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Regular

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

HCP 26/2026

HAFSA TAHIR TH.HER MOTHER

..... Petitioner(s)

Through: Mr. Bhat Khursheed, Advocate.

V/s

UNION TERRITORY OF J AND K AND OTHERS

..... Respondent(s)

Ms. Rekha Wagnoo, GA

Through: Mr. Ishfaq Bashir, Advocate.

Coram:

Hon'ble Mr. Justice Sanjay Dhar, Judge

ORDER

15.04.2026

1. The petitioner, through the medium of present petition is seeking a writ of Habeus Corpus against the private respondents for production of minor daughter of the petitioner.
2. Heard learned counsel for the petitioner and perused the material on record.
3. It appears that the petitioner happens to be mother of the minor girl namely "Hafsa Tahir" who was born out of her wedlock with one "Shri Tahir Ahmad Shah". It seems

that there was matrimonial discord between the parents of the minor girl and the issue landed before the court of Munsiff, Sogam. During the pendency of the suit, the parties entered into compromise before the Lok Adalat on 11.02.2023. As per the terms of the compromise, the marriage between the petitioner and her husband namely Shri Tariq Ahmad Sah was dissolved. Regarding custody of the minor girl, it was agreed by the parties that her custody will remain with the petitioner until she attains the age of seven years whereafter the custody of the minor was to be given to the father. It was also agreed that in case, the petitioner gets remarried, she shall hand over custody of minor girl to her father.

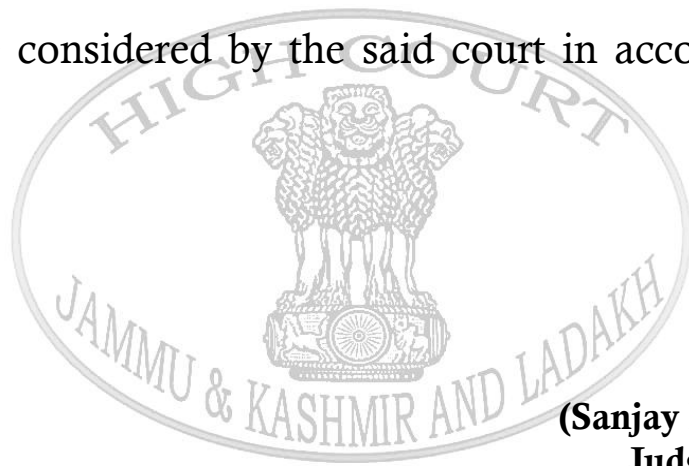
4. It seems that the petitioner remarried and this prompted the father of the girl family Shri Tahri Ahmad Shah to file an execution petition before the learned Munsiff, Sogam. In the said execution petition, an interim order came to be passed on 03.03.2026 whereby interim custody of the minor girl was given to her grandfather namely Abdul Khaliq Rather/respondent No. 5 herein. The interim

order is still in force and the execution petition is pending disposal before the court below.

5. The grievance of the petitioner is that the grandfather is not legally entitled to have custody of the minor girl in the presence of her parents. It has been contended that even in terms of the compromise arrived at between the parties before the Lok Adalat, custody of the minor girl cannot be handed over to the grandfather.
6. The merits of the aforesaid submission made by the petitioner can be well considered by the learned Munsiff Sogam during the proceedings of the execution petition. It would not be appropriate for this Court to render any opinion on this aspect of the matter. Since interim custody of the minor girl has been given to respondent No. 5 in terms of the interim order passed by the court below, as such the same cannot be termed as illegal, particularly when the petitioner has not thrown challenge to the said order.
7. This court while exercising its jurisdiction for issuance of writ of Habeus Corpus cannot, pass any order in respect

of custody of the minor girl when the Executing court is seized of the matter.

8. In view of the above, the petition is disposed of by permitting the petitioner to raise all the grounds that are available to her in law before the Executing Court, which shall be considered by the said court in accordance with law.



(Sanjay Dhar)
Judge

SRINAGAR
15.04.2026
Aasif