

*** THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI**
*** THE HONOURABLE SRI JUSTICE SUBHENDU SAMANTA**

WRIT PETITION NO: 14117/2026

% 02.07.2026

Karri Appalanaidu

.....petitioner

And:

\$ The State of A.P., & 3 others

.... respondents

!Counsel for the petitioner

: Sri A.S.L.N. Raju

^Counsel for the respondents

: Sri J Krishna Praneeth, learned
AGP for respondents

<Gist:

>Head Note:

? Cases referred:

1. (2019) 7 SCC 42
2. 2017(5) ALD 145 (SC)
3. (2024) 9 SCC 382
4. 2024 Supreme SC 411
5. (2025) 4 SCC 342

HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

* * * *

WRIT PETITION NO: 14117/2026

Between:

Karri Appalanaidu

..... PETITIONER

AND

The State of A.P., & 3 others

....RESPONDENTS

DATE OF JUDGMENT RESERVED :

DATE OF JUDGMENT PRONOUNCED : 02.07.2026

DATE OF JUDGMENT UPLOADED :

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

&

THE HONOURABLE SRI JUSTICE SUBHENDU SAMANTA

- | | |
|---|--------|
| 1. Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2. Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3. Whether Your Lordships wish to see the fair copy of the Judgment? | Yes/No |

RAVI NATH TILHARI,J

SUBHENDU SAMANTA,J

THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI
THE HONOURABLE SRI JUSTICE SUBHENDU SAMANTA

WRIT PETITION NO: 14117/2026

ORDER: *(per Ravi Nath Tilhari, J)*

Heard Sri A.S.L.N.Raju, learned counsel for the petitioner and Sri J.Krishna Praneeth, learned Assistant Government Pleader appearing for the respondents.

2. The petitioner is the husband of respondent No.4 and is the father of minor son aged about 4 years, who is in the custody of the mother – respondent No.4. This petition under Article 226 of Constitution of India has been filed for writ of Habeas Corpus seeking direction to the official respondent Nos.2 & 3 for production of the minor son and to set him at liberty from the alleged illegal detention of respondent No.4 as also to hand over his custody to the petitioner being a father and the natural guardian.

3. The relationship between the petitioner and the minor son is not in dispute.

4. The averment is that the marriage was solemnized without dowry and they lived happily for some time. Son was born on 14.02.2022 but after about two months from the birth of the son, respondent No.4 suddenly left the matrimonial home with the son without the consent or knowledge of the petitioner. The allegations have also been made with respect to the changed behavior on account of the petitioner's alleged disability, the petitioner being disabled person suffering from 40% locomotor disability. The petitioner sent a

legal notice dated 11.04.2025 calling upon respondent No.4 to return to the matrimonial home with the son. She did not reply nor comply with the notice. Consequently, this petition has been filed for direction to produce the son and to hand over the custody to the petitioner-father from the mother's custody.

5. We are of the view that the son being in the custody of the mother, the said custody could not be said to be illegal.

6. So far as the custody of minor with one of the parents and to take the custody by another parent by way of writ of Habeas Corpus is concerned, in ***Tejaswini Gaud v. Shekhar Jagdish Prasad Tewari***¹, the Hon'ble Apex Court held that 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 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. It was held that in child custody matter, the writ of Habeas Corpus is maintainable, where it is proved that the detention of the minor child by a parent or others was illegal and without any authority of law.

7. Para 19 of ***Tejaswini Gaud*** (supra) reads as under:

"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

¹ (2019) 7 SCC 42

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.”

8. In ***Nithya Anand Raghavan v. State of NCT of Delhi***², the Hon’ble Apex Court held that the High Court while dealing with the petition for issuance of a writ of habeas corpus concerning a minor child, in a given case, may direct return of the child or decline to change the custody of the child keeping in mind all the attending facts and circumstances including the settled legal position. The decision of the Court, in each case, must depend on the totality of the facts and circumstances of the case brought before it whilst considering the welfare of the child which is of paramount consideration. The remedy of writ of habeas corpus cannot be used for mere enforcement of the directions given by the court against a person within its jurisdiction and convert that jurisdiction into that of an executing court. Recourse can be taken to such other remedy as may be permissible in law for enforcement of the order.

9. In ***Nithya Anand Raghavan*** (supra), the Hon’ble Apex Court further held that in a Habeas Corpus petition, the High Court must examine at the threshold whether the minor is in lawful or unlawful custody of another person. For considering that issue, if that another person was none other than the natural guardian of the minor being the biological mother and once that fact was ascertained, it could be presumed that the custody of the minor with

² 2017 (5) ALD 145 (SC)

his/her mother was lawful. In such a case, only in exceptionable situation, the custody of the minor may be ordered to be taken away from the mother for being given to any other person including the husband (father of the child), in exercise of the writ jurisdiction. Instead, the other parent could be asked to resort to a substantive remedy prescribed for getting the custody of the child.

10. Para Nos.29 and 30 of ***Nithya Anand Raghavan*** (supra) deserve reproduction which as under:

“29. The High Court while dealing with the petition for issuance of a writ of habeas corpus concerning a minor child, in a given case, may direct return of the child or decline to change the custody of the child keeping in mind all the attending facts and circumstances including the settled legal position referred to above. Once again, we may hasten to add that the decision of the Court, in each case, must depend on the totality of the facts and circumstances of the case brought before it whilst considering the welfare of the child which is of paramount consideration. The order of the foreign Court must yield to the welfare of the child. Further, the remedy of writ of habeas corpus cannot be used for mere enforcement of the directions given by the foreign court against a person within its jurisdiction and convert that jurisdiction into that of an executing court. Indubitably, the writ petitioner can take recourse to such other remedy as may be permissible in law for enforcement of the order passed by the foreign Court or to 16 113 (2004) Delhi Law Time 823 resort to any other proceedings as may be permissible in law before the Indian Court for the custody of the child, if so advised.

30. 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.”

11. In ***Somprabha Rana v. State of Madhya Pradesh***³, the Hon'ble Apex Court summarized the propositions of law on the point of direction for custody

³ (2024) 9 SCC 382

of the minor in a petition for Habeas Corpus under Article 226 of the Constitution of India in Para No.9 which is reproduced as under:

“9. After having perused various decisions of this Court, the broad propositions of settled law on the point can be summarised 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.”

12. In ***Nirmala v. Kulwant Singh***⁴, the Hon'ble Apex Court held that no hard and fast rule can be laid down insofar as the maintainability of a habeas corpus petition in the matters of custody of a minor child is concerned and further that as to whether the writ court should exercise its extraordinary jurisdiction or not will depend on the facts and circumstances of each case.

13. In the present case, the extraordinary and exceptional circumstances could not be brought to our notice so as to justify the writ jurisdiction by way of writ of habeas corpus, as prayed, to change the custody of the minor son aged about four years who is with the mother. The petitioner will have the alternative remedy as may be open under law for custody of the minor.

14. Learned counsel for the petitioner submits that respondent No.4 is not permitting the petitioner to meet the child.

⁴ 2024 Supreme SC 411

15. If it be so, the petitioner may seek such other remedy as may be open under law and as may be advised.

16. The Writ Petition is dismissed with the aforesaid observations.

No order as to costs.

As a sequel thereto, miscellaneous petitions, if any pending, shall also stand closed.

RAVI NATH TILHARI,J

SUBHENDU SAMANTA,J

Dated:02.07.2026

Note: L.R. copy be marked

B/o.

AG

Whether the order is :

Speaking Yes/No / Reasoned Yes/No

Reportable Yes/No / Non-Reportable Yes/No

136

THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI
THE HONOURABLE SRI JUSTICE SUBHENDU SAMANTA

WRIT PETITION NO: 14117/2026

Dated:02.07.2026
AG