IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 9TH DAY OF OCTOBER, 2026

PRESENT

THE HON'BLE MRS. JUSTICE ANU SIVARAMAN

AND

THE HON'BLE MR. JUSTICE T.P.VIVEKANANDA

WRIT PETITION (HABEAS CORPUS) NO.138 OF 2025

BETWEEN:

[redacted]

...PETITIONER

(BY SRI. PRABHIJIT JAUHAR, ADV. FOR
SMT. DEEPA J., ADV.)

AND:

1. THE STATE OF KARNATAKA
   THROUGH SHO
   VIJAYANAGAR POLICE STATION, MYSORE
   BANGALORE

2. [redacted]

[redacted]

3. STATE OF KARNATAKA
REP. BY SECRETARY
HOME DEPARTMENT
VIDHANA SOUDHA
BENGALURU-560 001

…RESPONDENTS

(BY SRI. RANJITH KUMAR, HCGP FOR R1 & R3;
SRI. ARUN GOVINDRAJ &
SRI. SIDDHANT S. DARIRA, ADVOCATES FOR R2)

THIS WP(HC) IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT OF HABEAS CORPUS ORDERING AND DIRECTING RESPONDENT NO.2 TO PRODUCE BEFORE THIS COURT THE SAID (DAUGHTER) [redacted] AGED ABOUT 5 YEARS DATE OF BIRTH (04.12.2020) AND CAUSE RETURN OF THE SAID MINOR CHILD TO THE JURISDICTION OF THE CANADA COURT IN COMPLAINCE WITH THE ORDER DATED 27.10.2025 PASSED BY THE SUPERIOR COURT OF JUSTICE, ONTARIO, CANADA CASE NO.FS-24-00047056-0000 TO ENABLE THE MINOR DAUGHTER TO GO BACK TO CANADA.

THIS WP(HC) HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 02.09.2026 AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, **ANU SIVARAMAN J.,** PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MRS. JUSTICE ANU SIVARAMAN
and
HON'BLE MR. JUSTICE T.P.VIVEKANANDA

CAV JUDGMENT

(PER: HON'BLE MRS. JUSTICE ANU SIVARAMAN)

This Writ Petition (Habeas Corpus) is filed seeking a direction to respondent No.2 to produce the minor daughter of the parties before this Court, direct the return of the minor daughter to the jurisdiction of the Canadian Court in compliance with Order dated 27.10.2025 passed by the Superior Court of Justice, Ontario, Canada and set aside the Order dated 12.06.2025 passed by the III Additional Principal Judge, Family Court Mysuru in M.C.No.577/2025.

2. We have heard Shri. Pabhijit Jauhar for Smt. Deepa J. learned counsel appearing for the writ petitioner, Shri. Ranjith Kumar, learned High Court Government Pleader, appearing for respondents No.1 and 3 and Shri. Arun Govindraj and Shri. Siddhant S. Darira, learned counsel appearing for respondent No.2.

3. The learned counsel appearing for the writ petitioner - father of the alleged detenue submits that

marriage between the petitioner and respondent No.2 was solemnised in accordance with Hindu rites and customs on 21.05.2013 in Kota, Rajasthan. In the year 2020 the parties moved to Oakville, Ontario, Canada. On 04.12.2020, the minor daughter was born in Ontario, Canada. The parties visited India in June 2022. Owing to matrimonial differences, they decided to live separately, pursuant to which the petitioner continued to reside in India, while respondent No.2 returned to Canada along with their minor daughter.

4. Respondent No.2, filed an application before the Superior Court of Justice, Ontario (File No. FS-24-00047056) on 03.06.2024 seeking divorce, sole custody of the minor, damages of USD 2,00,000 and freezing of the petitioner's assets. The petitioner entered appearance on 23.08.2024 and filed his Answer seeking joint decision-making responsibility. Thereafter, respondent No.2 filed an application seeking leave to relocate with the minor to the United States of America. By Order dated 21.01.2025 the Superior Court of Justice, Ontario granted decision-making responsibility on a temporary, without-prejudice basis for

day-to-day matters alone, expressly barred respondent No.2 from taking any major decision concerning the minor or travelling with her without advance notice to the petitioner, and directed to disclose full particulars of the proposed relocation by 31.01.2025 and the petitioner was granted virtual parenting time with the minor.

5. Respondent No.2 travelled to India on 12.03.2025 with the minor child citing a family medical emergency, without giving any notice to the petitioner. On 05.06.2025, the Superior Court of Justice, Ontario directed respondent No.2 to file a return plan for the minor within two weeks. However, on 10.06.2025 respondent No.2 filed a Notice of Withdrawal of her Canadian proceedings and, on the same day, filed M.C. No. 575/2025 for divorce and M.C. No. 577/2025 for custody before the Family Court at Mysuru. Respondent No.2 obtained an *ex parte* Interim Order of custody dated 12.06.2025 from the Family Court, Mysuru.

6. On 02.07.2025, the petitioner filed an urgent Motion before the Canadian Court praying for the return of the minor daughter. The Superior Court of Justice, Ontario

held that the Ontario Court retained jurisdiction notwithstanding the withdrawal, and directed respondent No.2 to forthwith return the minor to Ontario. On 14.08.2025, respondent No.2 informed the minor child's school at Oakville that the child would continue her schooling in India. On 27.10.2025, the Superior Court of Justice, Ontario passed a Final Order holding that Ontario is the habitual residence of the minor child, that respondent No.2 had attorned to the jurisdiction of the Ontario Court, and that her retention of the minor child in India was in breach of the Consent Order dated 21.01.2025 and the order dated 02.07.2025. Respondent No.2 was directed to return the minor child to Ontario. The petitioner was granted supervised in-person parenting time on gradual reintroduction and virtual parenting time on weekends. It is submitted that respondent No.2 has failed to comply with the order dated 27.10.2025 and continues to retain the minor child in India. The petitioner has approached this Court seeking for repatriation of the minor daughter to Ontario, Canada.

7. The learned counsel appearing for the writ petitioner contends that the minor daughter is a natural-born Canadian citizen holding Canadian passport. Her habitual residence is Oakville, Ontario and was enrolled in a Canadian school. Therefore, the Superior Court of Justice, Ontario is the forum having the closest and most intimate connection with the minor child, and the exclusive jurisdiction to decide her care and custody. It is further submitted that it is respondent No.2 who invoked the jurisdiction of the Superior Court of Justice, Ontario, by filing her application for divorce and custody in June 2024 has submitted to that jurisdiction, and cannot abandon the proceedings midway and refuse to abide by the orders passed therein.

8. It is further submitted that respondent No.2 is in wilful disobedience of the Consent Order dated 21.01.2025, requiring advance notice of any travel with the child and prohibiting major unilateral decisions, the order dated 02.07.2025 directing the forthwith return of the minor to Ontario, and the Final Order dated 27.10.2025 wherein the

Canadian Court held that Ontario is the habitual residence of the minor, that respondent No.2 had attorned to the jurisdiction of that Court by initiating the divorce and custody proceedings, and that her removal and retention of the minor in India was in breach of the Consent Order dated 21.01.2025 and the order dated 02.07.2025.

9. It is further contended that the ex parte interim order dated 12.06.2025 passed by the Family Court, Mysuru in M.C.No.577/2025 was obtained by suppressing the pending Canadian proceedings and without notice to the petitioner. As the minor is a Canadian citizen and not ordinarily a resident of India, no Indian court has jurisdiction over the custody dispute, and the said order is a nullity in law. There is no material on record to suggest that repatriation will cause any physical, mental or psychological harm to the minor. On the contrary, the order dated 27.10.2025 provides for supervised in-person parenting time with gradual reintroduction, and virtual parenting time on weekends. The welfare of the minor is fully protected. Respondent No.2 was given every opportunity to be heard

by the Canadian Court. Despite due service, she chose not to appear at the trial in September and October 2025. She cannot now complain of the orders which she herself invited.

10. The learned counsel appearing for the writ petitioner places reliance on the following judgments:-

- ***Smt. Jeewanti Pandey v. Kishan Chandra Pandey,*** reported in ***(1981) 4 SCC 517;***
- ***Smt. Surinder Kaur Sandhu v. Harbax Singh Sandhu & another,*** reported in ***(1984) 3 SCC 698;***
- ***Mrs. Elizabeth Dinshaw v. Arvand M. Dinshaw and another,*** reported in ***(1987) 1 SCC 42;***
- ***Paul Mohinder Gahun v. Selina Gahun,*** reported in ***2006 (90) DRJ 77;***
- ***Ms. Shilpa Aggarwal v. Aviral Mittal & Another,*** reported in ***(2010) 1 SCC 591;***
- ***Dr. V. Ravi Chandran v. Union of India & Others,*** reported in ***(2010) 1 SCC 174;***
- ***Sondur Gopal v. Sondur Rajini,*** reported in ***(2013) 7 SCC 426;***
- ***Arathi Bandi v. Bandi Jagadrakshaka Rao & Others,*** reported in ***(2013) 15 SCC 790;***
- ***Surya Vadanan v. State of Tamil Nadu & Others,*** reported in ***(2015) 5 SCC 450;***

- ***Nithya Anand Raghavan v. State (NCT of Delhi) & another,*** reported in ***(2017) 8 SCC 454;***
- ***Ganamukkala Sirisha v. Tippa Srihari & Others,*** reported in ***MANU/SCOR/23943/2019;***
- ***Lahari Sakhamuri v. Sobhan Kodali,*** *reported in* ***(2019) 7 SCC 311;***
- ***Varun Verma v. State of Rajasthan and Others,*** reported in ***2019 SCC Online Raj 5430;***
- ***Yashita Sahu v. State of Rajasthan & Others,*** reported in ***(2020) 3 SCC 67;***
- ***Tejaswini Gaud & Others v. Shekhar Jagdish Prasad Tewari & Others,*** reported in ***(2019) 7 SCC 42;***
- ***Nilanjan Bhattacharya v. State of Karnataka & Others,*** reported in ***(2021) 12 SCC 376;***
- ***Vasudha Sethi & Others v. Kiran V. Bhaskar & Another,*** reported in ***(2023) 17 SCC 478;***
- ***Rohith Thammana Gowda v. State of Karnataka & Others,*** reported in ***(2022) 20 SCC 550;***
- ***Rajeswari Chandrasekar Ganesh v. State of Tamil Nadu and Others,*** reported in ***(2023) 12 SCC 472;***
- ***Neha Joshi v. State of Maharashtra & Another,*** reported in ***SLP (Crl.) No.12866/2023;***
- ***Anupriya v. Abhinav Gyan & Another,*** reported in ***SLP (Crl.) No.10381/2022;***

- ***Sunaina Rao Kommineni v. Abhiram Balusu,*** reported in ***2025 SCC Online Del 4176;***
- ***Ashu Chopra v. Karan Chopra and Another,*** reported in ***SLP (Crl.) No.14401/2026;*** and
- ***Anusha Reddy Akepati v. Ghadiam Harshavardhan Reddy and Others,*** reported in ***SLP (Crl.) No.1550/2022.***

11. The learned counsel appearing for the respondent No.2 - mother contends that a writ of habeas corpus lies only where a person is shown to be under illegal detention. The petitioner does not even plead that respondent No.2's custody of the minor is unlawful. The petition is therefore liable to be dismissed *in limine*. It is further contended that respondent No.2 is the natural mother, legal guardian and primary caregiver of the minor since her birth. Even the Superior Court of Justice, Ontario, by its Endorsement dated 27.10.2025, has refused to transfer custody to the petitioner and has specifically recorded that the child recognizes the mother as her only parent. The order dated 02.07.2025 relied upon by the petitioner did not declare the mother's custody illegal, nor did it vest sole custody in the petitioner.

The custody of the minor with respondent No.2 cannot be characterized as unlawful.

12. It is further contended that in M.C.No.577/2025 filed by respondent No.2 before the III Additional Principal Judge, Family Court, Mysuru, an order dated 12.06.2025 has been passed protecting her custody of the minor and restraining the petitioner and his family from interference. The said order is subsisting. It cannot be dislodged in habeas corpus proceedings. If the petitioner is aggrieved, then his remedy lies in appellate or revisional proceedings, and not under Article 226 of the Constitution of India. It is further contended that a writ is issued only in the absence of an alternative and efficacious remedy. The proceedings adjudicating the welfare of the minor are already pending before the competent Family Court at Mysuru. The extraordinary jurisdiction of this Court cannot be invoked to bypass those proceedings. It is further contended that respondent No.2 returned to India in March 2025 owing to compelling familial circumstances, namely the serious illness of her mother, and the petitioner was duly informed. The

petitioner has since been meeting the minor in India and has continued to have video call access every weekend in terms of the parenting arrangement.

13. It is further contended that in matters concerning the custody of a minor, the paramount consideration is the welfare of the child and not the enforcement of a foreign decree. Even where a foreign court has assumed jurisdiction first, once the child is within the territorial jurisdiction of an Indian court, the said court is duty-bound to independently assess the welfare of the child, and is not mechanically bound to direct return solely on the basis of a foreign Court's order. Comity of courts yields where welfare demands otherwise.

14. It is further contended that in any event, respondent No.2 is not in a position to return to Canada. She has no financial stability, employment and support infrastructure there, and the foreign court itself has continued the primary caregiving arrangement with her. The petitioner, who is himself a resident of India and who moved back to Canada only when respondent No.2 came to India,

cannot invoke the extraordinary jurisdiction of this Court for strategic advantage.

15. The learned counsel appearing for respondent No.2 places reliance on the following decisions:-

- ***Sameer Hamsa Ramla v. State of Karnataka and Others,*** reported in ***2022 SCC Online Kar 789;***
- ***Yasir Ayaz v. State of NCT Delhi and Another,*** reported in ***2026 SCC Online Del 951;***
- ***Nithya Anand Raghavan v. State (NCT of Delhi) and Another,*** reported in ***(2017) 8 SCC 454;***
- ***Sarita Sharma v. Sushil Sharma,*** reported in ***(2000) 3 SCC 14;***
- ***Ruchi Majoo v. Sanjeev Majoo,*** reported in ***(2011) 6 SCC 479;***
- ***Nirmala v. Kulwant Singh and Others,*** reported in ***(2024) 10 SCC 595;***
- ***Kanika Goel v. State of Delhi and Another,*** reported in ***(2018) 9 SCC 578;*** and
- ***Dhanwanti Joshi v. Madhav Unde,*** reported in ***(1998) 1 SCC 112.***

16. The question that arises for consideration is whether this Court in the exercise of its writ jurisdiction, is

bound to direct the repatriation of the minor to Ontario, Canada in enforcement of the order dated 27.10.2025 passed by the Superior Court of Justice, Ontario.

17. It is well settled that the paramount consideration in each and every case is the welfare of the minor, and that an order passed by a foreign court directing the return of the minor is not a jurisdictional bar on the Indian Court in the exercise of its jurisdiction. The following decisions of the Apex Court are relevant in this regard.

(i) In ***Dhanwanti Joshi v. Madhav Unde*** reported in ***(1998) 1 SCC 112***, the Apex Court, dealing with a minor who had been removed by the mother from the United States to India in violation of an order of the American Court, held that the Indian Court is not bound to mechanically enforce a foreign court order and that the welfare of the minor remains the paramount consideration. It was further held that the Court called upon to decide the issue may either exercise summary jurisdiction and direct the return of the minor, or hold an elaborate enquiry into welfare, the choice depending inter alia upon the length of

time for which the minor has been in India and the extent of the ties formed. The relevant paragraphs on this point is extracted below:-

> ***"30.*** *We may here state that this Court in Elizabeth Dinshaw v. Arvand M. Dinshaw [(1987) 1 SCC 42] while dealing with a child removed by the father from USA contrary to the custody orders of the US Court directed that the child be sent back to USA to the mother not only because of the principle of comity but also because, on facts, — which were independently considered — it was in the interests of the child to be sent back to the native State. There the removal of the child by the father and the mother's application in India were within six months. In that context, this Court referred to H. (infants), Re [(1966) 1 All ER 886, CA] which case, as pointed out by us above has been explained in L. Re [(1974) 1 All ER 913, CA] as a case where the Court thought it fit to exercise its summary jurisdiction in the interests of the child. Be that as it may, the general principles laid down in McKee v. McKee [1951 AC 352] and J v. C [1970 AC 668] and the distinction between summary and elaborate inquiries as stated in L. (infants), Re [(1974) 1 All ER 913, CA] are today well settled in UK, Canada, Australia and the USA. The same principles apply in our country. Therefore nothing precludes the Indian courts from considering the question on merits, having regard to the delay from 1984 — even assuming that the earlier orders passed in India do not operate as constructive res judicata.*

> ***31.*** *The facts of the case are that when the respondent moved the courts in India and in the proceedings of 1986 for habeas corpus and under Guardians and Wards Act, the courts in India thought it best in the interests of the child to allow it to continue with the mother in India, and those orders have also become final. The Indian courts in 1993 or 1997, when the child had lived with his mother for nearly 12 years, or more, would not exercise a summary jurisdiction to return the child to USA on the ground that its removal from USA in 1984 was contrary to orders of US courts."*

(ii) In ***Nithya Anand Raghavan v. State (NCT of Delhi)*** reported in ***(2017) 8 SCC 454,*** the principles laid down in ***Dhanwanti Joshi's*** *case* (supra) have been reaffirmed by the Apex Court. In the said case, dealing with a minor daughter brought by the mother from the United Kingdom to India, notwithstanding a return order passed by the foreign court, it was held that the doctrine of comity of courts does not oust the jurisdiction of the Indian Court, does not compel the enforcement of the foreign court order, and highlights that the welfare of the minor which is of paramount consideration. Paragraph No.42 of the judgment reads as follows:-

> ***"42.*** *The consistent view of this Court is that if the child has been brought within India, the courts in India may conduct : (a) summary inquiry; or (b) an elaborate inquiry on the question of custody. In the case of a summary inquiry, the court may deem it fit to order return of the child to the country from where he/she was removed unless such return is shown to be harmful to the child. In other words, even in the matter of a summary inquiry, it is open to the court to decline the relief of return of the child to the country from where he/she was removed irrespective of a pre-existing order of return of the child by a foreign court. In an elaborate inquiry, the court is obliged to examine the merits as to where the paramount interests and welfare of the child lay and reckon the fact of a pre-existing order of the foreign court for return of the child as only one of the circumstances. In either case, the crucial question to be considered by the court (in the country to which the child is removed) is to answer the issue according to the child's welfare. That has to be done bearing in mind the totality of facts and circumstances of each case independently. Even on close scrutiny of the several decisions pressed before us, we do not find any contra view in this behalf. To put it differently, the principle of comity of courts cannot be given primacy or more weightage for deciding the matter of custody or for return of the child to the native State."*

(iv) In ***Kanika Goel v. State of Delhi*** reported in ***(2018) 9 SCC 578***, the Apex Court reiterated the above mentioned principles and held that the order of the foreign court must yield to the welfare of the child, and the remedy

of writ of habeas corpus cannot be used for mere enforcement of the directions given by the foreign court against a person within its jurisdiction and to convert that jurisdiction into that of an executing court. Where the private respondent is none other than the natural guardian of the minor being her biological mother, it can be presumed that the custody of the minor with her mother is lawful, and it is only in an exceptionable situation that such custody can be ordered to be taken away from her in the exercise of writ jurisdiction.

18. The decisions relied upon by the learned counsel for the petitioner, have been considered and explained by the Apex Court in ***Nithya Anand Raghavan's*** *case* (supra). In that case, the Apex Court came to the conclusion on facts that summary return of the minor to the foreign jurisdiction was in the welfare of the minor. We notice that in none of the decisions relied upon by the learned counsel appearing for the petitioner, any inflexible rule is laid down that a foreign court order for return must be enforced by the

Indian Court in every case, irrespective of the welfare of the minor.

19. Therefore, in the instant case, we are of the opinion that the jurisdiction to decide the question of custody may lie with the courts in India, since there is nothing available to suggest that the welfare of the minor is better served by repatriating her to Canada. Further, as recorded by the Superior Court of Justice, Ontario in its Endorsement dated 27.10.2025, respondent No.2 is also the primary caregiver whom the child recognises as her only parent. The minor is presently only 6 years old and is in the custody of her mother in India. She is attending school here and is being brought up by her mother and maternal grandparents. The petitioner has continued to have video call access in terms of the parenting arrangement. There is nothing on record to suggest that her continued stay with respondent No.2 is in any manner prejudicial to her welfare.

20. On the question of issuance of a writ of habeas corpus, we find that, in the facts and circumstances of the present case, this Court cannot exercise its writ jurisdiction.

The Apex Court in ***Tejaswini Gaud'***s case (supra), held that the writ of habeas corpus is an extraordinary remedy and that in matters of the custody of a minor the power to grant the writ is confined to cases in which the minor is detained by a person not entitled to his or her legal custody:-

> ***"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.*
>
> ***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."*

21. In ***Nithya Anand Raghavan***'s case (supra), the Apex Court held that the custody of a minor with a natural guardian is to be presumed lawful, and that it is only in an exceptionable situation that such custody will be disturbed

in the exercise of the writ jurisdiction while the other parent is ordinarily relegated to the substantive remedy.

22. We are of the opinion that the decisions relied on by either side are to be considered in the factual situation available in each case. In the instant case, the custody of the minor with respondent No.2 is protected by an *ex parte* Temporary Injunction order dated 12.06.2025 passed by the III Additional Principal Judge, Family Court, Mysuru in M.C.No.577/2025, which is subsisting as on date. Insofar as the order dated 27.10.2025 passed by the Superior Court of Justice, Ontario directing return of the minor is concerned, the said order did not declare the custody of the minor with respondent No.2 to be unlawful, nor did it vest sole custody in the petitioner. The petitioner is exercising his visitation rights regularly as is evident from the Orders passed by this Court. In the said factual situation, we are of the opinion that the question of jurisdiction or the lack thereof as also of the best interest of the child are to be decided by the Court where the parties have joined issues.

23. We are therefore of the opinion, that the writ petition filed seeking repatriation of the minor child cannot succeed in the peculiar facts and circumstances of the instant case.

24. Accordingly, the Writ Petition (Habeas Corpus) fails and the same is ***dismissed.***

Pending interlocutory applications shall stand *disposed of.*

Sd/-
(ANU SIVARAMAN)
JUDGE

Sd/-
(T.P.VIVEKANANDA)
JUDGE

cp*