



2026:AHC-LKO:21506

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

HABEAS CORPUS WRIT PETITION No. - 313 of 2025

Master Ammu Verma Thru. His Mother Mrs.
Anupma Gautam

.....Petitioner(s)

Versus

State Of U.P. Thru. Prin. Secy. Home Lko And 5
Others

.....Respondent(s)

Counsel for Petitioner(s)	: Askari Husain
Counsel for Respondent(s)	: G.A., Desh Raj Singh, Kunwar Sushant Prakash

Court No. - 14

HON'BLE SUBHASH VIDYARTHI, J.

1. Heard Sri Askari Husain, the learned counsel for the petitioner, Sri Yogesh Kumar Singh, the learned AGA-I for the State of U.P. and Sri Bajahul Quamar Siddiqui, the learned counsel for the opposite party no. 3.
2. The instant Writ Petition seeking issuance of a writ of Habeas Corpus has been filed by Master Ammu Verma aged 2 years, son of Sri Ajay Kirti Verma through his mother Smt. Anupama Gautam alleging that the minor petitioner has been illegally detained by his father Ajay Kirti Verma (opposite party no. 3). It has been stated in the Writ Petition that Smt. Anupama Gautam married the opposite party no. 3-Ajay Kirti Verma on 26.02.2020. The petitioner was living with his mother till 24.07.2025 on which date the opposite party no. 3 forcibly took away the child from the custody of the mother, who is the natural guardian of the child.
3. An FIR No. 152/2025 has been lodged in this regard at Police Station Talkatora, District Lucknow West (Commissionerate Lucknow), under Sections 333, 152(2), 352, 351(2) BNS, 2023 against the opposite party no. 3 and three unknown persons.
4. The disputes between the parties were referred to the Mediation and Conciliation Center of this Court by means of an order dated 03.09.2025 and the Mediation Center has submitted a report dated 31.10.2025 stating that the mediation proceedings have completed but the parties could not

arrive at an settlement.

5. Thereafter the opposite party no. 3 filed a counter affidavit dated 05.01.2026 after serving its copy on the learned counsel for the petitioner. It has inter alia been stated in the counter affidavit that two children were born out of the wedlock between the parents of the child but the Habeas Corpus Petition filed through the mother of the child does not disclose the existence of the second child of the parties. The counter affidavit states that the opposite party no. 3 had withdrawn cash amounting to Rs. 7,70,000/- from the bank on 30.06.2025 and the mother of the child had eloped along with this cash and jewelry regarding which the opposite party no. 3 has lodged a missing report on 01.07.2025. Acting upon the missing person's report, the Police tracked the mobile location of the mother of the child at Nainital. The Police went there and recovered the missing articles from the possession of the mother of the child. Thereafter the parties had entered into a compromise dated 10.07.2025 before Mahila Ayog wherein they agreed to live amicably and peacefully.

6. On 15.07.2025, the mother of the child had gone away with the son, for a period of three days after signing a written declaration but thereafter she did not return home. It is stated in the counter affidavit that when the mother of the child did not return the son of the parties, the opposite party no. 3 approached the police. With the intervention of the police, the mother returned the custody of the son to the opposite party no. 3 on 24.07.2025 and thereafter she has filed the writ petition on false allegations. The opposite party no. 3 has lodged an FIR No. 780/2025 at Police Station Para, District Lucknow West (Commissionerate Lucknow) against Anupama Gautam and 4-4 unknown persons for offenses under Sections 191(2), 115(2), 352 & 351(3) BNS, 2023.

7. The petitioner has not filed any rejoinder affidavit refuting the correctness of the averments made in the counter affidavit.

8. From the aforesaid facts, it appears that there are serious disputes between the parties. The parties have one daughter aged 5 years and one son aged 2.5 years. The daughter is admittedly living with her father-opposite party no. 3 and the mother of the children has not disclosed this fact in the Writ Petition and she has not made any efforts to claim custody of the daughter.

9. The allegations and counter allegations have been leveled by the parties against each other in the writ petition and in the counter affidavit. Although the allegations leveled in the writ petition have been refuted in the counter affidavit filed by the opposite party no. 3, the allegations leveled in the counter affidavit have not been refuted by the petitioner by filing a rejoinder affidavit.

10. 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.

11. 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.”

12. The aforesaid view has been followed and reiterated in **Nirmala v. Kulwant Singh**: (2024) 10 SCC 595, wherein the Hon’ble Supreme Court further 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.”

13. The learned counsel for the opposite parties no. 3 submits that the opposite party no. 3 has filed a suit bearing Case No. 2778/2025 titled *Ajay Kirti Verma v. Smt. Anupama Gautam*, under Section 9 of the Hindu Marriage Act, 1955, which is pending in the court of Additional Principal Judge-IV, Family Court, Lucknow and the next date fixed in the case is 20.04.2026.

14. The learned counsel for the petitioner states that the petitioner has not received summons of the aforesaid case.

15. Keeping in view the facts and circumstances of the case noticed above, it would be appropriate that the issue of custody is also decided either under Section 26 of the Hindu Marriage Act, 1955 in the suit which is already pending or the petitioner may file any other appropriate proceedings before the Family Court and the question of welfare of the children cannot be decided without taking evidence, which cannot be done by this Court while deciding the writ of Habeas Corpus.

16. On the last date, this Court had sought report from cyber cell regarding some objectionable material posted by the opposite party no. 3 on social media. The learned AGA states that the offending material has been taken down and further investigation in the matter is going on. The scope of the present writ petition was regarding custody of the minor petitioner and in case the petitioner has any other grievance, she can seek redressal of taking recourse to the process of law.

17. In view of the foregoing discussion, the writ petition seeking issuance of writ of Habeas Corpus is **dismissed** leaving it open for the parties to get

the issue of custody of minor petitioner adjudicated by the Family Court in appropriate proceedings.

(Subhash Vidyarthi,J.)

March 25, 2026

Pradeep/-