



2026:AHC-LKO:21066

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

HABEAS CORPUS WRIT PETITION No. - 64 of 2026

Baby Alina Bano Thru. Her Father Mohd. Azeem
And Another

.....Petitioner(s)

Versus

State Of U.P. Thru. Its Prin. Secy. Home Lko. And 4
Others

.....Respondent(s)

Counsel for Petitioner(s) : D.P. Dutt Tiwari, Anil Kumar Singh,
Mayank Singh
Counsel for Respondent(s) : G.A., Navneet Kumar Mishra

Court No. - 14

HON'BLE SUBHASH VIDYARTHI, J.

1. Heard Shri D.P. Dutt Tiwari, the learned counsel for the petitioner, Shri G.D. Bhatt, the learned Additional Chief Standing Counsel for the State of U.P. and Shri Navneet Kumar Mishra, the learned counsel for the respondent Nos.4 and 5.

2. This writ petition has been filed for issuance of a writ of Habeas Corpus by minor children Baby Alina Bano, aged about 10 years and Master Hasnain, aged about 11 years through their father Mohd. Azeem alleging that the children are in illegal detention of their maternal grand-parents- the opposite party Nos.4 and 5 since the death of mother of the children on 30.10.2025.

3. Even as per the pleadings made in the writ petition, children are residing with their maternal grand-parents since before death of their mother on 30.10.2025. This petition has been filed on 19.02.2026. It is not a case of sudden and illegal deprivation of custody of the children warranting entertaining a writ petition seeking issuance of a writ of Habeas Corpus.

4. The custody of children is a complex issue which is to be decided keeping in view the welfare of the children. Welfare of the children can

only be decided after giving an opportunity to the parties to lead evidence.

5. In **Tejaswini Gaud v. Shekhar Jagdish Prasad Tewari**: (2019) 7 SCC 42 the Hon'ble Supreme Court considered various precedents on the point and held that: -

“19. Habeas corpus proceedings is not to justify or examine the legality of the custody. Habeas corpus proceedings is a medium through which the custody of the child is addressed to the discretion of the Court. Habeas corpus is a prerogative writ which is an extraordinary remedy and the writ is issued where in the circumstances of the particular case, ordinary remedy provided by the law is either not available or is ineffective; otherwise a writ will not be issued. In child custody matters, the power of the High Court in granting the writ is qualified only in cases where the detention of a minor by a person who is not entitled to his legal custody. In view of the pronouncement on the issue in question by the Supreme Court and the High Courts, in our view, in child custody matters, the writ of habeas corpus is maintainable where it is proved that the detention of a minor child by a parent or others was illegal and without any authority of law.

20. 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. In cases arising out of the proceedings under the Guardians and Wards Act, the jurisdiction of the court is determined by whether the minor ordinarily resides within the area on which the court exercises such jurisdiction. 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. What is important is the welfare of the child. In the writ court, rights are determined only on the basis of affidavits. 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. It is only in exceptional cases, the rights of the parties to the custody of the minor will be determined in exercise of extraordinary jurisdiction on a petition for habeas corpus.”

6. The aforesaid view has been followed and reiterated in **Nirmala v. Kulwant Singh**: (2024) 10 SCC 595, in which the Hon'ble Supreme Court held that: -

“27. ...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.”

7. In **Nirmala v. Kulwant Singh** (supra), the Hon'ble Supreme Court

further held that: -

“29. 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.

30. 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.

31. 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.”

8. I have interacted with the children privately in my chamber. The children appear to be quite intelligent and both of them categorically expressed unwillingness to live with their father. They have leveled very serious allegations against their father and have expressed apprehensions in case they are made to live with their father, but this Court is refraining from mentioning all those averments in this order so that the same may not prejudice adjudication of the issue of custody of children by the competent Court, after giving opportunity to adduce evidence in support of their respective claims.

9. Accordingly, the writ petition is **dismissed** leaving it open for the petitioner to file a regular suit for claiming custody of the children before appropriate Court.

March 24, 2026

-Amit K-

(Subhash Vidyarthi,J.)