



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL WRIT PETITION No.234/2026

Vikas s/o Vishwas Tayde : **PETITIONER**
Age : Adult, Occ. Dance Teacher,
R/o Chikhalgaon, Tq. Patur,
Dist. Akola, Maharashtra

VERSUS

1. State of Maharashtra, : **RESPONDENTS**
Through Superintendent Police, Akola,
District Akola
2. Vilas Thokne,
(Father of Detenue)
Age Adult, Occ. Agriculturist
3. Sandhya W/o Vilas Thokne
(Mother of the Detenue)
Both are R/o Near Shree Latiyaal
Bhawani Temple, Telhara, Tq. Telhara,
Dist. Akola
4. State of Maharashtra,
Through Police Station Officer, Telhara,
Tq. Telhara, Dist. Akola
5. State of Maharashtra,
Through Police Station Officer, Patur,
Tq. Patur, Dist. Akola
6. Gayatri W/o Vikas Tayade,
(Daughter of Vilas Thokne)
Aged about 22 years, Occ. Student,
R/o Near Shree Latiyaal Bhawani
Temple, Telhara, Tq. Telhara,
Dist. Akola

Mr. Syed Ateeb, Advocate for the petitioner
Mr. S.S. Doifoe, Addl.PP for the respondents - State
Mr. N.R. Tidke, Adv. for Respondent No.6

CORAM: URMILA JOSHI PHALKE AND
NIVEDITA P. MEHTA, JJ.

DATED : 15.04.2026



ORAL JUDGMENT (PER : URMILA JOSHI PHALKE, J.)

1. Rule. Rule made returnable forthwith. Heard finally with the consent of learned counsel for the parties.

2. By this writ petition, the petitioner is seeking writ of a habeas corpus directing the respondent No.1 to produce the respondent No. 6 i.e. Mrs. Gayatri Vikas Tayde, allegedly the wife of the petitioner before this Court and also seeks direction to set her at liberty and permit her to reside at a place of her choice in accordance with the free will.

3. The brief facts which are necessary for the disposal of the said petition is as under :

It is contended by the petitioner that he and detenue solemnized their marriage on 15.04.2024 at Chikalgaon Boudha Vihar according to the customary rights of Buddhism. After solemnization of the marriage, the petitioner and detenue started residing as husband and wife. The marriage of the petitioner and detenue is duly evidenced by a marriage certificate issued by the competent authority and also supported by the photographs of the marriage ceremony in presence of witnesses namely Piyush Mankar, Sangpal Tayade, Grampanchayat Member and other villagers. It is further contended by him that the parents of the detenue and



relatives opposed the said marriage and on the pretext of meeting her mother, they have called the detenue and thereafter the detenue never returned to join the company of the present petitioner and thus the parents of the detenue prevented her from joining the company and to meet and kept her under strict control. Due to continued obstruction and interference caused by the parents of the detenue, he has also issued legal notice on 24.02.2025. The said notice was received by her and after receipt of the notice also, she has not joined the company of the present petitioner. Therefore, the petitioner constrained to prefer this petition, seeking directions of this Court for setting her at liberty.

4. The respondent - State has strongly opposed the said application on the ground that the petitioner has already preferred an application for restitution of conjugal rights and the detenue has already replied the notice by stating that no such marriage was performed between her and the present petitioner. The present petitioner has taken disadvantage of the documents, which was along with him as she was learning the dance from him. It is further submitted that she has joined dance classes and on the pretext of preparing the list, the photographs are obtained and said photographs are misused. Therefore, the petition is not



maintainable and deserves to be dismissed. It is submitted that the petition seeking a writ of habeas corpus is not maintainable.

6. Before entering into the entitlement of the present petitioner to the claim relief, it is necessary to consider the guidelines issued by the Hon'ble Apex Court in the matter of Writ of habeas corpus. In the case of *Devu G. Nair Vs. The State of Kerala and others* reported in *2024(257) AIC 216*, wherein the Hon'ble Apex Court has issued the guidelines for the Courts dealing with habeas corpus petitions or petitions for police protection which are culminated as under :

"a. Habeas corpus petitions and petitions for protection filed by a partner, friend or a natal family member must be given a priority in listing and hearing before the court. A court must avoid adjourning the matter, or delays in the disposal of the case;

b. In evaluating the locus standi of a partner or friend, the court must not make a roving enquiry into the precise nature of the relationship between the Appellant and the person;

c. The effort must be to create an environment conducive for a free and uncoerced dialogue to ascertain the wishes of the corpus;

d. The court must ensure that the corpus is produced before the court and given the opportunity to interact with the judges in-person in chambers to ensure the privacy and safety of the detained or missing person. The court must conduct in-camera proceedings. The recording of the statement must be transcribed and the recording must be secured to ensure that it is not accessible to any other party;

e. The court must ensure that the wishes of the detained person is not unduly influenced by the Court, or the police, or



the natal family during the course of the proceedings. In particular, the court must ensure that the individuals(s) alleged to be detaining the individual against their volition are not present in the same environment as the detained or missing person. Similarly, in petitions seeking police protection from the natal family of the parties, the family must not be placed in the same environment as the Petitioners;

f. Upon securing the environment and inviting the detained or missing person in chambers, the court must make active efforts to put the detained or missing person at ease. The preferred name and pronouns of the detained or missing person may be asked. The person must be given a comfortable seating, access to drinking water and washroom. They must be allowed to take periodic breaks to collect themselves. The judge must adopt a friendly and compassionate demeanor and make all efforts to defuse any tension or discomfort. Courts must ensure that the detained or missing person faces no obstacles in being able to express their wishes to the court;

g. A court while dealing with the detained or missing person may ascertain the age of the detained or missing person. However, the minority of the detained or missing person must not be used, at the threshold, to dismiss a habeas corpus petition against illegal detention by a natal family;

h. The judges must showcase sincere empathy and compassion for the case of the detained or missing person. Social morality laden with homophobic or transphobic views or any personal predilection of the judge or sympathy for the natal family must be eschewed. The court must ensure that the law is followed in ascertaining the free will of the detained or missing person;

i. If a detained or missing person expresses their wish to not go back to the alleged detainer or the natal family, then the person must be released immediately without any further delay;

j. The court must acknowledge that some intimate partners may face social stigma and a neutral stand of the law would be detrimental to the fundamental freedoms of the Appellant. Therefore, a court while dealing with a petition for police protection by intimate partners on the grounds that they are a same sex, transgender, inter-faith or inter-caste couple must grant an ad-interim measure, such as immediately granting police protection to the Petitioners, before



establishing the threshold requirement of being at grave risk of violence and abuse. The protection granted to intimate partners must be with a view to maintain their privacy and dignity;

k. The Court shall not pass any directions for counselling or parental care when the corpus is produced before the Court. The role of the Court is limited to ascertaining the will of the person. The Court must not adopt counselling as a means of changing the mind of the Appellant, or the detained/missing person;

l. The Judge during the interaction with the corpus to ascertain their views must not attempt to change or influence the admission of the sexual orientation or gender identity of the Appellant or the corpus. The court must act swiftly against any queerphobic, transphobic, or otherwise derogatory conduct or remark by the alleged detainers, court staff, or lawyers; and

m. Sexual orientation and gender identity fall in a core zone of privacy of an individual. These identities are a matter of self-identification and no stigma or moral judgment must be imposed when dealing with cases involving parties from the LGBTQ+ community. Courts must exercise caution in passing any direction or making any comment which may be perceived as pejorative.”

7. The similar guidelines are reiterated by the Hon’ble Apex Court in the case of ***Somprabha Rana and others Vs. State of Madhya Pradesh in Criminal Appeal No. 3821/2020***, wherein the Hon’ble Apex Court has observed in para 6 that

“After having perused various decisions of this Court, the broad propositions of settled law on the point can be summarised as follows:

a. Writ of Habeas corpus is a prerogative writ. It is an extraordinary remedy. It is a discretionary remedy.

b. 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;



c. 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

d. 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."

8. Section 97 of the Code of Criminal Procedure deals with the power to direct the search for persons wrongfully confined, whereas Section 98 provides the procedure to compel the restoration of abducted females. In a situation where the husband seeks to assert that the wife without reasonable cause is requisite to return to her matrimonial home, it would be open for him to seek the remedy of restitution of conjugal rights under Section 9 of the Hindu Marriage Act, 1955. The recourse to the later remedy made is to sought where the detention does not amount to an offence and to the former. While invoking either of the said remedies or the issues relating to parts can be agitated or examined, a writ of habeas corpus may not be useful where facts are disputed or are not clearly established.

9. Thus the exercise of extra-ordinary jurisdiction for issuance of writ of habeas corpus would depend on the jurisdictional facts where the petitioner establishes a prima facie



case that the detention is unlawful, which apparently is to be demonstrated from the facts which are on record in the record of the detaining authority.

10. In view of the abovesaid guidelines, if the facts of the present case are taken into consideration though the petitioner has submitted that he has performed the marriage with the present detenue on 15.04.2024, but during interview in the chamber the detenue has specifically denied about performance of the marriage and it is her specific contention that no such marriage was performed by her with the present petitioner, however, the said marriage certificate is obtained by the petitioner with the help of the documents which were in his custody. Her further contention is that the photographs which are placed on record which are obtained by the petitioner under the pretext of preparing the list, she fairly admits that she was having love affair with the present petitioner, but she has flatly denied that she has performed marriage with the present petitioner. She has specifically stated that as no such marriage is performed between her and present petitioner she has already filed a suit for declaration that said marriage which is alleged by the petitioner be declared as null and void. After all paramount consideration is the will and wish of the detenue wherein she has specifically denied to join the company of the



present petitioner. In view of above that, the present petition is devoid of merits and liable to be dismissed. Accordingly, the petition is dismissed. No costs.

Rule is discharged.

(NIVEDITA P. MEHTA,J.)

(URMILA JOSHI PHALKE, J.)

MP Deshpande