

Karnataka High Court

Mahesh D. Yatnalli vs The State Of Karnataka on 23 May, 2023

Bench: Alok Aradhe, Anant Ramanath Hegde

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WPHC No. 34 of 2023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23rd DAY OF MAY, 2023

PRESENT

THE HON'BLE MR. JUSTICE ALOK ARADHE

AND

THE HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

W.P.H.C. NO.34 OF 2023

BETWEEN:

MAHESH D. YATNALLI,  
S/O DEVENDRAPPA,  
AGED ABOUT 49 YEARS,  
R/AT #202, "KAUTIK" SHIVA RESIDENCY,  
24TH MAIN END,

Digitally  
signed by  
RUPA V  
Location:  
High Court  
of  
Karnataka

VINAYAKA NAGAR ROAD,  
NEAR BIG BAZAAR,

J.P NAGAR 5TH PHASE,  
PUTTENHALLI,

BENGALURU-560078.

...PETITIONER

(BY SRI. K.B MONESH KUMAR ADV., FOR  
SRI. VIJETHA. R. NAIK ADV., FOR PETITIONER (P/H)

AND:

1. THE STATE OF KARNATAKA  
THROUGH HOME DEPARTMENT  
GOVERNMENT OF KARNATAKA  
2ND FLOOR, VIDHANA SOUDHA  
BENGALURU-560 001.  
REP. BY ITS ADDL. CHIEF SECRETARY
2. THE COMMISSIONER OF POLICE  
BENGALURU CITY

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KARNATAKA STATE POLICE  
BENGALURU-560 001.

3. THE INSPECTOR OF POLICE  
MICO LAYOUT POLICE  
KARNATAKA STATE POLICE  
BENGALURU-560 001.
4. R. SUJATHA @ SARASWATHI,  
D/O SRI RAMACHANDRAN,  
AGED ABOUT 47 YEARS,  
R/AT FLAT NO. G01,  
MANAR MERLYN APARTMENT,  
SUNSHINE COLONY 14TH MAIN,  
12TH 'A' CROSS, BTM 2ND STAGE,  
BENGALURU-560076

...RESPONDENTS

(BY SRI. R.A.DEVANAND ADV., FOR  
SRI. SHASHIDHAR BELAGUMBA ADV., FOR R4(P/H)  
SRI. THEJESH. P HCGP FOR R1 TO R3(P/H)

THIS WPHC IS FILED UNDER ARTICLE 226 OF THE  
CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT, ORDER  
OR DIRECTION OR ANY OTHER WRIT IN THE NATURE OF  
HABEAS CORPUS DIRECTING THE RESPONDENT NOS.1 TO 3  
TO SEARCH AND PRODUCE THE SON OF THE PETITIONER BY  
NAME KAUTHIK IYER YATNALLI BEFORE THIS HON'BLE COURT  
AND HAND IT OVER TO THE CUSTODY OF THE PETITIONER, IN  
THE INTEREST OF JUSTICE. AND ETC.

THIS PETITION COMING ON FOR ORDERS, THIS DAY,  
ALOK ARADHE J., MADE THE FOLLOWING:

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ORDER

Mr.K.B.Monesh Kumar, learned counsel for the petitioner.

Mr.R.A.Devanand, learned counsel along with Mr.Shashidhar Belagumba, learned counsel for the respondent No.4.

Master Kautik Iyer Yatnalli along with respondent No.4 is present before this Court.

This petition has been filed seeking a writ of Habeas Corpus to produce the minor son of the parties namely Kautik Iyer Yatnalli (hereinafter referred to as 'the son') before this Court.

2. Facts giving rise to filing of this petition briefly stated are that petitioner and respondent No.4 were married on 28.02.2011. From the wedlock, son was born to them on 10.12.2011. On account of matrimonial disputes, the parties did not stay together WPHC No. 34 of 2023 beyond 2014. It appears that respondent No.4 had initiated a proceeding under Section 125 of the Criminal Procedure Code, 1973 seeking maintenance for herself and the son which was decided by an order dated 22.02.2022. Against the aforesaid order, a revision petition namely RPF No.104/2022, was preferred before this Court. In the said proceeding, the petitioner as well as respondent No.4 arrived at an amicable settlement. Admittedly, under the aforesaid compromise, respondent No.4 was appointed as guardian of son whereas petitioner namely the father of son was granted visitation rights during weekends as well as custody of child during Summer and Winter Vacations.

3. It is also not in dispute, that, in compliance of the compromise arrived at between the parties in the month of December 2022, the custody of son was WPHC No. 34 of 2023 handed over to the petitioner and the son spent approximately 12 days with the petitioner.

4. However, it is the case of the petitioner that he went during one of the weekends in the month of January 2023 to visit the son but was denied access to the son and despite commencement of the Summer Vacation of the son w.e.f. 25.03.2023, the custody of the son was not handed over to him as per the terms of the compromise arrived at between the petitioner and respondent No.4. Thereafter, petitioner has sent e-mails to the respondent No.4. However, no response was received to the e-mails and the petitioner was denied any sort of access to the son. Thereupon, the petitioner filed this petition seeking a writ of Habeas Corpus on 19.04.2023. In the aforesaid factual background, this petition arises for our consideration.

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5. Learned counsel for the petitioner submitted that petitioner is employed as a Senior Manager in Hindustan Aeronautics Limited and is entitled to access to the son in view of compromise arrived at between the parties. Our attention has also been invited to the photographs produced before us and it is contended that those photographs have been taken in the month of March 2017 where son seems to be comfortable with the petitioner. It is also submitted that the petitioner has already applied for grant of leave and in case an opportunity is granted to the petitioner to spend sometime

with the son for such period as this Court may deem fit, the petitioner shall obtain leave and shall be with his son all the time. It is also stated that the petitioner will ensure that his mother Smt. Anasuya and his sister Jyothi will also remain present during the period in which the son stays with the petitioner. It is also submitted that a writ of Habeas Corpus, in the fact situation of the case, is maintainable. In support of WPHC No. 34 of 2023 aforesaid submission, reliance has been placed on the decision of the Hon'ble Supreme Court in 'RAJESWARI CHANDRASEKAR GANESH Vs. STATE OF TAMIL NADU & OTHERS', 2022 SCC ONLINE SC 885.

6. On the other hand, learned counsel for the respondent No.4 submitted that the petitioner has not placed on record the leave grant certificate and no leave has been granted to him. It is further submitted that the petitioner is alone and he would not be able to pay attention to the son who is a patient of epilepsy. It is further submitted that this Court may interview the son. It is also contended that the instant case is not a case of illegal detention as the son is in the custody of the mother and in case the terms and conditions of the compromise arrived at between the parties have been breached, the petitioner is at liberty to initiate the proceedings for contempt of this Court. It is pointed out that the petitioner has already resorted to the remedy of WPHC No. 34 of 2023 filing a petition for non-compliance of the compromise recorded by this Court. It is also urged that only in case of an infant, a writ of Habeas Corpus is maintainable in case the child is in illegal custody. In support of aforesaid submission, reliance has been placed on the decision of Hon'ble Supreme Court in 'KANU SANYAL Vs. DISTRICT MAGISTRATE, DARJEELING AND OTHERS' (1973) 2 SCC 674 AND 'GOHAR BEGUM Vs. SUGGI ALIAS NAZMA BEGUM AND ORS.' AIR 1960 SC

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7. We have considered the submissions made on both sides and have perused the record. The issue with regard to maintainability of a writ of Habeas Corpus at the instance of one of the parent is no longer res integra and has been answered by the Hon'ble Supreme Court in 'YASHITA SAHU Vs. STATE OF RAJASTHAN' (2020) 3 SCC 67. In paragraph 10 of the aforesaid judgment, it has been held as under:

WPHC No. 34 of 2023 "10. It is too late in the day to urge that a writ of habeas corpus is not maintainable if the child is in the custody of another parent. The law in this regard has developed a lot over a period of time but now it is a settled position that the court can invoke its extraordinary writ jurisdiction for the best interest of the child. This has been done in Elizabeth Dinshaw vs. Arvand M. Dinshaw & Ors. (1987) 1 SCC 42, Nithya Anand Raghavan vs. State (NCT of Delhi) & Anr. (2017) 8 SCC 454 and Lahari Sakhamuri vs. Sobhan Kodali (2019) 7 SCC 311 among others. In all these cases the writ petitions were entertained. Therefore, we reject the contention of the appellant wife that the writ petition before the High Court of Rajasthan was not maintainable."

8. In view of aforesaid enunciation of law, it is axiomatic that in case the child is in custody of one of the parent, writ of Habeas Corpus is maintainable. In the instant case, we are conscious of the fact that the

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WPHC No. 34 of 2023 son is in the custody of the mother. However, the fact remains that the petitioner and the respondent No.4 had entered into a compromise and under the compromise, the petitioner is entitled to visit the son during weekends and is entitled to his custody during Summer as well as Winter Vacations. In the instant case, admittedly the petitioner has been deprived access to the son during the Summer Vacation. Therefore, in the fact situation of the case, the writ of Habeas Corpus is held to be maintainable.

9. In case of KANU SANYA supra, a Constitution Bench of the Hon'ble Supreme Court has traced the development of a writ of Habeas Corpus. It is pertinent to note that in RAJESWARI CHANDRASEKAR GANESH, supra, the Hon'ble Supreme Court took note of the law laid down by it in KANU SANYA'S case and has held that writ of Habeas Corpus is maintainable in case the child is in custody of one of the parents.

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WPHC No. 34 of 2023 Similarly in GOHAR BEGUM, supra, the Hon'ble Supreme Court dealt with the claim of a Muslim mother who stayed off her minor daughter. The minor daughter was not in custody of either of the parents. Therefore, the ratio of the decision of GOHAR BEGUM'S case, supra has no application to the facts of the case.

10. At this stage, we also take note of the report submitted by Dr.S.R.Lakshmipathy, M.D.(Pediatrics), stating that on account of medication given to the son, he is alert and interactive and does not suffer from any deficits presently and is reasonably good in communication.

11. We have also interacted with the son namely Master Kautik Iyer Yatnalli in the Chambers. Upon interaction, the son disclosed that he likes his grandmother. Therefore, during his stay with the petitioner, it is all the more necessary that a congenial

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WPHC No. 34 of 2023 atmosphere remains in the house of the petitioner where the son can feel comfortable.

12. It is well settled in law that the concept of guardianship of a ward is essentially different from custody of the ward. The Court has to ensure that sufficient visitation rights to a parent who is not given child's custody should be granted so that the child may not lose social, physical and psychological contact with the parent. The parent who is denied the custody of the child should have access to the child specially when both parents live in same city. The parents under an obligation to provide for an environment which is reasonably conducive to the development of the child. It is in the best interest of the child to have parental care of both the parents if not joint then atleast separate. In the instant case, parties have arrived at a settlement with regard to guardianship and custody of the son. We, therefore, see no reason as to why respondent No.4

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WPHC No. 34 of 2023 should be permitted to flout the terms and conditions of the compromise arrived at between the parties, that too without any justification.

13. It is made clear that this Court has not expressed any opinion with regard to violation of the terms and conditions arrived at between the parties which is a issue to be agitated and adjudicated in a proceeding initiated by the petitioner seeking contempt of the orders passed by this Court.

14. In the facts and circumstances of the case and in view of amicable settlement arrived at between the parties, we issue the following directions:

(1) The respondent No.4 shall handover the custody of the son to the petitioner today by 5 p.m. and the petitioner shall be entitled to the custody of the son till 04.06.2023.

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WPHC No. 34 of 2023 (2) The petitioner shall be on leave and shall spend the whole time with the son from the time of handing over of the custody till 04.06.2023. In addition, the petitioner shall ensure that his mother and his sister also stay with him during the period for which the son stays with the petitioner.

(3) The petitioner shall take care of his son and shall attend to his medical needs. Respondent No.4 is directed to provide the details of the doctor under whose treatment the son is, to the petitioner and in case of any medical assistance to the son, the petitioner shall forthwith take his son to the concerned medical specialist.

(4) Respondent No.4 shall be entitled to make a video call daily to the son between the period from 6 p.m. to 7 p.m.

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WPHC No. 34 of 2023 (5) The petitioner shall handover the custody of the son to the respondent No.4 on 04.06.2023 at 5 p.m. With the aforesaid directions, the writ petition is disposed of Sd/-

JUDGE Sd/-

JUDGE RV