

(2025) 12 GUJ CK 0004

Gujarat High Court

Case No: R/Special Criminal Application (Habeas Corpus) No. 10646 Of 2025

Almas W/O Rizwan Dastgir
Shaikh D/O Jamil Ahmed Ansari

APPELLANT

Vs

State Of Gujarat & Ors

RESPONDENT

Date of Decision: Dec. 12, 2025

Hon'ble Judges: N.S.Sanjay Gowda, J; D. M. Vyas, J

Bench: Division Bench

Advocate: Salman S Khan, Kunal P Chandiramani, Pranav Dhagat

Final Decision: Allowed

Judgement

N.S.Sanjay Gowda, J

1. The petitioner has filed this petition contending that the custody of her children be secured and be handed over to her since they have been illegally detained by her husband, her brother-in-law and her sister-in-law.
2. It is her case that her marriage was solemnized on 6. 09.2019 and out of this wedlock, they had two children namely Mohammad Hamdan who is aged about 4 years and Mohammad Yahya who is aged about 22 months as of now. She has stated that she spent some time in her matrimonial home in Kolhapur but due to some financial issue and in order to secure better job opportunities, she and her husband shifted to Ahmedabad from Kolhapur. It is stated that even though they have shifted to Ahmedabad, her husband used to go Kolhapur for at least 10 to 15 days every two months.
3. She has thereafter stated that the marriage ran into difficulties and she and her family members in fact extended monetary support to her husband but the same was wasted and he did not mend his ways.
4. She submits that she requested her husband to return to Kolhapur and hand over custody of her children but this was not acceded to. She also states that the he quit

his job as a result of which, the employer had in fact sent a letter to him about his absenteeism. She also alleges that he had taken a loan in her name and had failed to repay the same. She thereafter contends that her two minor children were abducted and her husband refused to hand over the custody.

5. On notice being ordered, the husband had entered his appearance and filed an affidavit-in-reply. In this affidavit, the husband, while denying all the contentions raised by the wife, states that he had issued a legal notice on 27.01.2025 seeking for restitution of conjugal rights and thereafter, a sulahnama dated 30.01.2025 was entered into.

6. Learned Counsel for the petitioner does not dispute the fact that under this sulehnama, the temporary custody of the minor children were to be handed over to the wife and the husband had also undertaken to search for house in Ahmedabad and shift to Ahmedabad.

7. It is thereafter stated that in the month of March, 2025, the husband came to Ahmedabad along with elder son and stayed with the petitioner. It is stated that an attempt was made by the husband to abide by the terms of the sulahnama and secure rented accommodation but there was no reciprocal support from the wife. It is also stated that on 28.04.2025, the husband and wife travelled back to the Kolhapur along with the elder child to visit the younger child, who was in Kolhapur. It is therefore contended that the custody of the minor children were lawfully with the husband and therefore this petition seeking for issuance of writ habeas corpus on the premise that the children were illegally confined cannot be accepted.

8. This Court, after interacting with the couple, passed an order on 18.08.2025 after noticing that the elder son who is aged four years was comfortable with the mother and therefore his custody should be handed over to her as an interim arrangement.

9. This Court also relegated the parties to the mediation center and accordingly, a mediation was conducted into which resulted in a memorandum of settlement being entered into on 12.09.2025. Under this settlement, which is produced at Annexure R-5, it is not in dispute that the parties have settled their differences amicably and it was agreed upon by the husband that he would shift to Ahmedabad. More importantly, the terms of the settlement indicate that he had undertaken to handover the custody of the younger child for the next three months and had also assured the wife that they would secure a residence at Ahmedabad so that all of them could live together.

10. A reading of this affidavit, as well as memorandum of settlement, would clearly indicate that the husband had categorically admitted and conceded that the custody of the younger child, who is aged about 22 months, would be handed over to the mother. It may be worthwhile to notice here that the welfare of an infant who is only 22 months old would obviously be better served with the mother rather than with the father, more so, when under the interim arrangement, the husband himself had

handed over the custody of elder child, who is aged about 4 years, to the mother.

11. If the husband had undertaken to hand over the custody of the 22 month old infant to the mother, he was obviously conceding to the fact that the mother was the person who is entitled for the custody and his custody over the 22 months old infant was improper and would not be, beneficial to, the child. In this scenario, it would not be open for the husband to contend that the 22 months infant should be in his custody and that presently he was in lawful custody.

12. It must be borne in mind that when it comes to case of custody of minor children, that too of an infant, the Court has to take judicious view about the welfare of the child rather than the views of the quarreling parents.

13. In this case, since the husband himself has agreed that he would hand over the custody of 22 months old infant to the mother, it is obvious that his retention of the custody of 22 months infant would be detrimental to the welfare of the child and his resiling from the sulehnama and MoU would result in this present custody being illegal. We therefore constrained to allow this petition and hereby direct the husband the to handover the custody of 22 months infant to the mother forthwith.

14. Since the custody of the elder son is already with the mother, by way of an interim arrangement, no further orders need to be passed regarding the custody of elder child who is aged four years, who was residing with the mother since past couple of months and she shall continue to be in custody of him.

15. Accordingly, the writ petition is allowed.

16. It is needless to mention that it is always open for the husband to approach the appropriate Family Court and establish that the custody of the children should be on the ground that their interest would be better served if the children reside with him.