IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(Cr.) (HB) (DB) No. 370 of 2026

Pinky Devi, w/o Ashok Kumar, aged about 29 years, resident of Village-Digwar, near Lugu Mandir, Partand, P.O.-Digwar, P.S.-Mandu, Digwar, District-Ramgarh, Jharkhand (829117), presently residing near GK Hospital, Rajwar Side Mahto Tola, P.O.-Jainamore, P.s.-Jaridih, District-Bokaro.

… … Petitioner

Versus

1. State of Jharkhand.
2. Ashok Kumar, s/o Ram Kishun Mahto, resident of Village-Digwar, Near Lugu Mandir, Partand, P.O.-Digwar, P.S.-Mandu, Digwar, District-Ramgarh, Jharkhand (829117).
3. Officer-in-charge (SHO), Digwar, Partand, P.O.-Digwar, P.S.-Mandu, District-Ramgarh, Jharkhand (829117).
4. Superintendent of Police, Ramgarh, P.O). & P.S.-Chhatarmaru, District-Ramgarh, Jharkhand (829130).

… … Respondents

P R E S E N T

HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD

HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA

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For the Petitioner : Mrs. Rashmi Kumar, Advocate
Mr. Alok Kumar Verma, Advocate

For the Resp. No.2 : Mrs. Neeharika Mazumdar, Advocate

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C.A.V./Reserved on 27.08.2026 **Pronounced on 08/10/2026**

Per Sujit Narayan Prasad, J.:

1. The instant criminal writ petition has been filed under Article 226 of the Constitution of India for the following relief(s):

> *"a. For issuance of a writ(s)/order(s)/direction(s) or particularly a writ in the nature of Habeas Corpus commanding upon the respondents for production of two minor children namely (1) Aaro Kumar, aged about 7 years & (2) Khanak Kumari, aged about 5 years, before the Hon'ble High Court of Jharkhand.*
>
> ***AND/OR***
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> *b. Upon production of the minor children, grant custody of the minor children to the Petitioner in the interest of their welfare and well-being;*
>
> ***AND/OR***

c. During the Pending disposal of the present petition, grant interim visitation rights/interim custody of the minor children to the Petitioner.

AND/OR

d. Direct the police authorities to assist in securing the presence of the minor children before this Hon'ble Court.

AND/OR

Pass such other order(s)/direction(s) as Your Lordships may deem fit and proper under the facts and circumstances of this case for doing conscionable justice to the petitioners."

Factual Matrix:

2. The brief facts of the case as per the pleading made in the writ petition which requires to be enumerated herein, are as under:

2.1 The petitioner was married with respondent no. 2 on 03.07.2017 at Rajwar side Mahto Tola, Jainamore, Bokaro, Jharkhand according to Hindu rites and rituals. Out of their wedlock, the two minor children were born one Aaro Kumar on 16.12.2018 and another Khanak Kumari on 15.11.2020.

2.2 Due to the matrimonial disputes and differences between the parties, the petitioner and respondent No. 2 have been living separately from 2020.

2.3 It has been pleaded that after two days of their marriage, the petitioner was harassed by the respondent and their family, mentally and physically. When the parents of the petitioner on 15.08.2017 went to the house of the respondent they saw that their daughter was confined in a room since last three days without meal and also used various abusive language to her and

the parents of the petitioner and curse the petitioner on petty issues and most importantly hide the fact about his habit of drinking alcohol. Respondent no. 2 did not give single penny to the petitioner for daily needs and did not provide milk and medicine to the minor children.

2.4 It has been pleaded that the respondent no. 2 is a habitual drunker and has illicit and illegal relationship with two girls since last 6 years and both of them are working as a staff and as a nurse in the hospital of the respondent.

2.5 The petitioner continued to live with the respondent no.2 with the hope that the respondent will mend his ways, but the behavior of the respondent was not changed and the cruelty could not be stopped and petitioner along with their minor children tolerated the cruelties, torture, harassment, beating, atrocities, taunting, misbehavior, maltreatment at the hands of the respondent no. 2 only to save her married life but the respondent no. 2 did not changed his attitude.

2.6 Reference of several cases pending between the parties due to matrimonial disputes has also been referred as:

a. Complaint Case No. 425/2025 pending before the learned A.C.J.M., Bermo at Tenughat, under sections 115(2) / 126(2) / 85 / 86(A) / 86(B) / 79 / 91 / 88 / 127(3) / 316(2) / 303(2) / 3(5) B.N.S.S. & 3/4 D. P. Act.

b. Complaint Case No. 345 of 2025 u/s 303 / 305 / 84 / 140 / 117(1) / 117(2) / 61(2) B.N.S.S., 2023 and u/s 4 of the Witch Craft Act.

c. Original Maintenance Case No. 156/2025 pending before the Addl. Principal Judge, Addl. Family Court, Bermo at Tenughat.

d. Original Suit No. 90/2025 under section 9 of Hindu Marriage Act, 1955, where decision was passed for the concerned parties thereto to live together by the Principal Judge-Family Court, Ramgarh.

2.7 It has also been pleaded that the aforesaid cases had no impact on respondent no. 2 and he assaulted the petitioner causing her to bleed from her mouth and kicked her in the chest and knocked her down then the petitioner has filed complaint before the Superintendent of Police, Ramgarh, Civil Surgeon, Ramgarh and Deputy Commission, Ramgarh, but no heed has been paid towards these complaints.

2.8 On 03.12.2025 the son and on 18.04.2026 the daughter of the petitioner was taken away by the respondent no. 2 from the custody of the Petitioner without consent and has since been unlawfully detaining them, preventing the Petitioner from meeting or interacting with the children and the petitioner even not knows the whereabout of the children. Despite repeated requests and efforts by the Petitioner to secure access to and

custody of the minor children, Respondent No. 2 has refused to permit the Petitioner to meet the children.

2.9 The Petitioner approached the local police authorities by filing a complaint but the local police did not accept the complaint so the petitioner gave complaint to the Superintendent of the Police, Ramgarh, dated 12.02.2026; however, no effective action has been taken to secure the production of the minor children.

3. In the aforesaid background, the instant writ petition has been filed for production of the two minor children of the petitioner and grant of custody of the minor children to the petitioner in the interest of their welfare and well-being.

Argument on behalf of the Petitioner:

4. Mrs. Rashmi Kumar, learned counsel for the petitioner has taken the following grounds:

(i) Learned counsel for the petitioner has submitted that both the minor children, who were in the custody of the mother [writ petitioner], have been forcibly taken away from the mother, writ petitioner and has been handed over to respondent no. 2 [father], the husband of the writ petitioner.

(ii) It has also been submitted that the respondent no. 2 is a habitual drunker and has illicit relationship with two girls, who are working as staff and Nurse in the Hospital run and owned by respondent no. 2 in the name of ‘Ashok Health Care and Trauma Centre’, as such, the same will adversely affect the

emotional, educational and psychological well-being of the children which will be detrimental to their welfare.

(iii) Learned counsel for the petitioner has relied upon a judgment rendered by the Hon'ble Apex Court in ***Tejaswini Gaud and Ors., vs. Shekhar Jagdish Prasad Tewari and Ors., (2019) 7 SCC 42***.

5. Learned counsel for the petitioner, on the aforesaid ground, has submitted that the custody of both the minor children may be handed over to the petitioner.

Argument on behalf of the Respondent No.2:

6. Mrs. Neeharika Mazumdar, learned counsel for the respondent no.2 has taken the following grounds in opposition:

(i) Herein, the detention cannot be said to be illegal since the minors were living with their father who was taking care of the welfare of the minor.

(ii) The minors will not be looked after properly if they will be allowed to remain with their mother.

(iii) The ground has also been taken that the minors are aged about 07 years and 05 years old and hence, the preference is to be given regarding the welfare of the minors over and above the legal rights.

7. Learned counsel for the respondent no.2, on the aforesaid ground, has submitted that the present writ petition is fit to be dismissed and the

custody of both the minor children may be allowed to remain with the respondent no.2-father.

Analysis:

8. This Court has heard the learned counsel for the parties, gone across the pleading made in the writ petition as also the affidavit filed in response to the pleading made in the writ petition.

9. The admitted fact herein as per the pleading made is that the petitioner was married with respondent no.2 and out of their wedlock, two children have taken birth and at present one is aged about 07 years and another is aged about 05 years. Due to the matrimonial disputes and differences between the parties, the petitioner and respondent No. 2 have been living separately since 2020.

10. It has been pleaded that after two days of their marriage, the petitioner was harassed by the respondent and their family, mentally and physically.

11. It has been pleaded that the respondent no. 2 is a habitual drunker and has illicit and illegal relationship with two girls since last 6 years and both of the said girls working as a staff and nurse in the hospital of the respondent.

12. It has also come that several cases are pending between the parties due to matrimonial disputes, i.e., (i) Complaint Case No. 425/2025; (ii) Complaint Case No. 345 of 2025; (iii) Original Maintenance Case No.156/2025; (iv) Original Suit No. 90/2025.

13. It has also been pleaded that on 03.12.2025 the son and on 18.04.2026 the daughter of the petitioner was taken away by the respondent no. 2 from the custody of the Petitioner without consent and has since been unlawfully detaining them, preventing the Petitioner from meeting or interacting with the children. The Petitioner had approached the local police authorities by filing a complaint but the local police did not accept the complaint so the petitioner gave complaint to the Superintendent of Police, Ramgarh, dated 12.02.2026; however, no effective action has been taken to secure the production of the minor children, hence, the present writ petition.

14. While on the other hand, the learned counsel for the respondent no.2 has argued that the custody of the minors with their father cannot be said to be illegal detention.

15. Although the issue of maintainability of the present writ petition has not been raised but this Court is of the view that first the issue of maintainability of the present writ petition needs to be decided as to whether in the facts and circumstances of the case, the present writ petition is maintainable for issuance of writ of habeas corpus or not?

16. The law is well settled in the case of ***Tejaswini Gaud and Ors., vs. Shekhar Jagdish Prasad Tewari and Ors.*** (supra) that even in a matter of custody, the writ of habeas corpus is well maintainable. It has further been observed that Habeas corpus proceedings are 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, reference of the relevant paragraph needs to be made herein, which reads as under:

> ***"14.*** *Writ of habeas corpus is a prerogative process for securing the liberty of the subject by affording an effective means of immediate release from an illegal or improper detention. The writ also extends its influence to restore the custody of a minor to his guardian when wrongfully deprived of it. The detention of a minor by a person who is not entitled to his legal custody is treated as equivalent to illegal detention for the purpose of granting writ, directing custody of the minor child. For restoration of the custody of a minor from a person who according to the personal law, is not his legal or natural guardian, in appropriate cases, the writ court has jurisdiction.*
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> ***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.*
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> ***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."*

17. There can be no quarrel with the aforesaid proposition that in cases of child custody, a petition seeking a writ of habeas corpus may be entertained in a case where it is established that the custody of the child is illegal or without authority. There may also be cases where the custody of the child has been forcibly altered, which renders the present custody illegal, and in the said circumstance, the Court may be persuaded to issue a writ of habeas corpus.
The writ of habeas corpus, as is legally well settled, is a prerogative writ and an extraordinary remedy. It is a writ of right and not a writ of course and may be granted only on reasonable ground or probable cause being shown.

18. This Court is conscious to the settled position of law that a writ of habeas corpus in child custody matters is maintainable only where the

detention is shown to be illegal or without authority of law. When the child is in the custody of a natural guardian, such custody cannot ordinarily be termed as illegal so as to justify issuance of a writ unless there are exceptional or compelling circumstances demonstrating immediate threat to the welfare of the child.

19. Thus, it is clear that in cases of custody the welfare of the child is of paramount concern irrespective of whether the proceedings are before this Court or before the Guardianship Courts. The Supreme Court in ***Nirmala v. Kulwant Singh, (2024) 10 SCC 595*** has considered the decision in ***Tejaswini Gaud and Ors. v. Shekhar Jagdish Prasad Tewari and Ors. (supra)*** and in the facts of the said case and held as follows:

> *"23. It can thus be seen that this Court in Tejaswini Gaud case [Tejaswini Gaud v. Shekhar Jagdish Prasad Tewari, (2019) 7 SCC 42 : (2019) 3 SCC (Civ) 433] has held that the habeas corpus is a prerogative writ which is an extraordinary remedy. It has been held that recourse to such a remedy should not be permitted unless the ordinary remedy provided by the law is either not available or is ineffective. It has been held that 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. It has further been held that 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.*
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> *24. This Court in Tejaswini Gaud case [Tejaswini Gaud v. Shekhar Jagdish Prasad Tewari, (2019) 7 SCC 42 : (2019) 3 SCC (Civ) 433] further held that 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. It has been held that 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. It has further been held that what is important is the welfare of the child. It has been further held that 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.

25. In the facts of the said Tejaswini Gaud case [Tejaswini Gaud v. Shekhar Jagdish Prasad Tewari, (2019) 7 SCC 42 : (2019) 3 SCC (Civ) 433] , this Court found that the child being a minor, aged 1½ years, cannot express its intelligent preferences and in the facts and circumstances of said case, the father being the natural guardian was justified in invoking the extraordinary remedy seeking custody of the child under Article 226 of the Constitution of India. 26. The same legal position has been reiterated by this Court in Jose Antonio Zalba Diez Del Corral [Jose Antonio Zalba Diez Del Corral v. State of W.B., (2024) 12 SCC 419 : 2021 SCC OnLine SC 3434] and Rajeswari Chandrasekar Ganesh v. State of T.N. [Rajeswari Chandrasekar Ganesh v. State of T.N., (2023) 12 SCC 472].

27. It can thus be seen that 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. […]

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.*
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> *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.*
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> *32. In our view, an exercise for promoting the bond between the minor child and the respondent father in a graded manner and thereafter considering the grant of custody of minor child to the respondent father taking into consideration the paramount interest of the welfare of the minor child would be required to be done in the present matter. Such an exercise would not be permissible in the extraordinary jurisdiction under Article 226 of the Constitution of India. "*

20. In the said case the Hon'ble Apex Court has further observed that 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.

21. It needs to refer herein that mere availability of a remedy before the Family Court under Section 7(1)(g) of the Family Courts Act, 1984 could not, by itself, warrant disposal of the habeas corpus petition. Section 25 of the Guardian and wards Act 1890 provides a dedicated civil remedy for delivery of a ward. A critical choice-of-remedy question arises: when should one bypass the Family Court and invoke writ jurisdiction?

22. It is well-settled that the High Court, while exercising its extraordinary jurisdiction under Article 226 of the Constitution, is not bound to relegate parties to the Family Court merely on the ground that civil

remedies are available, if the welfare of the minor child necessitates immediate intervention. Nonetheless, the consistent judicial trend has been to discourage the invocation of habeas corpus jurisdiction as a substitute for statutory remedies under the Guardians and Wards Act, 1890 or the Hindu Minority and Guardianship Act, 1956, emphasizing that the writ of habeas corpus must remain confined to urgent and exceptional circumstances, rather than being employed as a routine mechanism in custody disputes.

23. No principle is more deeply entrenched in this field than the welfare of the child. In ***Rosy Jacob v. Jacob A. Chakramakkal (1973) 1 SCC 840*** the Hon'ble Supreme Court laid down the iconic principle that children are not mere chattels or playthings. The absolute right of parents has yielded to the welfare of the child as a human being.

24. In ***Gaurav Nagpal v. Sumedha Nagpal (2009) 1 SCC 42*** the Hon'ble Apex Court expressly extended this standard to habeas corpus proceedings, establishing that the child's welfare is the supreme consideration, overriding the competing rights of the parents.

25. Welfare must encompass the child's moral, emotional, and intellectual development. In ***Nil Ratan Kundu v. Abhijit Kundu (2008) 9 SCC 413*** the Hon'ble Apex Court emphasized that the principles in relation to the custody of a minor child are well settled and in determining the question as to who should be given custody of a minor child, the paramount consideration is the `welfare of the child' and not rights of the parents under a statute for the time being in force.

26. Thus, from the aforesaid deduction it can safely infer the following points:

(i) The High Court's jurisdiction to issue a writ of Habeas Corpus in minor child custody matter is predicated on the basic jurisdictional fact, namely, the minor child's custody is demonstrably illegal/unlawful. In appropriate cases, the High Court may relax this jurisdictional prerequisite, in the interest of welfare of minor child.

(ii) The writ of Habeas Corpus is not a substitute for the comprehensive and evidence-based procedures available under the applicable guardianship statutes (such as Hindu Minority and Guardianship Act, 1956;Guardians Guardians and Wards Act, 1890 etc.). As a matter of general judicial principle, the writ Court ought to ordinarily exercise restraint and defer dispute(s) to statutory forums unless accentuating circumstances necessitate such intervention by High Court.

(iii) In all matters relating to the custody of minor child, the paramount consideration is the welfare of such child. In exercise of its *parens patriae* jurisdiction; the High Court may, in appropriate cases, upon a holistic examination of facts, take an inquisitional role to ensure that the custodial arrangement serves the be best interest of the child, superseding the adversarial claims of the parties.

(iv) In furtherance of a minor child's welfare, the writ Court may issue interim order(s) concerning custody and other incidental aspects as warranted by exigencies of the situation, ensuring that the minor child's wellbeing remains the ultimate determinant of justice and thereafter refer parties to remedy(s) before statutory forum(s) for final/further determination of the *lis*.

(v) The High Court, in its writ jurisdiction has unbridled, unfettered and plenary powers. No inflexible and comprehensive guidelines can conceivably be enumerated governing the exercise of these intrinsic powers. There is no gainsaying that the nature, mode and extent of such exercise of this jurisdiction by the High Court shall depend upon the judicial discretion exercised by the High Court in the facts and circumstances of a given case.

27. Further the law is also settled that under Article 226 of the Constitution of India, there is no embargo in exercising the power of privilege of writs rather the power under Article 226 of the Constitution of India is having no restriction and if any restriction is there, the same is self-imposed restriction by the High Court. Reference in this regard be made to the judgment rendered by the Hon'ble Apex Court in in the case of ***Maharashtra Chess Association-Vs.-Union of India & Others, (2020) 13 SCC 285***, wherein the Hon'ble Apex Court has laid down that mere existence of alternate

Forums, where the aggrieved parties may secure relief, does not create a legal bar on a High Court to exercise its jurisdiction, rather, it is a factor to be taken into consideration by the High Court amongst several factors. The decision, whether or not to entertain an action in its writ jurisdiction remains a decision to be taken by the High Court on examination of the facts and circumstances of a particular case.

28. Mere existence of alternate Forums, where the aggrieved parties may secure relief, does not create a legal bar on the High Court to exercise its jurisdiction, rather it is a factor to be taken into consideration by the High Court amongst several factors. Paragraphs- 19 and 22 of the aforesaid judgment read as under:

> ***"19.*** *... The existence of an alternate remedy, whether adequate or not, does not alter the fundamentally discretionary nature of the High Court's writ jurisdiction and therefore does not create an absolute legal bar on the exercise of the writ jurisdiction by a High Court. The decision whether or not to entertain an action under its writ jurisdiction remains a decision to be taken by the High Court on an examination of the facts and circumstances of a particular case.*
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> ***22.*** *The mere existence of alternate forums where the aggrieved party may secure relief does not create a legal bar on a High Court to exercise its writ jurisdiction. It is a factor to be taken into consideration by the High Court amongst several factors…."*

29. It is, thus, evident that the writ petition will be said to be maintainable in the following eventualities:

(i) If there is violation of principles of natural justice;

(ii) If the decision has been taken contrary to the statutory mandate;

(iii) If the decision, so taken, amounts to miscarriage of justice.

30. It is also equally settled that where the disputed question of fact requires adjudication then, the writ court will restrain in proceeding with the matter for adjudicating the issue. Such principle is based upon the fact that if a case is quite impossible to be decided based upon the pleading only then in such circumstances, it would not be just and proper for the High Court to exercise the power of Article 226 of the Constitution of India to adjudicate the issue which depends upon the factual aspect which needs appreciation by the competent court.

31. This Court has examined the factual aspect in the touchstone of the facts of the present case and the settled position of law so far as the guardianship of the minor is concerned.

32. The law is well settled that so far as the legal right is concerned, the father is the natural guardian. But, on the issue of guardianship, it is to weigh the welfare over and above the legal right and in case the High 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. Reference in this regard be made to the judgment rendered by the Hon'ble Apex Court in ***Tejaswini Gaud and Ors., vs. Shekhar Jagdish Prasad Tewari and Ors.*** (supra).

    It also needs to be referred that upon the said judgment; reliance has also been placed by the learned counsel for the petitioner.

33. So far as the fact of the present case is concerned, the minors are aged about 07 years and 05 years old and as such, they are not in a position to say about their preference by expressing the same as to whether

they want to live for their well-being and welfare as per the ratio laid down by the Hon'ble Apex Court in ***Tejaswini Gaud and Ors., vs. Shekhar Jagdish Prasad Tewari and Ors.*** (supra), particularly, the observation so made at paragraphs-20, 21 and 26 of the said judgment, which reads as under:

> ***"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.*
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> ***21.*** *In the present case, the appellants are the sisters and brother of the mother Zelam who do not have any authority of law to have the custody of the minor child. Whereas as per Section 6 of the Hindu Minority and Guardianship Act, the first respondent father is a natural guardian of the minor child and is having the legal right to claim the custody of the child. The entitlement of father to the custody of child is not disputed and the child being a minor aged 1½ years cannot express its* ***intelligent preferences****. Hence, in our considered view, in the facts and circumstances of this case, the father, being the natural guardian, was justified in invoking the extraordinary remedy seeking custody of the child under Article 226 of the Constitution of India.*
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> ***Welfare of the minor child is the paramount consideration***

> ***26.*** *The court while deciding the child custody cases is not bound by the mere legal right of the parent or guardian. Though the provisions of the special statutes govern the rights of the parents or guardians, but the welfare of the minor is the supreme consideration in cases concerning custody of the minor child. The paramount consideration for the court ought to be child interest and welfare of the child."*

34. It is, thus, evident that the present petition is maintainable on the ground that even in the case of the guardianship so as to come to the conclusion as to whether on the basis of the fact, appropriate direction is to be passed by the writ court merely on the ground that the father is the natural guardian so as to come to the conclusion that where the welfare of the child will be better. As such, in order to come to the conclusion by relegating the petitioner to move before the alternative forum, the factual aspect is required to be scrutinized so as to come to the conclusion that there can be any direction by this Court for issuance of writ of habeas corpus.

35. Therefore, this Court is of the view that the writ is to be maintained and accordingly, the writ petition is maintainable.

36. It needs to refer herein that the Hon'ble Apex Court in para 13 of the decision rendered in ***Gohar Begum* v. *Suggi alias Nazma Begum* AIR 1960 SC 93 : (1960 Cri LJ 164**) has observed that in issuing a writ of habeas corpus a court has power in the case of infants to direct its custody to be placed with a certain person, for ready reference the relevant paragraph of the said judgment s being quoted herein which reads as under:

> *"It is further well established in England that in issuing a writ of habeas corpus a court has power in the case of infants to direct its custody to be placed with a certain person. In R. v. Greenhill, (1836) 4 Ad. & El. 624 at P. 640 : 111 ER 922 at p. 927 Lord Denman C.J. said:*
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> *'When an infant is brought before the Court by habeas corpus, if he be of an age to exercise a choice, the Court leaves him to elect where he will go. If he be not of that age, and a want of direction would only expose him to dangers or seductions, the Court must make an order for his being placed in the proper custody.'*
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> *See also (1857) 7 El Bl 186 : 119 ER 1217. In Halsbury's Laws of England, Vol. IX, Art. 1201 at page 702 it is said:*
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> *'Where, as frequently occurs in the case of infants, conflicting claims for the custody of the same individual are raised, such claims may be enquired into on the return to a writ of habeas corpus, and the custody awarded to the proper persons.'*

37. The observations of the Supreme Court in ***Gohar Begum's case*** **(AIR 1960 SC 93**) with regard to the issue of the writ of Habeas Corpus in child custody cases finds support also from the following statement of law occurring in Vol. 11, Article 1469 at page 779 of ***Halsbury's laws of England***, Fourth Edition:

> *"A parent, guardian, or other person who is legally entitled to the custody of a minor can regain that custody when wrongfully deprived of it by means of the writ of habeas corpus."*

38. It is a settled proposition that when the writ of *habeas corpus* is invoked in matters concerning the custody of a minor child, the jurisdiction exercised by the Court is not one conferred by any specific statutory provision, but rather an inherent jurisdiction rooted in equity. The employment of this writ in custody disputes is independent of statute, resting upon the Court's equitable powers and its role as

parens patriae to safeguard the welfare of its infant ward. The very nature of the inquiry, and the relief sought, necessitate the exercise of equitable jurisdiction. The primary object of such a petition, when applied to infants, is to ascertain in whose custody the welfare and best interests of the child are most likely to be advanced. In proceedings where one parent seeks custody against the other, the Court is called upon not only to adjudicate the competing rights of the parties inter se, but also, where the pleadings and evidence so warrant, to discharge its paramount duty as *parens patriae* in promoting and securing the welfare of the child.

39. In adjudicating matters of child custody under its inherent and general jurisdiction, the Court is not constrained by the bare legal rights of the parent or guardian. While the provisions of special statutes governing such rights may be considered, they do not fetter the Court's equitable authority to act as *parens patriae*. In the exercise of this jurisdiction, the Court must give due weight to circumstances bearing upon the child's ordinary comfort, contentment, intellectual, moral, and physical development, together with considerations of health, education, general maintenance, and the benefit of favourable surroundings. Ultimately, the decisive factor is the Court's assessment of the welfare and best interests of the child, which require that custody be entrusted to the parent under whose care such welfare is most likely to be secured.

40. In the case of ***Rosy Jacob v. Jacob A. Chakramakkal, (supra)*** which was a case arising under S. 25 of the Guardians and Wards Act, 1890, the pertinent observations made by the Hon'ble Apex Court in this context being relevant are extracted hereinbelow:

> *"The Court's power ……. is also, in our opinion, to be governed primarily by the consideration of the welfare of the minors concerned. The discretion vested in the Court is, as is the case with all judicial discretion, to be exercised judiciously in the background of all the relevant facts and circumstances. Each case has to be decided on its own facts and other cases can hardly serve as binding precedents, the facts of two cases in this respect being seldom if ever-identical. The contention that if the husband is not unfit to be the guardian of his minor children, then, the question of their welfare does not at all arise is to state the proposition a bit too broadly and may at times be somewhat misleading……. In our opinion, the dominant consideration in making orders under S. 25 is the welfare of the minor children and in considering this question due regard has of course to be paid to the right of the father to be the guardian and also to all other relevant factors having a bearing on the minor's welfare…….. There is no dichotomy between the fitness of, the father to be entrusted with the custody of his minor children and considerations of their welfare. The father's fitness has to be considered, determined and weighed predominantly in terms of the welfare of his minor children in the context of all the relevant circumstances. If the custody of the father cannot promote their welfare equally or better than the custody of the mother, then, he cannot claim indefeasible right to their custody under S. 25 merely because there is no defect in his personal character and he has attachment for his children — which every normal parent has……. The father's fitness from the point of view just mentioned cannot override considerations of the welfare of the minor children. No doubt, the father has been presumed by the statute generally to be better fitted to look after the children being normally the earning member and head of the family — but the court has in each case to see primarily to the welfare of the children in determining the question of their custody, in the*

> *background of all the relevant facts having a bearing on their health, maintenance and education……. Merely because the father loves his children and is not shown to be otherwise undesirable cannot necessarily lead to the conclusion that the welfare of the children would be better promoted by granting their custody to him as against the wife who may also be equally affectionate towards her children and otherwise equally free from blemish, and, who, in addition, because of her profession and financial resources, may be in a position to guarantee better health, education and maintenance for them.* ***The children are not mere chattels : nor are they mere playthings for their parents. Absolute right of parents over the destinies and the lives of their children has, in the modern changed social conditions, yielded to the considerations of their welfare as human beings so that they may grow up in a normal balanced manner to be useful members of the society and the guardian court in case of a dispute between the mother and the father, is expected to strike a just and proper balance between the requirements of welfare of the minor children and the rights of their respective parents over them."***

41. In the case of ***Thrity Hoshie Dolikuka*** **v.** ***Hoshiam Shavaksha Dolikuka*****, AIR 1982 SC 1276,** the Hon'ble Apex Court reiterated this view in the following words:

> *"The principles of law in relation to the custody of a minor appear to be well established. It is well settled that any matter concerning a minor, has to be considered and decided only from the point of view of the welfare and interest of the minor. In dealing with a matter concerning a minor, the Court has a special responsibility and it is the duty of the Court to consider the welfare of the minor and to protect the minor's interest. In considering the question of custody of a minor, the Court has to be guided by the only consideration of the welfare of the minor."*

42. It is, therefore, manifest that in adjudicating the rival claims of two parents for custody of a minor child, the mere circumstance that the father is not unfit to act as custodian cannot, by itself, be determinative

of the welfare of the child. The father cannot assert an indefeasible right to custody unless it is shown that his guardianship would promote the welfare of the child equally or in greater measure than that of the mother. The well-recognised "tender years rule" enjoins that children of tender age ought ordinarily to remain in the custody of the mother, whose care and protection during such formative years is indispensable. Indeed, no other safeguard can be conceived which would equal, in measure or substance, the maternal protection afforded to children in such circumstances.

43. Further, the "tender years rule" has, in fact, received statutory recognition, and the legislative policy underlying it is founded not merely upon social philosophy but upon practical realities. It points unmistakably to the principle that the custody of minor children below the age of five years should ordinarily rest with the mother, notwithstanding that the father is the natural guardian of such minors. Consequently, when the Court is moved by a petition for *habeas corpus* in a custody matter, and in the exercise of its inherent and general jurisdiction, it is incumbent upon the Court to keep this legislative prescription in view. The welfare of the child, which is the paramount consideration, must be judged in light of this statutory directive, ensuring that the tender years of the minor are safeguarded under maternal care.

44. The principal duty of the Court in such matters is to ascertain whether the custody of the child is unlawful and illegal and whether the welfare

of the child requires that his present custody should be changed and the child be handed over to the care and custody of any other person. The principle is well settled that in such matters the welfare of the child is of paramount consideration.

45. In an application seeking a writ of habeas corpus for custody of minor child, as is the case herein, the principal consideration for the court would be to ascertain whether the custody of the child can be said to be unlawful and illegal and whether his welfare requires that the present custody should be changed and the child should be handed over in the care and custody of somebody else other than in whose custody he presently is.

46. The role of the High Court in examining cases of custody of a minor, in a petition for a writ of habeas corpus, would have to be on the touchstone of the principle of *parens patriae* jurisdiction and the paramount consideration would be the welfare of the child. In such cases the matter would have to be decided not solely by reference to the legal rights of the parties but on the predominant criterion of what would best serve the interest and welfare of the minor.

47. This Court, before going into the merit of the case, needs to discuss herein the background of the case.

48. It needs to refer herein that on 20.07.2026, Mr. Amrit Raj Kisku, learned AC to GA-V waived notice on behalf of the respondent nos.1, 3 and 4 and this Court had issued notice upon the respondent no.2

through the Superintendent of Police, Ramgarh and the case was directed to be listed on 11.08.2026.

49. The case was taken on 11.08.2026 after hearing the respective parties, this Court, taking into consideration the age of the minor children, had directed the respondent no.2 to remain physically present before this Court on the next date fixed along with the minor children and has also directed the Officer-in-Charge (SHO), Partand P.S.; the S.D.P.O., Ramgarh to remain present on the next date of hearing. For ready reference, the said order is being reproduced as under:

> *"**1.** It is a case where the jurisdiction of this Court has invoked under Article 226 of the Constitution of India for issuance of following relief(s):*
>
> *"a. For issuance of a writ(s)/order (s)/direction (s) or particularly a writ in the nature of Habeas Corpus commanding upon the respondents for production of two minor children namely (1) Aaro Kumar, aged about 7 years & (2) Khanak Kumari, aged about 5 years, before the Hon'ble High Court of Jharkhand.*
>
> *b. Upon production of the minor children, grant custody of the minor children to the Petitioner in the interest of their welfare and well-being;*
>
> *c. During the Pending disposal of the present petition, grant interim visitation rights/interim custody of the minor children to the Petitioner.*
>
> *d. Direct the police authorities to assist in securing the presence of the minor children before this Hon'ble Court."*
>
> ***2.** It has specifically been pleaded in the writ petition that both the minor children, who were in the custody of the mother [writ petitioner], have been forcibly taken away from the mother, writ petitioner and has been handed over to respondent no. 2 [father], the husband of the writ petitioner. It has further been*

stated that now the writ petitioner, mother of the minor children, is not even allowed to meet with her children.

3. *Besides that allegation has been made in the writ petition that the respondent no. 2 [husband of the writ petitioner] is a habitual drunkard and had illicit relation with two girls, who are working as Nurse in the Hospital run and owned by respondent no. 2 in the name of 'Ashok Health Care and Trauma Centre'.*

4. *It has been pleaded that though complaints have been made before the Deputy Commissioner and other authorities by filing representation in this regard but having found no response, the present writ petition has been filed.*

5. *This Court has issued notice upon respondent no. 2. Thereafter, appearance has been made on behalf of respondent no. 2, who is being represented by learned counsel, Mr. Lalan Kumar Singh.*

6. *The respondents-State has also appeared and filed counter affidavit on behalf of Superintendent of Police, Ramgarh, wherein factum, based upon the discussion in between the parties to have mutual agreement, has been mentioned that both the children will remain with the mother and that term has been undertaken before the concerned police station.*

7. *This Court on perusal of the counter affidavit filed on behalf of Superintendent of Police, Ramgarh, is very much surprised that under what capacity the jurisdiction to deal with the issue of custody of minor children has been undertaken though there is specific statutory mandate to get the issue of custody of minor children decided by filing appropriate application before the competent court of jurisdiction.*

8. *In view thereof, the State is also directed to demonstrate under what capacity the custody of the children has been decided in the police station by the officer(s) concerned on the next date of hearing.*

9. *It has been alleged in the writ petition that the respondent no. 2 is mis-utilizing his status since he is running a hospital in the name and style of 'Ashok Health Care and Trauma Centre', and*

the State since has filed counter affidavit but there is no reference with respect to hospital and degree of the respondent no. 2, as such learned counsel for the State has submitted that he will come with appropriate instruction with regard to degree and running of hospital by respondent no. 2.

10. *Further, this Court, after having heard learned counsel for the parties and looking to the age of the minor children, who are 5 and 7 years, is of the view that appropriate direction is required to be issued upon respondent no. 2.*

11. *In view thereof, respondent no. 2 is directed to remain physically present along with the minor children before this Court on the next date of hearing at 10.30 a.m.*

12. *On the next date of hearing, the writ petitioner shall also remain physically present.*

13. *Besides that, the Officer-in-Charge (SHO), Partand P.S., the respondent no. 3 herein; as also the S.D.P.O., Ramgarh who sworn the affidavit dated 07.08.2026, filed on behalf of Superintendent of Police, Ramgarh shall also remain present on the next date of hearing.*

14. *List this case on 13.08.2026 at 10.30 a.m."*

50. The case, thereafter, was taken up on 13.08.2026 and both the parties were present as also the minor children and the officers concerned were also present and after interacting with the parties this Court had passed the following order:

*"**1.** Reference may be made to the order dated 11th August, 2026.*

2. *Mr. Alok Ranjan, S.D.P.O., Ramgarh and Mr. Ashutosh Kumar Singh, Officer in-charge, Kuju O.P. (Mandu P.S.) are present.*

3. *Mr. J.F. Toppo, learned GA-V representing the State has submitted that the counter affidavit is ready but could not have been filed. However, he has orally submitted that the inquiry has*

been conducted on the issue of legality and propriety of running of the hospital which is being run by the respondent no.2.

4. *The petitioner, namely, Pinky Devi is physically present in the Court.*

5. *The respondent no.2, namely, Ashok Kumar, is also present along with two minor children, one male and another female.*

6. *With the intervention of the learned counsel for the parties, it has been informed to the Court that today, both the minors, who were in the Court along with respondent-father after sometime, have been found to be in the lap of the mother, the petitioner.*

7. *Mrs. Jasvinder Mazumdar, learned counsel appearing for the respondent no.2 has taken efforts in resolving the issues, so that, the minors may not be deprived from love and affection of both the mother and father. She has apprised that the mother since is away from both the minors and as such, the minors may be allowed to go with the mother, who will be accompanied by the respondent no.2, father of two minors and husband of the petitioner to her native place at Jainamore, Bokaro.*

8. *The respondent-husband has agreed that he will accompany the petitioner along with two minors to leave them in the paternal house of the petitioner.*

9. *The respondent no.2, while interacting with the Court, has stated that his both children are to participate in the Independence Day ceremony, which is to be organized in the school, in which, minors are required to represent.*

10. *Learned counsel for both the parties, as also, the petitioner have agreed that in the morning of 15th of August, 2026, both of the minors will come to the school with the father and mother and participate in the Independence Day ceremony, which is to be organized in the school where both the children are studying.*

11*. The parties, in presence of both the learned counsel, have agreed that the respondent no.2, thereafter, again will accompany with the petitioner along with the minors to leave them in the paternal home.*

> ***12.*** *In view of the aforesaid settlement, the matter is being adjourned.*
>
> ***13.*** *Learned counsel for both the parties are being directed to file affidavit to that effect, as has been recorded hereinabove.*
>
> ***14.*** *List this case on 20th August, 2026 and on that date, the petitioner will appear physically along with minors. The respondent no.2, will also appear physically.*
>
> ***15.*** *On the next date, Officer in-charge, Kuju O.P. (Mandu P.S.) shall also appear in-person.*
>
> ***16.*** *Any mishappening with the petitioner, as the apprehension has been shown by the petitioner, will be the personal accountability of the S.D.P.O., Ramgarh.*
>
> ***17.*** *Let this order be communicated forthwith to the S.D.P.O., Ramgarh.*
>
> ***18.*** *The personal appearance of Mr. Alok Ranjan, S.D.P.O., Ramgarh, be dispensed with for the present."*

51. Accordingly, matter was taken up on 20.08.2026 and in compliance of the order dated 13.08.2026 passed by this Court, the Respondent No.2 has appeared physically and S.I.- cum-Officer-in-Charge, Kuju O.P. (Mandu P.S.) was also present in person before this Court. On that day since, learned counsel appearing for the Respondent No.2 has submitted that although she has received Vakalatnama the day when the matter was heard on 13.08.2026, but due to inadvertence the Vakalatnama could not be filed and therefore, the matter was directed to be listed on 27.08.2026.

52. Accordingly, matter was heard on 27.08.2026 and after conclusion of argument, the matter was reserved.

53. From the factual matrix and the sequence of proceedings narrated, it emerges that the writ petition under Article 226 of the Constitution

was instituted by the mother seeking issuance of a writ of *habeas corpus* for production and custody of her two minor children aged about 07 years and 05 years.

54. The petitioner's case rests upon allegations of forcible removal of the children from her custody, denial of access, cruelty, and the respondent-father's alleged habitual drunkenness and illicit relationships, all of which, according to her, imperil the welfare of the minors.

55. The respondent-father, on the other hand, has resisted the petition by asserting that the children are lawfully in his custody and that their welfare is better secured under his care.

56. The Court, while entertaining the matter, issued notices, directed physical production of the minors, and ensured the presence of police officers to safeguard the process.

57. During hearings, the Court noted the tender age of the children, interacted with both parents, and facilitated interim arrangements whereby the minors were allowed to spend time with their mother, including participation in school activities under the joint presence of both parents. The Court also expressed concern over the propriety of custody arrangements being recorded at the police station and directed the State to clarify its authority in that regard.

58. In the backdrop of the aforesaid factual aspect and settled position of law it is evident that the Court's paramount consideration remains the welfare and best interests of the children, which must prevail over the

mere legal rights of either parent. The judicial determination will therefore hinge upon whether continued custody with the father or restoration of custody to the mother better advances the welfare, comfort, and development of the minors, keeping in view the statutory recognition of the “tender years rule” and the Court’s inherent jurisdiction as *parens patriae*.

59. As discussed hereinabove, this Court, after going across the judgment rendered by the Hon'ble Apex Court in ***Tejaswini Gaud and Ors., vs. Shekhar Jagdish Prasad Tewari and Ors.*** (supra), is of the view that the said judgment on the one hand has laid down the ratio with respect to maintaining a writ petition for the purpose of issuance of writ of habeas corpus while on the other hand the issue on fact has been considered by taking into consideration the age of the minor.

60. At the outset, it needs to be referred herein that the Hon'ble Apex Court has been pleased to hold as under paragraph-19 that habeas corpus proceedings are not to justify or examine the legality of the custody. A habeas corpus proceeding 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. 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 is made by a person who is not entitled to legal custody. For

ready reference, paragraph-19 of the said judgment is being referred as under:

> *"**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."*

61. At paragraph-20 of the said judgment, the Hon'ble Apex Court has been pleased to hold that 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.

62. The Hon'ble Apex Court has further been pleased to observe the difference between the enquiry under the Guardians and Wards Act and the exercise of powers by a writ court which is summary in nature. It has been further been observed that 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. The relevant paragraph, i.e., paragraph-20 has already been quoted and referred above.

63. Herein admittedly both the children are in tender age. Male child is of 07 years of age and female child is of 05 years of age. It is evident from the order dated 11.08.2026 passed by this Court wherein this Court has also taken note of the fact that it has specifically been pleaded in the writ petition that both the minor children, who were in the custody of the mother [writ petitioner], have been forcibly taken away from the mother, writ petitioner and has been handed over to respondent no. 2 [father], the husband of the writ petitioner.

64. Besides that, allegation has been made in the writ petition that the respondent no. 2 [husband of the writ petitioner] is a habitual drunkard and had illicit relation with two girls, who are working as Nurse in the Hospital run and owned by respondent no. 2 in the name of 'Ashok Health Care and Trauma Centre'.

65. It has further been stated that now the writ petitioner, mother of the minor children, is not even allowed to meet with her children. This Court has further taken note of the fact that though complaints have been made by the petitioner before the Deputy Commissioner and other authorities by filing representation in this regard but no heed was given.

66. When matter was heard on 13.08.2026, this Court has taken note of the fact that today, both the minors, who were in the Court along with

respondent-father after sometime, have been found to be in the lap of the mother, the petitioner.

67. Admittedly, the instant petition involves disputed questions of fact which cannot be conclusively adjudicated in a summary proceeding. The pivotal issue, however, remains whether, in light of the settled principles of law and keeping the tender age of the minor children and their welfare as the paramount consideration, custody ought to be restored to the petitioner-mother or allowed to rest with the father.

68. As discussed in the preceding paragraphs that in custody disputes, the Court has consistently held that the father's mere fitness to act as custodian is not, by itself, determinative of the welfare of the child. The father cannot claim an indefeasible right to custody unless it is shown that his guardianship would promote the welfare of the child equally or more than that of the mother. The well-established "tender years rule" directs that children of tender age should ordinarily remain with the mother, whose care and protection during formative years is indispensable. This principle has received statutory recognition, reflecting not only social philosophy but practical realities, mandating that children below five years of age should ordinarily be in maternal custody, notwithstanding the father's status as natural guardian.

69. Accordingly, in habeas corpus petitions concerning custody, the Court's principal duty is to ascertain whether the custody of the child is unlawful or illegal and whether welfare requires a change in custody. The High Court, exercising its *parens patriae* jurisdiction,

must decide such matters not merely by reference to the legal rights of the parties but by applying the paramount criterion of the welfare and best interests of the child.

70. This Court is of considered view herein that even ignoring the allegations made against the respondent and assuming that he is otherwise fit to be entrusted with the custody of the minor children the question of custody has still to be resolved in the context of all the relevant circumstances having a bearing on the minors' welfare including their ordinary comfort, contentment, health and upbringing. If the custody of the father cannot promote their welfare equally or better than the custody of the mother, then, he has no indefeasible right to the children's custody. The mother's protection for the two minor children is, in our opinion, indispensable. We cannot think of any other protection which will be equal in measure and substance to that of the mother.

71. Having given our anxious consideration to all the material circumstances of the case and having unhesitatingly reached the conclusion that the best interests of the minors require that their custody be given to the petitioner.

72. On the basis of the foregoing discussion, this Court is of the considered view that, having regard to the paramount consideration of the welfare of the minor children, the custody of the male child aged seven years and the female child aged five years ought, at present, to be restored to the petitioner-mother. This direction is necessitated by

the tender age of the children and the settled principles of law which recognize the indispensable maternal care during such formative years.

73. Since, by virtue of the order dated 13.08.2026 passed by this Court, both the minor children are residing with their mother, this Court hereby directs that the custody of the minor male child, aged seven years, as well as the minor female child, aged five years, shall remain with the petitioner-mother.

74. The respondent-father is hereby directed to ensure peaceful custody of both minor children with the petitioner-mother, in compliance with the directions contained herein.

75. The petitioner-mother is hereby directed to ensure that the education and studies of both minor children are not hampered.

76. This Court is further of the opinion that the welfare of the minors requires that they not be deprived altogether of paternal affection and company.

77. Accordingly, the respondent-father shall be granted access to the children at the petitioner's parental home or her place of residence every Sunday between 4:00 p.m. and 6:00 p.m.

78. The respondent-father shall not, however, take the children outside during such visitation, nor shall he, by any act or omission, create circumstances that may disturb the children's sense of security, emotional balance, or domestic harmony.

79. It is clarified that the present order is of a temporary/interim nature, and the parties shall remain at liberty to approach the court of competent jurisdiction for appropriate relief as may be warranted.

80. However, we clarify that no observation in the present judgment and order would be binding on the proceedings if taken by the parties under the relevant law/statute and the proceedings would be decided in accordance with law on its own merits.

81. In the light of the aforesaid, we direct that in the event the respondent-father or petitioner/mother files an application under the provisions of the relevant law/statute, the competent Court shall decide the same expeditiously.

82. Accordingly, the instant writ petition stands disposed of with aforesaid directions and observation.

83. Pending interlocutory application, if any, also stands disposed of.

(Sujit Narayan Prasad, J.)

I agree,

(Pradeep Kumar Srivastava, J.) **(Pradeep Kumar Srivastava, J.)**

Jharkhand High Court, Ranchi
Dated: 08/10/2026
Saurabh /
A.F.R.
Uploaded on : 09.10.2026