



2026:AHC-LKO:22193

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

HABEAS CORPUS WRIT PETITION No. - 72 of 2026

Om Mishra (Minor) Thru. His Grandmother Vimla
Mishra

.....Petitioner(s)

Versus

State Of U.P. Thru. Secy. Home Lko. And 3 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Sanjay Kumar Singh
Counsel for Respondent(s)	:	G.A., Anurag Singh

Court No. - 14

HON'BLE SUBHASH VIDYARTHI, J.

1. Heard Shri Sanjay Kumar Singh, the learned counsel for the petitioner, Shri Mayank Sinha, the learned AGA for the State and Shri Anurag Singh, the learned counsel for the opposite party No.4.

2. The instant petition has been filed by Master Om Mishra son of Bhupendra Kumar Mishra, through his grand-father Shri Vijay Kumar Mishra and grand-mother Smt. Vimla Mishra seeking issuance of a writ of habeas corpus commanding the opposite party No.4- Smt. Sadhna, wife of Bhupendra Kumar Mishra, mother of the child, to produced the child Om Mishra before this Court and to allow visitation rights to the grand-parents.

3. It has been stated in the writ petition that father of the child- Bhupendra Kumar Mishra is being treated for psychiatric disorder in King George Medical University, Lucknow and, therefore, the burden of care of detenue Om Mishra has been shifted upon the shoulders of the grand-parents of the child.

4. Shri Bhupender Kumar Mishra, father of the child, got married to the opposite party No.4- Smt. Sadhna Mishra, on 01.02.2017. Out of the wedlock, Master Om Mishra was born on 30.11.2019. It has been stated in the petition that due to some family disputes, the opposite party No.4 left her matrimonial home on 22.11.2023. On 24.11.2023, she submitted a complaint before Mahila Thana levelling allegations against all the family members. Father of the child has also submitted a complaint against the opposite party No.4 on 05.12.2023. The mother of the child thereafter filed a complaint

under Section 12 of the Protection of Women from Domestic Violence Act in the Court of A.C.J.M., Room No.29, Lucknow, which has been registered as Complaint No.1947 of 2024. The opposite party no.4 has also filed an application under Section 125 Cr.P.C/144 B.N.S.S.

5. On the basis of instructions provided by the police, the learned AGA has submitted that the opposite party No.5 has lodged an FIR bearing Case No.58 of 2024 in Police Station- Ashiyana, Lucknow for offences under Section 498-A, 323, 504, 506 IPC and 3/4 of Dowry Prohibition Act against her husband Bhupendra Kumar Mishra and five other persons. The minor child is living with his mother. His mother has got him admitted to a school. The mother is taking care of the welfare of the child. From the facts stated in the instructions provided to the learned AGA, it appears that no case of illegal detention of the child is made out.

6. The opposite party No.4 has filed a counter affidavit stating that she was ill-treated for pressing the demand of dowry by her husband and his family members regarding which she has lodged the FIR No.58 of 2024 at Police Station- Ashiyana, District- Lucknow. Thereafter, one Sheela Pandey has filed an application under Section 156(3) Cr.P.C. on 06.05.2024 against the opposite party No.4 and her two brothers whereupon a Complaint Case No.21623 of 2025 has been registered in which the learned Additional Civil Judge (S.D.), Court No.2 /ACJM, Sitapur has passed an order dated 13.05.2025 summoning the opposite party No.4 for facing the trial for offences under Sections 379, 504, 506 IPC and her brothers have been summoned to face trial for offences under Section 354, 379, 504, 506 IPC. The learned counsel for the opposite party No.4 has submitted that this has been done at the behest of the husband of the opposite party no.4 and her family members.

7. Learned counsel for the opposite party No.4 has submitted that the child is living happily with his mother, who is a natural guardian and the child is not in illegal detention.

8. The pleadings made in the writ petition itself do not make out a case of illegal detention of the child. The facts appear from the material available on record indicate that because of a matrimonial dispute, the opposite party no.4 has been ousted from her matrimonial home and she is keeping her minor son with her which is not an illegal detention of the child.

9. 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."

10. 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."

11. 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."

12. The custody of children is a complex issue which is to be decided keeping in view the welfare of the children. The custody of a minor child, who has constantly been residing with his mother, cannot be disturbed without a detailed examination of facts and evidence relating to the welfare of the child. Welfare of the child can only be decided after giving an opportunity to the parties to lead evidence.

10. Accordingly, in absence of a case of illegal detention of the child having been made out. 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 30, 2026

-Amit K-

(Subhash Vidyarthi,J.)