



2026:CGHC:10226-DB

NAFR**HIGH COURT OF CHHATTISGARH AT BILASPUR****WPHC No. 2 of 2026**

Hriday Sharma S/o Ripan Sharma Aged About 20 Years R/o - Ward No. 42,
Nahar Para, Check Dam Road, Devrikhurd, Bilaspur, District - Bilaspur (C.G.)

... Petitioner(s)**versus**

1 - State Of Chhattisgarh Through - The Secretary, Department Of Women And
Child Development, S-3 -23, Third Floor, Mahanadi Bhawan, Ministry, Nava
Raipur Atal Nagar, District - Raipur, Chhattisgarh Phone No. +91-771-2510945
E-Mail - secy. wcd-cg@gov.in

2 - The District Officer District Women And Child Welfare, Raipur, District
Raipur (C.G.)

3 - The Director/ Program Officer Nari Niketan, Raipur, District Raipur (C.G.)

4 - The Collector Raipur, District Raipur (C.G.)

... Respondent(s)

(Cause Title Taken from Case Information System)

For Petitioner(s) : Mr. Niraj Baghel, Advocate.

For Respondent(s) : Mr. Priyank Rathi, Government Advocate.

Hon'ble Shri Ramesh Sinha, Chief Justice**Hon'ble Shri Ravindra Kumar Agrawal, Judge****Order on Board****Per Ramesh Sinha, Chief Justice****27/02/2026**

- 1** Heard Mr. Niraj Baghel, learned counsel for the petitioner as well as Mr.
Priyank Rathi, learned Government Advocate for the State/respondents.

- 2 By this petition under Article 226 of the Constitution of India, the petitioner seeks for a direction to the respondent No. 3 to release his wife and son from detention.
- 3 Facts, as projected by the petitioner are that he is the resident of Bilaspur. The petitioner is a Hindu and belongs to Brahmin Caste and his wife (alleged detainee) (*hereinafter referred to as 'X'*) is a Muslim. They were in relationship for last 4-5 years. The family members of the detainee was not ready for her marriage with the petitioner because of their different faiths. Therefore, she ran away along with the petitioner from her house. The petitioner and the detainee firstly married at the Kali Mandir and started living as husband and wife under one roof. Thereafter the brothers of the detainee took her back and were forcing her to marry with another man against her will and without her consent. Again the petitioner and detainee came into contact and they came to Devrikhurd, Bilaspur and residing there since July, 2023. They are married and from the said wedlock, the detainee became pregnant in the year 2025. On the complaint of one Ashok Kumar, who is a Liaison Officer at Freedom Firm NGO, an FIR was registered against the petitioner under Sections 141, 143 (4), 64(2)(m) of Bhartiya Nyaya Sanhita, 2023 and 14(a)(b), 5(L)/6 of the Prevention of child from the Sexual Offences (POCSO) Act at the Police Station, Pachpedi, District Bilaspur. During the pendency of the criminal trial, the petitioner was in judicial custody and the detainee was admitted at the Nari Niketan, Raipur. However, the petitioner was acquitted of all the charges vide judgment dated 29.10.2025 passed in Special Criminal Case No. 51/2025 by the learned Additional Sessions Judge/First Fast Track Special Court (POCSO Act) Bilaspur.

- 4 Mr. Baghel, learned counsel for the petitioner submits that when the petitioner was in prison, the detenue 'X' gave birth to a male child (*hereinafter referred to as 'Y'*) at Nari Niketan. Since then, the petitioner's wife 'X' and son 'Y' are living at the Nari Niketan, Raipur. The petitioner submitted a representation (Annexure P/4) before the Nari Niketan, Raipur for release of his wife and child which is still pending. On 12.11.2025, he also made an application/representation before the president/ Officer-in-Charge, District Women and Child Welfare, Raipur, Distt. Raipur which is also pending and his wife and child have not been released from Nari Niketan. The marriage between the petitioner and 'X' is legal and the respondent authorities cannot illegally detain them.
- 5 On the other hand, Mr. Priyank Rathi, learned counsel for the State/respondents submits that this petition deserves to be dismissed on the ground that on 18.03.2025, the SHO, Torwa made a communication to Child Protection Officer (CWC), regarding keeping of 'X' who was a Bangladesi minor girl for keeping her in safe custody and it was communicated that the petitioner had eloped with 'X' from Bangladesh and had taken her to Bilaspur. X's parents had also lodged an FIR for the offence of kidnapping in Bangladesh. The NGO who had lodged the FIR had also informed the X's parents in Bangladesh about her whereabouts. Since, none of the relatives of the victim were in India and for her deportation, necessary steps were being taken and Indian Embassy was being contacted in that regard for which some time would be required therefore it was requested to keep the victim in safe custody at that time. 'X' was initially kept in Child Care Institution, vide order dated 23.05.2025 after it was found that 'X' had attained the age of 18 years on 31.03.2025. It was decided that it was not appropriate to keep her in child care institution any more with other minor girls. Therefore, decision

was taken that 'X' who was also 4 months pregnant at that time should be kept in Nari Niketan, Raipur. While 'X' was kept in safe custody in Nari Niketan, she delivered a male child 'Y' on 19.10.2025, who are being taken care of properly at Nari Niketan, Raipur.

6 Mr. Rathi further submits that 'X' is a Bangladeshi national and the petitioner who is also a Bangladeshi, had eloped with 'X' to Bilaspur in 2023 and the criminal case of kidnapping is also pending against the petitioner in Bangladesh which has not been disclosed by the petitioner while filing the instant petition. Furthermore, even though, the petitioner has been acquitted of the offences registered against him under section 141, 143 (4), 64(2) (M) of Bhartiya Nyaya Sanhita, 2023 and 14(a)(b), 5(L)/6 of the Prevention of child from the Sexual Offences (POCSO) Act. However, in the said judgment the petitioner has been given the benefit of doubt as the victim has not supported the case of the prosecution. The deposition of 'X' in that particular case also goes to show that she was a Bangladeshi and had come to India being in love relationship with the petitioner. 'X' is a Bangladeshi national who has been residing in India without valid visa and a complaint had also been lodged against the petitioner in Bangladesh for abducting the minor i.e. 'X' and as such, this petition is not maintainable. He further submits that necessary steps would be taken for deportation of 'X' to Bangladesh after adequate consultation with the Ministry of Home and also the Ministry of External Affairs, Government of India in this regard and a legal opinion with regard to the same has also been obtained on 02.02.2026.

7 Placing reliance on the rejoinder filed, Mr. Baghel submits that the maternal grandparents of the petitioner are residents of India and they were residing in Calcutta. The mother of petitioner is a citizen of India

and permanent resident of India. The father of petitioner was a Bangladeshi who had come to India for work and residing in Calcutta. In the year 1997, elder sister of the petitioner was born in India. The parents of the petitioner came to India for their livelihood. Some other paternal family members of the petitioner live in Bangladesh therefore petitioner also used to go to Bangladesh and during his stay in Bangladesh the petitioner and 'X' came into love relationship and they married to each other at Kali Temple. Thereafter they left Bangladesh and Calcutta and started living at Bilaspur which is present address of the petitioner.

8 We have heard learned counsel appearing for the parties, perused the pleadings and documents appended thereto.

9 In ***Kanu Sanyal v. District Magistrate, Darjeeling and others***, {(1973) 2 SCC 674} a Constitution Bench held as under:

“4. It will be seen from this brief history of the writ of habeas corpus that it is essentially a procedural writ. It deals with the machinery of justice, not the substantive law. The object of the writ is to secure release of a person who is illegally restrained of his liberty. The writ is, no doubt, a command addressed to a person who is alleged to have another person unlawfully in his custody requiring him to bring the body of such person before the Court, but the production of the body of the person detained is directed in order that the circumstances of his detention may be enquired into, or to put it differently, “in the order that appropriate judgment be rendered on judicial enquiry into the alleged unlawful restraint”. the writ is primarily designed to give a person restrained of his liberty a speedy and effective remedy for having the legality of his detention enquired into and determined and if the detention is found to be unlawful, having himself discharged and freed from such restraint. The most characteristic element of the writ is its peremptoriness..... the essential and leading theory of the whole procedure is the immediate determination of the right to the applicant's freedom and his release, if the detention is found to be unlawful. That is the primary purpose of the writ, that is its substance and end. The

production of the body of the person alleged to be wrongfully detained is ancillary to this main purpose of the writ. It is merely a means for achieving the end which is to secure the liberty of the subject illegally detained.”

- 10 In ***Union of India v. Yumnam Anand M. alias Bocha alias Kora alias Suraj and another*** {(2007) 10 SCC 190}, while explaining the nature of writ of habeas corpus, Their Lordships of the Supreme Court held that though it is a writ of right, it is not a writ of course and the applicant must show a *prima facie* case of unlawful detention. Paragraph 7 of the decision reads as under:

“7. Article 21 of the Constitution having declared that no person shall be deprived of life and liberty except in accordance with the procedure established by law, a machinery was definitely needed to examine the question of illegal detention with utmost promptitude. The writ of habeas corpus is a device of this nature. Blackstone called it "the great and efficacious writ in all manner of illegal confinement". The writ has been described as a writ of right which is grantable ex debito justitiae. Though a writ of right, it is not a writ of course. The applicant must show a prima facie case of his unlawful detention. Once, however, he shows such a cause and the return is not good and sufficient, he is entitled to this writ as of right.”

- 11 A writ of habeas corpus is maintainable only where a person is under illegal or unlawful detention. Where the custody of a person is lawful and is in accordance with statutory authority or for the welfare and protection of such person, the extraordinary jurisdiction under Article 226 cannot be invoked.
- 12 In the present case, ‘X’ who is allegedly the wife of the petitioner admittedly is a foreign national who entered India without valid travel documents. Her presence in India is therefore unauthorized. The State, being under a sovereign obligation to regulate entry and stay of foreign nationals, is competent to take steps for her detention pending

deportation in accordance with law. The record further shows that the 'X' and 'Y' are lodged in Nari Niketan. It is not as a punitive measure but for their protection, care and welfare. The alleged detainee is a young woman who had no guardian in India, was pregnant at the relevant time, and subsequently delivered a male child 'Y'. The protective custody in a welfare institution cannot, in such circumstances, be termed illegal detention. The Court also notes that deportation proceedings have already been initiated by the competent authorities in coordination with the concerned Ministries of the Government of India. Thus, the continued stay of 'X' and his minor son 'Y' in the protective home is only a temporary arrangement pending completion of lawful deportation formalities.

13 Further, the petitioner's acquittal in the criminal case in India does not confer any legal right upon him to seek custody of his wife or to question her protective stay, particularly when her nationality and immigration status remain undisputedly irregular and the State is lawfully proceeding towards her repatriation. Since the custody of the alleged detainee is neither unauthorized nor illegal but is in furtherance of her welfare and pending lawful deportation, no ground is made out for issuance of a writ of habeas corpus under Article 226 of the Constitution of India.

14 Accordingly, the writ petition is **dismissed**. No order as to costs.

Sd/-
(Ravindra Kumar Agrawal)
JUDGE

Sd/-
(Ramesh Sinha)
CHIEF JUSTICE

Anu / Amit

