

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Habeas Corpus Petition No. 419/2025

Komal Sharma W/o Shubham Jaimini D/o Mukesh Kumar Sharma, aged about 32 Years, R/o Amritpuri Colony, Hindon City, District-Karauli, Rajasthan

-----Petitioner

Versus

1. State Of Rajasthan, Through Principal Secretary, Department Of Home, Government Of Rajasthan Government Secretariat, Jaipur.
2. Superintendent Of Police, Sawai Madhopur City, Rajasthan.
3. Station House Officer, Police Station Kotwali, Hindaun City, District Karauli, Rajasthan.
4. Dineshchand Jaimini S/o Late Shri Kedarlal Jaimini, Aged About 65 Years, R/o 52, In Front Of Ramleela Maidan, Sawai Madhopur City, Sawai Madhopur, Rajasthan, 322001
5. Santosh W/o Dineshchand Jaimini, Aged About 60 Years, R/o 52, In Front Of Ramleela Maidan, Sawai Madhopur City, Sawai Madhopur, Rajasthan, 322001
6. Shubham Jaimini S/o Dineshchand Jaimini, Aged About 34 Years, R/o In Front Of Ramleela Maidan, Sawai Madhopur City, Rajasthan 322001

-----Respondents

For Petitioner(s)	:	Mr. Pratush Choudhary
For Respondent(s)	:	Mr. Arvind Sharma with Ms. Pankaj Solanki and Ms. Manju Chouhan Mr. Rajesh Choudhary, GA cum AAG with Mr. Aman Agarwal, Mr. Shri Ram Dhakad, PP Mr. Vinod Sharma with Mr. Mahendra (CI) PS Hindon City, District Karauli

HON'BLE MR. JUSTICE MAHENDAR KUMAR GOYAL
HON'BLE MR. JUSTICE SAMEER JAIN

09/02/2026

This habeas corpus petition has been filed seeking custody of the master 'M.', petitioner's son.

Learned Government Advocate cum Additional Advocate General has submitted the status report dated 09.02.2026 furnished by SHO, Police Station Hindaun City, District Karauli.

The relevant facts in brief are that the petitioner married the respondent No. 6, Shri Shubham Jaimini on 18.02.2018 and master 'M.' was born on 24.10.2019. The petitioner as well as the respondent No. 6 are Government officers.

As per the petitioner's case, in the year 2025, when both of them were posted in Udaipur where master 'M.' was also studying, the respondent No. 6 obtained Transfer Certificate from the school without information to her and took him illegally to Sawai Madhopur to his grandparents house. It is averred in the petition that upon protest by her, she was allowed to converse with master 'M.' on mobile on few occasions. It is alleged that she received a call from master 'M.' from his tuition teacher's phone begging her to take him along. It is alleged that she apprehends that her son is not being taken care of properly. It is also averred that on 09.11.2025, she filed a complaint with the SHO, Police Station, Kotwali, Hindaun City, District Karauli alleging forcible detention of master 'M.' by his father as also by his grandparents.

In the aforesaid factual backdrop, it is prayed that the habeas corpus petition be allowed and custody of master 'M.' be handed over to the petitioner.

Per contra, the respondents No. 4 and 5 as also the respondent No. 6 have, in their separate reply, denying the allegations levelled in the petition, stated that master 'M.' is residing with them since 15.05.2025 with consent of the petitioner and on 12.07.2025, she herself has sent a copy of the transfer certificate to the respondent No. 6 based whereupon, he was admitted to Shalom English Secondary School, Sawai Madhopur on 16.07.2025. A copy of the screenshot of the WhatsApp message of the Transfer Certificate is enclosed with as Annexure-R/3. It is also averred that on 06.10.2025, she has lodged a complaint in the Court of learned Additional Chief Judicial Magistrate, Hindaun City against them under Sections 85, 316(2), 115(2) and 126(2) of the Bhartiya Nyaya Sanhita, 2023 which does not contain any allegation/averment of illegal detention of master 'M.'. It is averred that they have already filed a petition under Section 6, 8 and 13 of the Hindu Minority and Guardianship Act, 1956 (hereinafter referred to as 'the Act of 1956') in the learned Family Court, Sawai Madhopur seeking a declaration that the respondent No. 6 is natural guardian and is entitled to retain custody of master 'M.', wherein, notices were issued on 04.11.2025 which is pending consideration. It is, therefore, prayed that the petition be dismissed.

In rejoinder, it is stated that the respondent No. 4- father of the respondent No. 6 has executed the partition deed dated 24.06.2025 stating therein that he has ousted his son from his property alleging that he did not care his parents.

Reiterating the averments made in the habeas corpus petition, learned counsel for the petitioner submits that she was

having custody of master 'M.' since the time of his birth till July, 2025 when he was forcibly taken away by his father to the place of residence of his grandparents. He contends that the Transfer Certificate was obtained by the father despite her protest.

Inviting attention of this Court towards the partition deed dated 24.06.2025, learned counsel also contends that since, the respondent No. 6 has been ousted from the property rights by his father, custody of master 'M.' with the grandparents is rendered illegal. He, therefore, prayed that the habeas corpus petition be allowed and custody of master 'M.' be handed over to her. He, in support of his contentions, relied upon the judgment of Hon'ble Supreme Court in India in the case of **Vivek Kumar Chaturvedi & Ors. Vs. State of U.P. & Ors. : (2025) 4 SCC 342.**

Per contra, learned Government Advocate cum Additional Advocate General, inviting the attention of this Court to the status report dated 09.02.2026, submits that during investigation, it transpired that both; the petitioner as well as the respondent No. 6, were earlier posted at Mavli, District Udaipur and after transfer of the respondent No. 6 from Mavli to Dhariyawad, District Pratapgarh, with consent of the petitioner, TC of the master 'M.' was obtained on 02.07.2025 and he was admitted in Shalom English Secondary School, Sawai Madhopur.

Learned counsel for the respondents No. 4, 5 and 6, denying the allegations that the Transfer Certificate was obtained without information to the petitioner, stated that the same was obtained with her consent and thereafter, master 'M.' was admitted in Shalom English Secondary School at Sawai Madhopur. He further submits that master 'M.' is not in illegal detention rather, in

custody of his father and grand-parents. He, therefore, prayed for dismissal of the petition.

Heard. Considered.

From the pleadings of the parties and the material available on record, we are not satisfied that Transfer Certificate of master 'M.' was obtained by his father stealthy or despite protest of the petitioner. Indisputably, the same was obtained in the month of July, 2025 and as per the screenshot of the WhatsApp message sent by the petitioner to the respondent No. 6 placed on record as Annexure-R/3, genuineness of which is not doubted before us, it is apparent that its photo was forwarded by the petitioner herself to the respondent No. 6 on 12.07.2025. Further, we don't find any averment in the petition that it was issued by the St. Teresa's Senior Secondary School, Udaipur despite her protest. It is also revealed that the respondent No. 6 has filed an application under Sections 6, 8 and 13 of the Act of 1956 against the petitioner in learned Family Court, Sawai Madhopur on 03.11.2025 wherein, notice was issued on 04.11.2025. The instant petition has been filed on 14.11.2025 without any explanation as to why it was so delayed if master 'M.' is in illegal detention of the respondents No. 4 to 6 since July, 2025.

We have also gone through the FIR dated 06.10.2025 lodged by the petitioner at Police Station Hindaun, District Karauli wherein, except an averment that master 'M.' was forcibly taken to Sawai Madhopur, there is not a whisper of allegation that he is being illegally detained by the respondents. In conspectus of the aforesaid analysis, we are not convinced that it is a case of illegal detention of master 'M.' by the respondents No. 4 to 6.

Their Lordships have, in the case of **Nirmala Vs. Kulwant Singh & Ors.: Criminal Appeal No. 2194/2022** decided on **03.05.2024**, involving identical controversy, held as under:-

13. *This Court further held that in child custody matters, the ordinary remedy lies only under the Hindu Minority and Guardianship Act or the Guardians and Wards Act as the case may be. It has been held that there are significant differences between the enquiry under the Guardians and Wards Act and the exercise of powers by a writ court which is summary in nature. It has further been held that what is important is the welfare of the child. It has been further held that where the court is of the view that a detailed enquiry is required, the court may decline to exercise the extraordinary jurisdiction and direct the parties to approach the civil court.*

14. *In the facts of the said case, this Court found that the child being a minor, aged 1½ years, cannot express its intelligent preferences and in the facts and circumstances of said case, the father being the natural guardian was justified in invoking the extraordinary remedy seeking custody of the child under Article 226 of the Constitution of India.*

15. *The same legal position has been reiterated by this Court in the cases of **Jose Antonio Zalba Diez Del Corral alias Jose Antonio Zalba** (supra) and **Rajeswari Chandrasekar Ganesh vs. State of Tamil Nadu and others**¹⁸.*

16. *It can thus be seen 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. As to whether the writ court should exercise its extraordinary jurisdiction under Article 226 of the Constitution of India or not will depend on the facts and circumstances of each case.*

17. *In the present case, it will be relevant to refer to the case pleaded by the respondent-father. The learned Single Judge of the High Court himself recorded the submissions of the respondent-father in the impugned judgment as under:*

"He further submitted that when the wife of the petitioner died, then at that point of time due

to psychological and social reasons, the child was sent to the maternal grand-parents which was the need of the hour at that time since the petitioner himself was also under psychological stress and a family environment was required for the child especially from the grand-parents and that was the sole reason as to why the son of the petitioner who at that point of time was of the age of 5 years was sent to them to be taken care of."

18. *It can thus be clearly seen that according to the case of the respondent-father himself, in the peculiar facts and circumstances of the case, a family environment was required for the child especially from the grandparents and that he had placed the custody of the minor child with the appellant- grandmother for taking his care. It can thus clearly be seen that it is not a case that the appellant-grandmother had illegally kept the custody of the minor child. It is the respondent-father who had placed the custody of the minor child with the appellant- grandmother.*

19. *We are of the considered view that in the peculiar facts and circumstances of the case, the High Court ought not to have entertained the habeas corpus petition under Article 226 of the Constitution of India. Since a detailed enquiry including the welfare of the minor child and his preference would have been involved, such an exercise could be done only in a proceeding under the provisions of the Guardians and Wards Act, 1890.*

20. *In any case, we are of the view that compelling a minor child at the tender age of 7 years to withdraw from the custody of his grandparents with whom he has been living for the last about 5 years may cause psychological disturbances.*

21. *In our view, an exercise for promoting the bond between the minor child and the respondent-father in a graded manner and thereafter considering the grant of custody of minor child to the respondent-father taking into consideration the paramount interest of the welfare of the minor child would be required to be done in the present matter. Such an exercise would not be permissible in the extraordinary jurisdiction under Article 226 of the Constitution of India.*

22. *We therefore find that the High Court was not justified in entertaining the petition under Article 226 of the Constitution of India. The impugned judgment and*

order of the Punjab and Haryana dated 23rd August 2022 in CRWP-1485-2021 (O&M) is quashed and set aside. The writ petition filed by the respondent- father is dismissed.

23. However, we clarify that no observation in the impugned judgment and order and in the present judgment and order would be binding on the proceedings if taken by the respondent- father under the Guardians and Wards Act, 1890 and the proceedings would be decided in accordance with law on its own merits.

24. In the light of the aforesaid, we direct that in the event the respondent-father files an application under the provisions of the Guardians and Wards Act, 1890, the competent Court shall decide the same expeditiously. We further direct that in the event such an application is made, an order at least with regard to visitation rights would be passed within a period of 4 weeks from the making of such an application.

25. The appeal is allowed in the above terms. Pending applications, if any, shall stand disposed of.

As already observed in the instant case as well that the respondent No. 6 has already filed an application seeking declaration as well as custody of master 'M.' under the provisions of the Act of 1956 which is pending consideration before the learned Family Judge, Sawai Madhopur. Therefore also, we are not inclined to entertain this habeas corpus petition.

We are informed at the Bar that reply on behest of the petitioner to the aforesaid application is yet to be filed.

Learned counsel, on instructions, submits that the same shall be filed within a period of four weeks from today.

We deem it just and proper to request the learned Family Court Judge, Sawai Madhopur to dispose of the same expeditiously. Needless to say that observations made by us hereinabove are only for the purpose of disposal of the habeas

corpus petition and shall not cause prejudice to the merit of the pending application before the learned Family Court.

We are in respectful agreement with the law laid down by the Hon'ble Supreme Court in the case of **Vivek Kumar Chaturvedi (Supra)**, however, having been rendered in different facts and circumstances, the same is not applicable in the instant case.

At this stage, learned counsel for the petitioner prays for visiting right till disposal of the application by the learned Family Court, Sawai Madhopur.

Prayer is not opposed.

With consensus, we direct that the petitioner shall have visiting right with the boy master 'M.' on every Sunday from 10:00 AM till 05:00 PM at Sawai Madhopur at the place of her choice. She is also permitted to have telephonic conversation with master 'M.' for about fifteen minutes everyday in the fashion so as not to disturb his regular studies.

This habeas corpus petition is disposed of in aforesaid terms. Pending application(s), if any, stands disposed of.

(SAMEER JAIN),J

(MAHENDAR KUMAR GOYAL),J

CHANDAN/PUNEET/1