled at a playschool at Rottendorf, Germany. There was no sudden or unlawful removal of the minor from India. The minor has been residing in Germany since he was 8 months of age and since January 2020, it is his natural habitat. Since Respondent no.2 is a German citizen and the minor was under her custody, it was a natural decision to apply for the German passport. It is denied that German passport was fraudulently obtained. The Petitioner has shown minimal interest in the minor's welfare, has not contributed to his maintenance, and has not visited him in Germany except once in 2022 and that too only for a period of four days.

7. Mr. Deshmukh relies upon the interim custody order dated 16th December 2024 and the final order dated 18th August 2025 passed by the Würzburg Court and submits that the said orders are binding on the Petitioner. Despite being served with

the summons, the Petitioner has not taken steps to challenge the Würzburg Court's orders or even commence custody proceedings in any competent Court in India. The petition is not maintainable, as the whereabouts of the minor are known and the custody was never with the Petitioner. Lastly, he submits that Respondent no.2 has facilitated regular video calls and had even invited the Petitioner to meet the minor during the Christmas holidays in Germany. Pursuant to this Court's order dated 11th December 2024, Respondent no.2's consent to the Petitioner visiting the minor is recorded. Further, the Petitioner has regularly interacted with the minor through video calls. He submits that no case is made out and relies upon the judgments in *Nithya Anand Raghavan vs. State of NCT of Delhi (2017) 8 SCC 454, Jose Toral vs. State of West Bengal (2021 SCC OnLine SC 3434), Rajeswari Ganesh vs. State of Tamil Nadu (2023) 12 SCC 472* and *Somprabha Rana vs. State of M.P. (2024) 9 SCC 382,* for the dismissal of the petition with costs.

## Reasons and Analysis:

8. We have heard the learned counsels and perused the written submissions as well as the compilation of judgments

tendered by them. In our view, the Petitioner has failed to make out any case for the grant of reliefs.

9. It is a well-settled law that in matters concerning the custody of children, the paramount consideration is always the welfare and best interests of the child. In *Somprabha Rana* (supra), the Hon'ble Supreme Court has succinctly reiterated the legal position governing the issuance of a writ of habeas corpus in child-custody disputes. The Court has summarized the governing principles as follows:

> *"9. After having perused various decisions of this Court, the broad propositions of settled law on the point can be summarized as follows:*
>
> *9.1. Writ of habeas corpus is a prerogative writ. It is an extraordinary remedy. It is a discretionary remedy;*
>
> *9.2. The High Court always has the discretion not to exercise the writ jurisdiction depending upon the facts of the case. It all depends on the facts of individual cases;*
>
> *9.3. Even if the High Court, in a petition of habeas corpus, finds that custody of the child by the respondents was illegal, in a given case, the High Court can decline to exercise jurisdiction under Article 226 of the Constitution of India if the High Court is of the view that at the stage at which the habeas corpus was sought, it will not be in the welfare and interests of the minor to disturb*

*his/her custody; and*

*9.4. As far as the decision regarding custody of the minor children is concerned, the only paramount consideration is the welfare of the minor. The parties' rights cannot be allowed to override the child's welfare. This principle also applies to a petition seeking habeas corpus concerning a minor."*

10. The scope of a petition seeking a writ of *habeas corpus* is limited to tracing out an individual who is alleged to be missing or securing the release of a person from unlawful restraint. The *parens patriae* jurisdiction of this Court is invoked only to intervene against an abusive or negligent parent, legal guardian or caretaker, and to act in the best interests of a child who requires protection. In the present case, there is nothing on record to indicate that Respondent no.2 is exercising unlawful custody over the minor or is incapable of providing proper care to her son. In *Shafin Jahan v. Asokan K.M. & Ors.*, (2018) 16 SCC 368, the Hon'ble Supreme Court has categorically held that this extraordinary jurisdiction is to be exercised only in exceptional circumstances. The relevant portion of the judgment reads as under:

*"39. Constitutional Courts in this country exercise parens*

*patriae jurisdiction in matters of child custody treating the welfare of the child as the paramount concern. There are situations when the Court can invoke the parens patriae principle and the same is required to be invoked only in exceptional situations. We may like to give some examples. For example, where a person is mentally ill and is produced before the Court in a writ of habeas corpus, the Court may invoke the aforesaid doctrine. On certain other occasions, when a girl who is not a major has eloped with a person and she is produced at the behest of habeas corpus filed by her parents and she expresses fear of life in the custody of her parents, the Court may exercise the jurisdiction to send her to an appropriate home meant to give shelter to women where her interest can be best taken care of till she becomes a major."*

*"45. Thus, the constitutional Courts may also act as parens patriae so as to meet the ends of justice. But the said exercise of power is not without limitation. The Courts cannot in every and any case invoke the parens patriae doctrine. The said doctrine has to be invoked only in exceptional cases where the parties before it are either mentally incompetent or have not come of age and it is proved to the satisfaction of the Court that the said parties have either no parent/legal guardian or have an abusive or negligent parent/legal guardian."*

11. In our view, having regard to the facts on record, this is not an exceptional case warranting the issuance of a writ of *habeas corpus*. The material before us indicates that Respondent no.2 left India in January 2020 and since then, the

minor has been in her sole care. Except for brief visits by the parties between India and Germany, the minor is residing continuously in Germany with Respondent no. 2. The minor is now a German national. In the present proceedings we are not required to adjudicate on the Petitioner's allegation that the minor's German passport was obtained through fraud or misrepresentation. The whereabouts of the minor are known to the Petitioner. Respondent no.2 has also facilitated video calls and has undertaken before this Court to permit the Petitioner and his family members to interact with the minor. In these circumstances, the writ petition is not maintainable.

12. We further note that Respondent no.2 has initiated custody proceedings before the Würzburg Court in Germany, in which orders dated 16th December 2024, and 18th August 2025 have been passed granting sole custody to Respondent no.2. It is an admitted position that the Petitioner did not appear before the Würzburg Court despite service of the proceedings. A translated copy of the order dated 18th August 2025 has been placed on record through Respondent no.2's additional affidavit dated 11th September 2025, and the Petitioner has raised no objection to the translation. The order sets out detailed reasons

for granting Respondent no.2 sole custody of the minor. The relevant portion of the order reads as under:

> *"The petitioner applied for sole custody.*
>
> *The respondent stated that he did not consider himself subject to German law. In his opinion, the petitioner had deceived him and taken the child away. He intended to assert his rights in India.*
>
> *The petitioner's application was served upon the respondent in India by way of judicial assistance. A guardian ad litem was appointed for the child. The Youth Welfare Office was also heard. The child was likewise heard, with reference made to the hearing records.*
>
> *The District Court of Würzburg has international and local jurisdiction pursuant to $$99,152 FamFG. India is not a contracting state to the Hague Convention on Child Abduction (HKU) or the Hague Convention on Parental Responsibility (KSU). Nor is there any other applicable international treaty (see Higher Regional Court Karlsruhe, decision of 20.11.2024 – 16 UFH 2/24, BeckRS 2024, 38698). International jurisdiction is therefore based on $ 99 para. 1 no. 1 and no.2 FarmFG.*
>
> *Substantive German law applies pursuant to Art. 21 EGBGB: The legal relationship between a child and its parents is governed by the law of the state in which the child has its habitual residence. The parents have joint custody as they were married at the child's birth.*
>
> *This decision is further based on $ 1671 para. 1 BGB. Under*

*this provision, the Court shall transfer parental custody, or part thereof, to one parent upon application if the parents live separately on a more than temporary basis, they jointly hold custody, and it is to be expected that termination of joint custody and transfer to the applicant parent best serves the welfare of the child.*

*Accordingly, custody had to be transferred solely to the mother. The Court found that the parents are unable to make joint decisions. Although the father contend the Court after previously refusing contact with the Youth Welfare Office or the child's counsel, it is unfortunately not possible to meaningfully engage with him further, as he does not recognize German jurisdiction. He accuses the mother of having taken the child from him. However, it is established that the mother never concealed her address that she provided the father's last known address to the Court and that she attempted to summer 2024 to reach an amicable solution in India. By contrast, the father appears to have made no efforts in recent years to "regain" his son. He himself wrote that he visited Germany after 2020 in order to see his son. However, he apparently undertook no legal steps regarding residence or custody and then departed again. He has also shown no further interest in this proceeding or the hearing date. His accusations remain vague and unsubstantiated.*

*It is established that mother and child have lived together in Germany for five years. The child is developing well. A stable relationship between mother and child can be assumed.*

*In light of all circumstances, the Court cannot assume that the parents will be able to make joint decisions, nor that the mother would be able to obtain the father's necessary*

*signatures. This is not due to an actual impediment of the father within the meaning of $ 1674 BGB – he is indeed reachable – but rather because of his accusations against the mother. In order to ensure legal certainty, in the best interests of the child, joint custody must therefore be terminated. Custody can only be transferred to the mother.*

*The father resides in India and has no genuine relationship with his son. The relationship between mother and child exists. No deficiencies in the mother's parental capacity are apparent. Both the Youth Welfare Office and the guardian ad litem support the petitioner's request."*

13. We also note that the Würzburg Court has interacted with the minor and recorded its observations. The relevant translated extract, annexed to Respondent no.2's additional affidavit dated 11th September 2025, reads as follows:-

*"Order*
*Würzburg, 18 August 2025*

1. *Record of the child's hearing in the presence of the child's counsel in Room A136.*

*Jay is excited and shy. He then talks about the "Huttendorf" (holiday camp) and opens up somewhat. He has seen his father only once, last year in India. Father and mother argued in India. He speaks on the phone with his father. Again tomorrow. He does not want to visit his*

*father again. He also does not particularly like talking with him on the phone. The father does not say that he will come to visit in Germany. The father seems to fear that the mother might make life difficult for him here. In India, Jay rode an elephant and a camel. Here, he rides horses. He further reports that he can speak many languages and that he has two birds. He likes animals including rabbits, lizards and dogs.*

*2. Record to file.*

*[signed]*
*Schneider M.*
*Judge at the District Court"*

14. In these facts and circumstances, we find that Respondent no.2 has correctly relied upon the judgment of the Hon'ble Supreme Court in *Jose Antonio* (supra). In that decision, the Hon'ble Supreme Court referred to its earlier decision in *Tejaswini Gaud v. Shekhar Jagdish Prasad Tewari*, (2019) 7 SCC 42, wherein the law governing the maintainability of a petition for a writ of *habeas corpus* in child-custody matters has been clearly delineated. Paragraphs 19 and 20 of *Tejaswini Gaud (supra)*, which set out the applicable principles, are extracted below:

*"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."*

15. In *Nitya Anand Raghavan*, the Hon'ble Supreme Court held that the paramount consideration in matters of this nature is the welfare of the minor child, and not the legal rights of either parent, the relevant portion of which is as under:-

*"47. In a habeas corpus petition as aforesaid, the High Court must examine at the threshold whether the minor is in lawful or unlawful custody of another person (private respondent named in the writ petition). For considering that issue, in a case such as the present one, it is enough to note that the private respondent was none other than the natural guardian of the minor being her biological mother. Once that fact is ascertained, it can be presumed that the custody of the minor with his/her mother is lawful. In such a case, only in exceptionable situation, the custody of the minor (girl child) may be ordered to be taken away from her mother for being given to any other person including the husband (father of the child), in exercise of writ jurisdiction. Instead, the other parent can be asked to resort to a substantive prescribed remedy for getting custody of the child."*

…

*69. We once again reiterate that the exposition in Dhanwanti Joshi [Dhanwanti Joshi v. Madhav Unde, (1998) 1 SCC 112] is a good law and has been quoted with approval by a three-Judge Bench of this Court in V. Ravi Chandran (2) [V. Ravi Chandran (2) v. Union of India, (2010) 1 SCC 174 : (2010) 1 SCC (Civ) 44] . We approve the view taken in Dhanwanti Joshi [Dhanwanti Joshi v. Madhav Unde, (1998) 1 SCC 112] , inter*

*alia, in para 33 that so far as non-Convention countries are concerned, the law is that the Court in the country to which the child is removed while considering the question must bear in mind the welfare of the child as of paramount importance and consider the order of the foreign Court as only a factor to be taken into consideration. The summary jurisdiction to return the child be exercised in cases where the child had been removed from its native land and removed to another country where, may be, his native language is not spoken, or the child gets divorced from the social customs and contacts to which he has been accustomed, or if its education in his native land is interrupted and the child is being subjected to a foreign system of education, for these are all acts which could psychologically disturb the child. Again the summary jurisdiction be exercised only if the Court to which the child has been removed is moved promptly and quickly. The overriding consideration must be the interests and welfare of the child."*

16. Following the proposition laid down in *Nitya Raghavan* and *Tejaswini Gaud,* the Hon'ble Supreme Court in *Rajeshwari Chandrashekhar Ganesh* held as follows:

*"99. Thus, it is well established that in issuing the writ of habeas corpus in the case of minors, the jurisdiction which the Court exercises is an inherent jurisdiction as distinct from a statutory jurisdiction conferred by any particular provision in any special statute. In other words, the employment of the writ of habeas corpus in child custody cases is not pursuant to, but independent of any statute. The jurisdiction exercised by the court rests in such cases on its inherent equitable powers and exerts the force of the State, as parens patriae, for the protection of its minor ward, and the very nature and scope of the inquiry and the result sought to be*

*accomplished call for the exercise of the jurisdiction of a court of equity. The primary object of a habeas corpus petition, as applied to minor children, is to determine in whose custody the best interests of the child will probably be advanced. In a habeas corpus proceeding brought by one parent against the other for the custody of their child, the Court has before it the question of the rights of the parties as between themselves, and also has before it, if presented by the pleadings and the evidence, the question of the interest which the State, as parens patriae, has in promoting the best interests of the child.*

*…*

*127. We would therefore hold that in the case at Bar, the dominant consideration to which all other considerations must remain subordinate must be the welfare of the child. This is not to say that the question of custody will be determined by weighing the economic circumstances of the contending parties. The matter will not be determined solely on the basis of the physical comfort and material advantages that may be available in the home of one contender or the other. The welfare of the child must be decided on a consideration of these and all other relevant factors, including the general psychological, spiritual and emotional welfare of the child. It must be the aim of the Court, when resolving disputes between the rival claimants for the custody of a child, to choose the course which will best provide for the healthy growth, development and education of the child so that he or she will be equipped to face the problems of life as a mature adult."*

17. In view of above principles, a writ of *habeas corpus* is not maintainable. The custody of the minor is with the mother, who is also the natural guardian. The *Würzburg* Court also permits it and hence the custody cannot be characterized

as illegal. The main criteria is the welfare of the minor. He is already admitted in a playschool at Rottendorf Germany. This is now his natural habitable environment. In our view, his best interest would be served in his existing environment at Germany where he has been since January 2020.

18. We are unable to accept Mr. Hingorani's submission that the Petitioner refrained from participating in the proceedings before the Würzburg Court on the ground that it lacked jurisdiction. In our view, it was open to the Petitioner to appear before the foreign Court and at least register his protest regarding its jurisdiction and the consequential orders granting custody to Respondent no.2. More importantly, we note that the Petitioner has not taken any steps to seek custody or visitation rights under the Guardians and Wards Act, 1890, or the Hindu Minority and Guardianship Act, 1956, before any competent Court in India. This omission is glaring, and no explanation has been offered for such inaction. In these circumstances, the Petitioner cannot contend that the minor is being illegally detained by Respondent no.2.

19. With respect to prayer clause (b), which seeks

"restoration of custody" of the minor to the Petitioner, we find that the relief is wholly misconceived. It proceeds on the assumption that the minor was previously in the Petitioner's custody. This is factually incorrect, as the minor has been in the care of the mother for the past five years. In any event, the question of restoration of custody is one that must be adjudicated by a competent Family Court, as it involves the appreciation of facts and evidence.

20. The judgments relied upon by the Petitioner are of no assistance as the facts therein are distinguishable. In *Elizabeth Dinshaw (supra)*, the Hon'ble Supreme Court was dealing with a case where the American Court granted a decree for child's custody to the mother and visitation rights to the father. The father breached the decree by secretly bringing the child to India against the express orders of the American Court. The mother had approached the Supreme Court under Article 32 of the Constitution of India. The Court interviewed the child and found that his best interest and welfare would be served if he were with the mother since both were American citizens and the USA Court had already passed a custody order in her favour. In that context, the Hon'ble Court held that the

Respondent-father had abducted the child and a writ of Habeas Corpus ordering custody of the child was granted to the mother. The Court holds that matter must be decided not by reference to the legal rights of the parties, but on the sole and predominant criterion of what would serve the best interests and welfare of the minor. Thus, this case is of no assistance to the Petitioner.

21. The Petitioner's reliance placed upon the judgment of this Court in *Abhijit S Shingote (supra)* is equally misplaced. The Court in this case also faced a comparable situation where the respondent-mother had taken the child outside USA in defiance of the American Court orders. The parties had arrived at a temporary parenting arrangement before the USA Court viz. that both would have joint physical custody. The wife breached the order of the USA Court and back to India with the child thereby denying the husband custody in USA. In view of this, the USA Court granted sole custody to the husband and issued contempt proceedings against the wife. It was in this background that the husband filed the Habeas Corpus petition in India. The prayer in that petition was to produce the child in compliance with the order of the USA Court. In those

circumstances, the custody of child was granted to the father by applying the principles of *status quo ante*.

22. In the present case, the minor is now a citizen of Germany. Since January 2020, i.e., the age of about 8 months, the minor is staying with Respondent no.2 in Germany. There is no question of Respondent no.2 mother having abducted the minor. Moreover, Respondent no.2 is granted sole custody of the minor by the Würzburg Court. The principles of *status quo ante has* no application to the present scenario as Respondent no.2 has not acted illegally or unlawfully to change any status quo.

23. Similarly, the judgment of the Supreme Court in *"Y. Narasimha Rao v.* deals with the provisions of the Hindu Marriage Act, 1955 and is in the context of divorce proceedings between husband and wife. It deals with the recognition of a divorce decree passed by a foreign Court in India when such execution of the foreign Court order is sought in India. Neither does it deal with Habeas Corpus proceedings nor with the custody of a minor child. Hence this decision is not applicable to the facts of the present case.

24. For all the above reasons, this Petition lacks merit. **Criminal Writ Petition No.2540 of 2025 is dismissed** without any order as to costs.

25. We however make it clear that Respondent No.2 shall continue to facilitate video calls for the Petitioner and his family members. It is made clear that, all the observations regarding the welfare of the child are made only for the purpose of deciding the present petition, and at an appropriate stage, the competent Courts in future are free to take their own decision in accordance with law regarding the custody and welfare of the child.

26. Rule is discharged.

**[GAUTAM A. ANKHAD, J. ]** **[RAVINDRA V. GHUGE, J.]**

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