



2026:AHC:173602

HIGH COURT OF JUDICATURE AT ALLAHABAD

HABEAS CORPUS WRIT PETITION No. - 1045 of 2026

Kapil Deo Nishad And 3 Others

.....Petitioner(s)

Versus

State Of U.P. And 3 Others

.....Respondent(s)

Counsel for Petitioner(s)	: Gyanamati Bind, Rajesh Yadav, Ram Nayan Sahani
Counsel for Respondent(s)	: G.A.

Court No. - 73

HON'BLE SANDEEP JAIN, J.

By order dated 04.08.2026, the State was directed to produce the corpus, namely, Vandana Nishad, Beauty and Prabhat Nishad, who are respectively the wife and minor children of the petitioner, Kapil Deo Nishad.

Pursuant to the aforesaid order, the corpus were produced before this Court. This Court interacted with the corpus, Vandana Nishad, who stated that, on account of the cruelty and harassment allegedly meted out to her in her matrimonial home, she is not willing to reside with her husband, the petitioner, Kapil Deo Nishad. She, however, admitted that the minor corpus, Beauty and Prabhat Nishad, are presently in her custody. This Court made an earnest endeavour to persuade her to resume cohabitation with the petitioner and to reside with him in the matrimonial home; however, she categorically declined to do so.

This Court also interacted with the petitioner, Kapil Deo Nishad. He refuted the allegations of cruelty and harassment levelled against him by his estranged wife and submitted that he is ready and willing to reside with her and the minor children in the matrimonial home and to discharge all his responsibilities towards them. However, from the interaction before this Court, it is apparent that the estranged wife is unwilling to resume matrimonial cohabitation with the petitioner.

This Court thereafter interacted with the minor corpus, Beauty, aged about 13 years, who is studying in Class VII. She stated that she has been

residing with her mother, Vandana Nishad, and is comfortable and secure in her company. She further stated that her maternal grandparents and maternal aunt are also residing with them. She categorically expressed her unwillingness to reside with the petitioner, Kapil Deo Nishad.

This Court also interacted with the minor corpus, Prabhat Nishad, aged about 8 years, who is studying in Class II. He stated that he is comfortable in the company of his mother and maternal grandparents and expressed his unwillingness to reside with his father.

It is true that the wishes expressed by the minor corpus, particularly having regard to their age and understanding, deserve due consideration. However, in matters relating to the custody of minors, the paramount consideration is their welfare and best interest, and not merely the preference expressed by them or the competing claims of the parents. The Court is required to examine the overall circumstances and to ensure that the arrangement made for the custody of the minors secures their physical, emotional, educational and financial well-being.

In the present case, the corpus, Vandana Nishad, has admitted that she is not gainfully employed and has no independent source of income. She has also not filed any affidavit indicating the means available with her for securing the education, maintenance and overall welfare of the minor corpus. On the other hand, the petitioner, Kapil Deo Nishad, is gainfully employed and appears to have a stable source of income and the means to provide for the education, maintenance and other legitimate needs of the minor children.

Having regard to the totality of the circumstances, this Court is of the considered opinion that, although the minor corpus have expressed their unwillingness to reside with their father, their welfare cannot be determined solely on the basis of such preference. The material presently available before the Court indicates that the petitioner is better placed financially and otherwise to secure the education, maintenance and overall welfare of the minor corpus. At the same time, the Court cannot lose sight of the importance of preserving the emotional bond between the minor children and their mother.

Accordingly, in the paramount interest and welfare of the minor corpus, this Court considers it appropriate to entrust their custody to the petitioner, Kapil Deo Nishad. However, such custody shall not operate to deprive the mother of her relationship and continuing emotional bond with the children. The respondent, Vandana Nishad, shall, therefore, have the following visitation and interaction rights:

- (i) She shall be entitled to interact with the minor corpus every day between 6:00 p.m. and 9:00 p.m. through video conferencing, at a mutually convenient time within the aforesaid period.
- (ii) She shall also be at liberty to meet the minor corpus personally, as and when she so desires, by visiting the residence of the petitioner, provided such visitation is conducted peacefully and without causing any disturbance to the education, routine or well-being of the minor children.
- (iii) The petitioner shall extend all reasonable cooperation in facilitating the aforesaid visitation and video interaction and shall not create any unnecessary obstruction therein.

The State authorities concerned shall ensure that the aforesaid arrangement is implemented peacefully and that no unnecessary interference or obstruction is caused by either party.

With the aforesaid directions, the present petition is disposed of.

(Sandeep Jain,J.)

August 18, 2026

Himanshu