2026:AHC:87783

HIGH COURT OF JUDICATURE AT ALLAHABAD

HABEAS CORPUS WRIT PETITION No. - 365 of 2025

Akshit Pandey (Minor) And Another

.....Petitioner(s)

Versus

State Of U.P. And 6 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Akhilesh Kumar Mishra, Devbratt Yadav, Gaurav Singh, Ram Pratap Yadav
Counsel for Respondent(s)	:	Pramod Kumar Srivastava, G.A., Manjari Singh

Court No. - 53 **AFR**

HON'BLE SANDEEP JAIN, J.

The present habeas corpus petition has been filed by the petitioner, Vipin Kumar Pandey, who is the father of the minor corpus, Akshit Pandey, seeking his custody.

In compliance with the order of this Court dated 03.04.2026, the corpus has been produced before this Court today by Sri Sanjay Kumar Singh, Sub-Inspector, Police Station Sarai Lakhansi, District Mau.

Learned counsel for the petitioner submits that the wife of the petitioner and mother of the corpus, namely Deepika Pandey, died on 10.02.2025. It is further submitted that since then, the corpus is in the custody of respondent Nos. 4 and 5, who are the maternal aunt and uncle of the corpus. It is contended that the petitioner, being the natural and legal guardian, is entitled to the custody of the minor. It is further submitted that the petitioner is financially sound and fully capable of maintaining the minor and ensuring his proper upbringing. Therefore, there exists no legal justification to deny custody of the minor to the petitioner.

It is also submitted that the petitioner’s sister, Smt. Sunita Pandey, who resides in close proximity to the petitioner’s residence, is a housewife and is available to assist in taking care of the minor. She is stated to be physically fit and capable of ensuring the welfare of the child.

The petitioner, Vipin Kumar Pandey, is present in Court and has assured

that he shall properly take care of the minor corpus. His financial capacity has not been disputed. Likewise, Smt. Sunita Pandey is also present and has undertaken to assist in the upbringing and welfare of the child.

Per contra, learned counsel for private respondent Nos. 4 and 5 submits that the wife of the petitioner died during a failed IVF procedure, which, according to him, reflects adversely on the conduct of the petitioner and raises doubts regarding his capability to take care of the minor, who is presently about 13 months old. It is further submitted that the corpus is presently under the care of the maternal aunt, who is adequately equipped to look after the child, particularly considering that the child was born premature and requires special care. However, it is fairly admitted that no criminal proceedings are pending against the petitioner.

I have heard learned counsel for the parties and perused the material on record.

The Apex Court in the case of ***Tejaswini Gaud and Others vs. Shekhar Jagdish Prasad Tewari and Ors. (2019) 7 SCC 42*** while granting the custody of 1.5 years child after the demise of mother to the father, who is the natural guardian, under Article 226 of the Constitution of India, held as under:-

"14. 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 jurisdiction.***

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18. In Manju Malini [Manju Malini Seshachalam v. Vijay Thirugnanam, 2018 SCC OnLine Kar 621 : (2018) 4 AIR Kant R 166] where the mother filed a habeas corpus petition seeking custody of her minor child Tanishka from her sister and brother-in-

law who refused to hand over the child to the mother, the Karnataka High Court held as under : (SCC OnLine Kar para 26)

"26. ***The moment Respondents 1 and 2 refused to hand over the custody of minor Tanishka to the petitioner the natural and legal guardian, the continuation of her custody with them becomes illegal detention.*** *Such intentional act on the part of Respondents 1 and 2 even amounts to the offence of kidnapping punishable under Section 361 IPC. Therefore there is no merit in the contention that the writ petition is not maintainable and Respondents 1 and 2 are in legal custody of baby Tanishka."*

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.

21. ***In the present case, the appellants are the sisters and brother of the mother***

Zelam who do not have any authority of law to have the custody of the minor child. Whereas as per Section 6 of the Hindu Minority and Guardianship Act, the first respondent father is a natural guardian of the minor child and is having the legal right to claim the custody of the child. The entitlement of father to the custody of child is not disputed and the child being a minor aged 1½ years cannot express its intelligent preferences. Hence, in our considered view, in the facts and circumstances of this case, the father, being the natural guardian, was justified in invoking the extraordinary remedy seeking custody of the child under Article 226 of the Constitution of India.

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32. In the case at hand, the father is the only natural guardian alive and has neither abandoned nor neglected the child. Only due to the peculiar circumstances of the case, the child was taken care of by the appellants. Therefore, the cases cited by the appellants are distinguishable on facts and cannot be applied to deny the custody of the child to the father.

33. The child Shikha went into the custody of the appellants in strange and unfortunate situation. Appellants 1 and 2 are the sisters of deceased Zelam. Appellant 4 is the husband of Appellant 1. All three of them reside at Mahim, Mumbai. Appellant 3 is the married brother of Zelam who resides in Pune. During the fifth month of her pregnancy, Zelam was diagnosed with stage 3/4 breast cancer. Zelam gave birth to child Shikha on 14-8-2017. On 29-11-2017, Respondent 1 collapsed with convulsions due to illness. Upon his collapse, he was rushed to hospital where he was diagnosed with Tuberculosis Meningitis and Pulmonary Tuberculosis. He was kept on ventilator for nearly eight days, during which period, appellants took care of Zelam and the child. The first respondent had to undergo treatment in different hospitals for a prolonged period. From 29-11-2017 to June 2018, Zelam and Shikha stayed at the residence of the appellants in Mumbai. During this period, Zelam underwent mastectomy surgery. Zelam later relapsed into cancer and decided to get treatment from a doctor in Pune and therefore, shifted to Appellant 3's house at Pune with Shikha and Zelam passed away on 17-10-2018. After recovering from his illness, the respondent visited Pune to seek custody of the child. But when they refused to hand over the custody, the father was constrained to file the writ petition seeking custody of the child. The child Shikha thus went to the custody of the appellants in unavoidable conditions. Only the circumstances involving his health prevented the father from

taking care of the child. ***Under Section 6 of the Act, the father is the natural guardian and he is entitled to the custody of the child and the appellants have no legal right to the custody of the child. In determining the question as to who should be given custody of a minor child, the paramount consideration is the "welfare of the child" and not rights of the parents under a statute for the time being in force.***

34. As observed in Rosy Jacob [Rosy Jacob v. Jacob A. Chakramakkal, (1973) 1 SCC 840] earlier, the father's fitness has to be considered, determined and weighed predominantly in terms of the welfare of his minor children in the context of all the relevant circumstances. The welfare of the child shall include various factors like ethical upbringing, economic well being of the guardian, child's ordinary comfort, contentment, health, education, etc. The child Shikha lost her mother when she was just fourteen months and is now being deprived from the love of her father for no valid reason. As pointed out by the High Court, the father is a highly educated person and is working in a reputed position. His economic condition is stable.

35. The welfare of the child has to be determined owing to the facts and circumstances of each case and the Court cannot take a pedantic approach. In the present case, the first respondent has neither abandoned the child nor has deprived the child of a right to his love and affection. The circumstances were such that due to illness of the parents, the appellants had to take care of the child for some time. Merely because, the appellants being the relatives took care of the child for some time, they cannot retain the custody of the child. It is not the case of the appellants that the first respondent is unfit to take care of the child except contending that he has no female support to take care of the child. The first respondent is fully recovered from his illness and is now healthy and having the support of his mother and is able to take care of the child.

36. The appellants submit that handing over of the child to the first respondent would adversely affect her and that the custody can be handed over after a few years. The child is only 1½ years old and the child was with the father for about four months after her birth. If no custody is granted to the first respondent, the Court would be depriving both the child and the father of each other's love and affection to which they are entitled. As the child is in tender age i.e. 1½ years, her choice cannot be ascertained at this stage. With the passage of time, she might develop more bonding with the appellants and after some time, she may be reluctant to go to her father in which case, the first respondent might be completely deprived of her child's love and

affection. Keeping in view the welfare of the child and the right of the father to have her custody and after consideration of all the facts and circumstances of the case, we find that the High Court was right in holding that the welfare of the child will be best served by handing over the custody of the child to the first respondent."

The Apex Court in the case of ***Gautam Kumar Das vs. NCT of Delhi and Ors. (2024) 10 SCC 588***, held that granting temporary custody of minor child to a relative would not preclude the natural guardian from seeking custody of the minor child. It was held as under:-

"20. ..The appellant's wife died due to Covid infection and as such, he was forced to give the custody of the minor child Sugandha Das to Respondents 5 and 6, who are the sisters of the deceased wife. Looking at the very tender age of the child Sugandha Das at that time, the appellant could not have looked after her. However, the appellant was looking after his son Divyanshu Das, who was relatively older.

21. Subsequently, the appellant remarried. Now, he and his wife can very well look after the minor girl Sugandha Das. A perusal of the photographs placed on record would also reveal that pursuant to the visitation rights granted by the High Court and this Court, the minor child has gelled well with the family and the family of four appears to be happy.

22. Insofar as the fitness of the appellant is concerned, he is well educated and currently employed as Assistant General Manager (Class A Officer) in Central Warehousing Corporation, Delhi. The appellant's residence is also in Delhi whereas Respondent 6 to whom the custody of the minor child was handed over to by Respondent 5 is residing at a remote village in West Bengal. Apart from taking care of his children, the appellant can very well provide the best of the education facilities to his children. The child Sugandha Das, who lost her mother at tender age, cannot be deprived of the company of her father and natural brother. At the relevant time, the appellant had no other option but to look upon the sisters of his deceased wife to nurture his infant child.

23. ***In our opinion, merely because of the unfortunate circumstances faced by the appellant as a result of which, Respondents 5 and 6 were given the temporary custody of the minor child Sugandha Das and only because they looked after her for few years, the same cannot be a ground to deny the custody of the minor child to the appellant, who is her only natural guardian.***

*24.****

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.***

26. However, it is to be noted that a common thread in all the judgments concerning the custody of minor children is the ***paramount welfare of the child****.* ***As discussed hereinabove, we find that, apart from the appellant being the natural guardian, even in order to ensure the welfare of the minor child, she should live with her natural family. The minor child is of tender age, and she will get adapted to her natural family very well in a short period****. We are therefore inclined to allow the appeal."*

It is well settled that in proceedings of habeas corpus relating to custody of a minor, the paramount consideration for the Court is the welfare and best interest of the child.

From the record, it is evident that the mother of the corpus, Deepika Pandey, died on 10.02.2025, and there is no criminal prosecution pending against the petitioner in relation to her death. The mere fact that the death occurred during a failed IVF procedure cannot, in any manner, be attributed to any fault on the part of the petitioner so as to disentitle him from claiming custody of his minor child.

It is also undisputed that after the demise of the mother, the father is the natural guardian and ordinarily the most suitable person to look after the welfare of the minor. There is no material on record to indicate that the petitioner is unfit or incapable of discharging his parental responsibilities. On the contrary, the record reflects that the petitioner possesses sufficient financial means, has stable residential arrangements, and is in a position to provide proper care and upbringing to the child.

Further, the presence and support of the petitioner’s sister, Smt. Sunita Pandey, who is residing nearby and is an experienced housewife with two

grown up children aged about 17 years and 11 years, provides an additional assurance regarding the welfare and proper upbringing of the minor.

The contention of the private respondents that the welfare of the child would be better served under the care of the maternal relatives does not outweigh the legal and natural claim of the father, particularly in the absence of any adverse material against him. The age of the maternal grandmother, stated to be about 71 years, also cannot be ignored while assessing long-term welfare considerations.

This Court is also mindful of the fact that the corpus is only about 13 months old. If custody is not entrusted to the father at this stage, there is a real possibility of the child growing up without forming any emotional bond with him, which would be detrimental to the child's overall development and the father's parental rights.

In the totality of the facts and circumstances, and considering the paramount welfare of the minor, this Court finds no justification to deny custody of the corpus to his father.

Accordingly, the private respondent Nos. 4 and 5 are directed to hand over the custody of the minor corpus, Akshit Pandey, to the petitioner, Vipin Kumar Pandey, forthwith, in Court itself.

However, in order to preserve the emotional bond of the child with the maternal family, respondent Nos. 4 and 5 are granted visitation rights. They shall be entitled to visit the minor at the petitioner's residence every Sunday at 04:00 PM for a duration of two hours.

It is expected that the petitioner shall extend full cooperation to the private respondents and shall not cause any obstruction during the visitation period.

It is further clarified that in the event the private respondents observe any circumstance adverse to the welfare of the minor, it shall be open to them to approach this Court in accordance with law.

Accordingly, the present habeas corpus petition is **allowed.**

In compliance of the direction of this Court, the custody of minor Akshit Pandey has been handed by the private respondents, to his father Vipin Kumar Pandey.

(Sandeep Jain,J.)

April 21, 2026
Himanshu

Digitally signed by :-
HIMANSHU YADAV
High Court of Judicature at Allahabad