

Mahesh D. Yatnalli Vs State Of Karnataka & Others**Writ Petition Habeas Corpus No. 34 Of 2023**

Court: Karnataka High Court At Bengaluru**Date of Decision:** May 23, 2023**Acts Referred:**

Code Of Criminal Procedure, 1973 " Section 125

Citation: (2023) 05 KAR CK 0027**Hon'ble Judges:** Alok Aradhe, J; Anant Ramanath Hegde, J**Bench:** Division Bench**Advocate:** K.B Monesh Kumar, R.A. Devanand, Shashidhar Belagumba, Thejesh. P**Final Decision:** Disposed Of

Judgement

Alok Aradhe, J

1. Mr.K.B.Monesh Kumar, learned counsel for the petitioner.

Mr.R.A.Devanand, learned counsel along with Mr.Shashidhar Belagumba, learned counsel for the respondent No.4.

Master Kautik Iyer Yatnalli along with respondent No.4 is present before this Court.

This petition has been filed seeking a writ of Habeas Corpus to produce the minor son of the parties namely Kautik Iyer Yatnalli (hereinafter referred

to as 'the son') before this Court.

2. Facts giving rise to filing of this petition briefly stated are that petitioner and respondent No.4 were married on 28.02.2011. From the wedlock, son

was born to them on 10.12.2011. On account of matrimonial disputes, the parties did not stay together beyond 2014. It appears that respondent No.4

had initiated a proceeding under Section 125 of the Criminal Procedure Code, 1973 seeking maintenance for herself and the son which was decided by

an order dated 22.02.2022. Against the aforesaid order, a revision petition namely RPFC No.104/2022, was preferred before this Court. In the said

proceeding, the petitioner as well as respondent No.4 arrived at an amicable settlement. Admittedly, under the aforesaid compromise, respondent No.4

was appointed as guardian of son whereas petitioner namely the father of son was granted visitation rights during weekends as well as custody of

child during Summer and Winter Vacations.

3. It is also not in dispute, that, in compliance of the compromise arrived at between the parties in the month of December 2022, the custody of son

was handed over to the petitioner and the son spent approximately 12 days with the petitioner.

4. However, it is the case of the petitioner that he went during one of the weekends in the month of January 2023 to visit the son but was denied

access to the son and despite commencement of the Summer Vacation of the son w.e.f. 25.03.2023, the custody of the son was not handed over to

him as per the terms of the compromise arrived at between the petitioner and respondent No.4. Thereafter, petitioner has sent e-mails to the

respondent No.4. However, no response was received to the e-mails and the petitioner was denied any sort of access to the son. Thereupon, the

petitioner filed this petition seeking a writ of Habeas Corpus on 19.04.2023. In the aforesaid factual background, this petition arises for our

consideration.

5. Learned counsel for the petitioner submitted that petitioner is employed as a Senior Manager in Hindustan Aeronautics Limited and is entitled to

access to the son in view of compromise arrived at between the parties. Our attention has also been invited to the photographs produced before us

and it is contended that those photographs have been taken in the month of March 2017 where son seems to be comfortable with the petitioner. It is

also submitted that the petitioner has already applied for grant of leave and in case an opportunity is granted to the petitioner to spend sometime with

the son for such period as this Court may deem fit, the petitioner shall obtain leave and shall be with his son all the time. It is also stated that the

petitioner will ensure that his mother Smt. Anasuya and his sister Jyothi will also remain present during the period in which the son stays with the

petitioner. It is also submitted that a writ of Habeas Corpus, in the fact situation of the case, is maintainable. In support of aforesaid submission,

reliance has been placed on the decision of the Hon'ble Supreme Court in 'RAJESWARI CHANDRASEKAR GANESH VS. STATE OF TAMIL

NADU & OTHERS', 2022 SCC ONLINE SC 885.

6. On the other hand, learned counsel for the respondent No.4 submitted that the petitioner has not placed on record the leave grant certificate and no

leave has been granted to him. It is further submitted that the petitioner is alone and he would not be able to pay attention to the son who is a patient of

epilepsy. It is further submitted that this Court may interview the son. It is also contended that the instant case is not a case of illegal detention as the

son is in the custody of the mother and in case the terms and conditions of the compromise arrived at between the parties have been breached, the

petitioner is at liberty to initiate the proceedings for contempt of this Court. It is pointed out that the petitioner has already resorted to the remedy of

filing a petition for non-compliance of the compromise recorded by this Court. It is also urged that only in case of an infant, a writ of Habeas Corpus is

maintainable in case the child is in illegal custody. In support of aforesaid submission, reliance has been placed on the decision of Hon'ble Supreme

Court in 'KANU SANYAL VS. DISTRICT MAGISTRATE, DARJEELING AND OTHERS' (1973) 2 SCC 674 AND 'GOHAR BEGUM VS.

SUGGI ALIAS NAZMA BEGUM AND ORS.' AIR 1960 SC 93.

7. We have considered the submissions made on both sides and have perused the record. The issue with regard to maintainability of a writ of Habeas

Corpus at the instance of one of the parent is no longer res integra and has been answered by the Hon'ble Supreme Court in 'YASHITA SAHU VS.

STATE OF RAJASTHAN' (2020) 3 SCC 67. In paragraph 10 of the aforesaid judgment, it has been held as under:

10. It is too late in the day to urge that a writ of habeas corpus is not maintainable if the child is in the custody of another parent. The law

in this regard has developed a lot over a period of time but now it is a settled position that the court can invoke its extraordinary writ

jurisdiction for the best interest of the child. This has been done in Elizabeth Dinshaw vs. Arvand M. Dinshaw & Ors. (1987) 1 SCC 42,

Nithya Anand Raghavan vs. State (NCT of Delhi) & Anr. (2017) 8 SCC 454 and Lahari Sakhamuri vs. Sobhan Kodali (2019) 7 SCC 311

among others. In all these cases the writ petitions were entertained. Therefore, we reject the contention of the appellant wife that the writ

petition before the High Court of Rajasthan was not maintainable.

8. In view of aforesaid enunciation of law, it is axiomatic that in case the child is in custody of one of the parent, writ of Habeas Corpus is

maintainable. In the instant case, we are conscious of the fact that the son is in the custody of the mother. However, the fact remains that the

petitioner and the respondent No.4 had entered into a compromise and under the compromise, the petitioner is entitled to visit the son during weekends

and is entitled to his custody during Summer as well as Winter Vacations. In the instant case, admittedly the petitioner has been deprived access to the

son during the Summer Vacation. Therefore, in the fact situation of the case, the writ of Habeas Corpus is held to be maintainable.

9. In case of KANU SANYA supra, a Constitution Bench of the Hon'ble Supreme Court has traced the development of a writ of Habeas Corpus. It

is pertinent to note that in RAJESWARI CHANDRASEKAR GANE, SsHupra, the Hon'ble Supreme Court took note of the law laid down by it in

KANU SANYA'S case and has held that writ of Habeas Corpus is maintainable in case the child is in custody of one of the parents. Similarly in

GOHAR BEGUM, supra, the Hon'ble Supreme Court dealt with the claim of a Muslim mother who stayed off her minor daughter. The minor

daughter was not in custody of either of the parents. Therefore, the ratio of the decision of GOHAR BEGUM'S case, supra has no application to the

facts of the case.

10. At this stage, we also take note of the report submitted by Dr.S.R.Lakshmipathy, M.D.(Pediatrics), stating that on account of medication given to

the son, he is alert and interactive and does not suffer from any deficits presently and is reasonably good in communication.

11. We have also interacted with the son namely Master Kautik Iyer Yatnalli in the Chambers. Upon interaction, the son disclosed that he likes his

grandmother. Therefore, during his stay with the petitioner, it is all the more necessary that a congenial atmosphere remains in the house of the

petitioner where the son can feel comfortable.

12. It is well settled in law that the concept of guardianship of a ward is essentially different from custody of the ward. The Court has to ensure that

sufficient visitation rights to a parent who is not given child's custody should be granted so that the child may not lose social, physical and

psychological contact with the parent. The parent who is denied the custody of the child should have access to the child specially when both parents

live in same city. The parents under an obligation to provide for an environment which is reasonably conducive to the development of the child. It is in

the best interest of the child to have parental care of both the parents if not joint then atleast separate. In the instant case, parties have arrived at a

settlement with regard to guardianship and custody of the son. We, therefore, see no reason as to why respondent No.4 should be permitted to flout

the terms and conditions of the compromise arrived at between the parties, that too without any justification.

13. It is made clear that this Court has not expressed any opinion with regard to violation of the terms and conditions arrived at between the parties

which is a issue to be agitated and adjudicated in a proceeding initiated by the petitioner seeking contempt of the orders passed by this Court.

14. In the facts and circumstances of the case and in view of amicable settlement arrived at between the parties, we issue the following directions:

(1) The respondent No.4 shall handover the custody of the son to the petitioner today by 5 p.m. and the petitioner shall be entitled to the custody of the

son till 04.06.2023.

(2) The petitioner shall be on leave and shall spend the whole time with the son from the time of handing over of the custody till 04.06.2023. In

addition, the petitioner shall ensure that his mother and his sister also stay with him during the period for which the son stays with the petitioner.

(3) The petitioner shall take care of his son and shall attend to his medical needs. Respondent No.4 is directed to provide the details of the doctor

under whose treatment the son is, to the petitioner and in case of any medical assistance to the son, the petitioner shall forthwith take his son to the

concerned medical specialist.

(4) Respondent No.4 shall be entitled to make a video call daily to the son between the period from 6 p.m. to 7 p.m.

(5) The petitioner shall handover the custody of the son to the respondent No.4 on 04.06.2023 at 5 p.m.

With the aforesaid directions, the writ petition is disposed of