



\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

*Reserved on: 13.05.2026*

*Pronounced on: 10.06.2026*

+ **W.P.(CRL) 4294/2025**

**SOMYA GOEL**

.....Petitioner

Through: Ms. Geeta Luthra, Senior Advocate with Mr. Aadarsh Kothari and Ms. Spriha Jha, Advocates for petitioner with Petitioner present in person (through VC).

versus

**THE STATE (GOVT. OF NCT OF DELHI) & ANR.**

.....Respondents

Through: Mr. Sanjay Lao, Standing Counsel (Criminal) with Mr. Abhinav Kumar, Mr. Aryan Sachdeva and Mr. Priyam Aggarwal, Advocates for the State with Insp. Surendra, SI Sumit, PS-Jagat Puri. Mr. Vinit Trehan, Mr. Yash Srivastava, Ms. Rashi Agarwal and Mr. Param Jeet Singh, Advocates for R-2.

**CORAM:**

**HON'BLE MR. JUSTICE NAVIN CHAWLA**

**HON'BLE MR. JUSTICE RAVINDER DUDEJA**

### **J U D G M E N T**

**NAVIN CHAWLA, J.**

1. This petition has been filed under Article 226 of the Constitution of India read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS'), seeking issuance of a Writ in the nature of Habeas Corpus directing the respondent no.2 to produce the minor daughter of the petitioner and to restore the custody of the



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minor daughter with the petitioner.

**CASE OF THE PETITIONER**

2. It is the case of the petitioner that the petitioner (mother) and the respondent no.2 (father) met in Singapore in the year 2016. On 18.11.2016, the petitioner and respondent no.2 got married in Ghaziabad, Uttar Pradesh in accordance with the Hindu rites and ceremonies. The marriage came to be registered on 08.02.2017.

3. After their marriage, the petitioner and respondent no.2 set up their matrimonial home in Singapore. The minor daughter of the petitioner and the respondent no.2 was born on 28.09.2021 in Singapore, but is an Indian citizen.

4. It is the case of the petitioner that ever since the birth of the daughter, the respondent no. 2 and his family have continuously subjected the petitioner and the minor child to cruelty, neglect and emotional harassment, which has adversely affected the welfare of the child. It is asserted that throughout the year 2023, the respondent no. 2 exhibited immature and irresponsible behaviour concerning the care of the minor child and, in January 2024, he complained about the child's school fees and domestic help expenses.

5. It is further asserted that during a visit to Mumbai in February 2024, the parents of the respondent no. 2, especially his mother, emotionally as well as physically harassed the petitioner and denied basic substances, such as milk, to the minor child, forcing the brother of the petitioner to arrange for the same.

6. On 12.03.2024, the minor child was diagnosed with Autism Spectrum Disorder (ASD). The petitioner, therefore, took the minor



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child for daily therapies in Greater Noida, bearing significant expenses, while the respondent no.2 provided minimal financial support and, in fact, blamed the petitioner for the lost school deposit. He also emotionally harassed her and even forced her to resign from a well-paying job. He used to verbally abuse not only the petitioner but also the minor child.

7. It is asserted that the respondent no.2 is a habitual alcoholic and the petitioner is fearful for the well-being of her minor daughter.

8. It is further asserted that the petitioner and the minor child resided in India from 26.02.2024 until 17.12.2024, when the respondent no.2 deceitfully persuaded the petitioner to return to Singapore with the minor child, promising reconciliation and advanced medical care for her. Upon arrival, however, the abusive behaviour of the respondent no. 2 escalated; he confiscated the passport of the petitioner, the travel documents of the minor child, and the petitioner's jewellery; and even attempted to force her into signing divorce papers. He started to indulge in physical assault, sexual violence, confinement, sleep deprivation, and spying on the petitioner through spyware.

9. Fearing for her safety, the petitioner contacted the police at Singapore, who facilitated her departure from Singapore on 25.12.2024, but she could not bring the minor child back as her travel documents had been illegally and forcefully withheld by respondent no.2, and respondent no. 2 had threatened to file a false case of abduction against the petitioner.

10. It is further asserted that the petitioner returned to Singapore on



05.07.2025 and filed a complaint with the police in Singapore on 12.07.2025, fearing for the safety and well-being of the minor daughter.

11. On 15.07.2025, the petitioner even obtained a restraint order against the respondent no.2 from the Family Justice Courts of Singapore due to his threats and violence. In retaliation, respondent no.2 instructed his new domestic help to actively alienate the minor child from the petitioner, due to which the child suffered autistic meltdowns. This also led to a drop in the child's BMI. A complaint in this regard was filed by the petitioner with the Singapore police on 06.08.2025. The petitioner also filed a complaint with the SHO, PS Jagatpura, Delhi, on 07.08.2025, through her Power of Attorney.

12. It is asserted that on 06.08.2025, the respondent no.2 unilaterally removed and abducted the minor child to an undisclosed location in Singapore and terminated the Dependent's Pass and residency of the petitioner in Singapore with the intention to compel her deportation.

13. The petitioner has also filed a Guardianship Petition and an application for *interim* custody in India. She also filed complaints with the Ministry of External Affairs and the Indian High Commission seeking intervention.

14. The petitioner asserts that as the minor child is suffering from ASD, she requires the love, care, and nurturing environment of her mother for her welfare and development.

15. For invoking the jurisdiction of the Court, the petitioner asserts as under: -



“11. That this Hon’ble Court has the inherent and requisite jurisdiction to entertain the present Writ Petition as the minor child was removed from the lawful jurisdiction of this court in a clandestine under false pretexts and misrepresentation.”

**Case Of The Respondent No. 2 (Father)**

16. On notice of this petition being issued to the respondent no. 2, the respondent no. 2 has filed a detailed reply, wherein he has prayed for the dismissal of the petition, alleging concealment of material facts by the petitioner. It is asserted that the petitioner has failed to disclose the proceedings before the Courts at Singapore and the orders passed therein.

17. It is asserted that the respondent no. 2 filed an Originating Application for Divorce, bearing No. FC/OAD 464/2025, titled ***Rajaraman Karthik v. Goel Somya***, before the Family Justice Courts, Singapore, on 27.01.2025, that is, much before the institution of the present petition. Multiple pleadings, affidavits, and contested applications have been filed by both parties in those proceedings, the details of which have been concealed by the petitioner before this Court. For the sake of ready reference, the averments of these filings, as mentioned in the reply filed by the respondent no.2, are detailed as under :-

<b><i>S.No.</i></b>	<b><i>Particulars of Proceedings/Documents</i></b>	<b><i>Date Filed</i></b>
<b><i>1.</i></b>	<b><i>Originating Application for Divorce bearing No. FC/OAD 464/2025 filed by the Respondent husband</i></b>	<b><i>27.01.2025</i></b>



	<p>For understanding-FC stands for Family Courts and OAD referred as Originating Application (Divorce). Copy of the Originating Application for Divorce bearing No FC/OAD 464/2025 filed by the Respondent-husband is herein annexed and attached as <b>ANNENURE-R1</b></p>	
2.	<p>Summons bearing No <b><u>FC/SUM 1540/2025</u></b> filed <b><u>to the Petitioner/Somya-wife</u></b> challenging the jurisdiction of the Singapore courts SUM stands for Summons Copy of the Summon bearing No FC/SUM 1540-2025 filed by the Petitioner/Somya-wife challenging the jurisdiction of the Singapore courts is herein annexed and attached as <b>ANNENURE-R/2</b></p>	07.07.2025
3.	<p>Affidavit filed by the Petitioner/Somey-wife in support of FC/SUM 1540/2025 Copy of the affidavit filed by the Petitioner/Somya-wife in support of FC/SUM 1540 2025 is herein annexed and attached as <b>ANNEXURE-R/3</b></p>	07.07.2025
4.	<p>Summons bearing No FC/SUM 1583/2025 filed by be Petitioner/Somya-wife seeking urgent</p>	14.07.2025



	<p>relocation of the minor child to India Copy of the Summer hearing No. FC/SUM 1583/2025 filed by the Petitioner/Somya-wife seeking urgent relocation of the minor child to India herein annexed and attached as <b>ANNENURE. R/4</b></p>	
5.	<p>Affidavit filed by the <b><u>Petitioner/Somya-wife in support of FC/SUM 1583/2025</u></b> Copy of the Affidavit filed by the Petitioner/Somya-wife in support of 'SUM 1583/2025 is herein annexed and attached as <b>ANNEXURE-R/5</b></p>	14.07.2025
6.	<p>Supplemental Affidavit filed by the Petitioner/Somya-wife in support of FC/SUM 1540/2025 Copy of the Supplemental fluid by the Petitioner/Somya-wife in support of FC/SUM 1540/2025 is herein annexed and attached as <b>ANNEXURE-R/6</b></p>	12.08.2025
7.	<p>Affidavit in Reply filed by the Respondent husband Copy of the Affidavit in Reply filed by the Respondent-husband dated 27.08.2025 is herein annexed and attached as <b>ANNEXURE-R/7</b></p>	27.08.2025
8.	<p>Supplemental Affidavit filed by the Respondent-husband Copy of the Supplemental</p>	28.08.2025



	<i>Affidavit filed by the Respondent-husband dated 28.08.2025 is herein annexed and attached as ANNEXURE-R/8</i>	
9.	<i>Affidavit in Reply filed by the Petitioner/Somya-wife. Copy of the Affidavit in Reply filed by the Petitioner/Somya-wife dated 02.10.2025 is herein annexed and attached as ANNEXURE-R/9.</i>	02.10.2025
10.	<i>Further Affidavit in Reply filed by the Respondent-husband</i>	23.10.2025

18. It is further asserted that the Family Justice Court of the Republic of Singapore, *vide* order dated 20.08.2025, was pleased to grant personal protection in favour of the respondent no. 2 and the minor daughter, against the petitioner.

19. It is asserted that by order dated 25.11.2025, the challenge of the petitioner to the jurisdiction of the Singapore Courts was rejected, and her application seeking relocation of the minor child from Singapore to India was also rejected.

20. It is asserted that these facts have been intentionally and deliberately concealed by the petitioner from this Court, and the present petition is liable to be dismissed on the ground of concealment alone.

21. It is further asserted that the petitioner had also filed a petition under the Guardians and Wards Act, 1890, being GP 30/2025, titled



*Somya Goel v. Kartik Rajaraman*, before the learned Family Court at Karkardooma, Delhi; as well as a Divorce Petition, being HMA 1430/2025, titled *Somya Goel v. Kartik Rajaraman*, thereby invoking an alternate jurisdiction. It is submitted that the present petition is, therefore, liable to be dismissed also on the ground of the availability and invocation of an alternate efficacious remedy by the petitioner.

22. It is asserted that the present petition is also liable to be dismissed on the ground of delay and laches.

23. The respondent no. 2 further asserts that the welfare and the best interests of the minor child require her to continue to stay in Singapore, where she is under the continuous care of specialized institutions, including the NUH Child Development Unit, ABA Therapy Centers, and a structured preschool environment tailored to her sensory and developmental needs. The minor child has also shown measurable improvement in her physical and mental well-being.

24. Respondent no. 2 further categorically denies all allegations made against him and his family members by the petitioner and, in fact, asserts that it is the petitioner who did not take care of the minor child and, through her behaviour, caused further emotional damage to the child.

25. It is asserted that the petitioner abruptly abandoned the matrimonial home at Singapore on 25.12.2024 and returned to India, abandoning the minor child. She also transferred a sum of SGD 207,000/- from Singapore to her bank account in India. There were several other transactions between December 2024 and March/April 2025, showing that the petitioner was emptying her bank account so



that she could avoid contributing to the matrimonial funds governed by the financial framework applicable in Singapore. On the other hand, it is the respondent no. 2 who is solely and all alone looking after the welfare of the minor child and her treatment.

26. Respondent no. 2 asserts that instead of taking care of the minor child, the petitioner undertook an expensive leisure trip to the United States of America and Canada with her parents and sister between March and May 2025. She also sent inappropriate messages defaming the respondent no. 2 to his employer, friends, relatives, and neighbour.

27. He also makes counter-allegations against the petitioner for ill-treating the minor child.

**SUBMISSIONS OF THE LEARNED SENIOR COUNSEL FOR THE PETITIONER**

28. Ms.Geeta Luthra, the learned senior counsel for the petitioner, submits that the marriage between the petitioner and the respondent no.2 was solemnised in accordance with Hindu rites and ceremonies in 2016. They were blessed with a minor daughter, who is presently only four years old and is an Indian Citizen. Placing reliance on the judgment of the Supreme Court in *Y. Narasimha Rao & Ors. v. Y. Venkata Lakshmi & Anr.* (1991) 3 SCC 451 and of this Court in *Padmini Hindupur v. Abhijit S. Bellur*, 2015 SCC OnLine Del 7484, she submits that the only law applicable to matrimonial disputes is the one under which the parties got married. She submits that the jurisdiction assumed by the Court at Singapore must be in accordance with the matrimonial law of India and merely because the petitioner



filed a reply to the claim filed by the respondent no.2, *albeit* under protest and challenging the jurisdiction of the said Court, the same should not be considered as a submission to the jurisdiction of the said Court and its decision on merits, thereby being binding on the Indian Courts.

29. She submits that the Singaporean Courts have no jurisdiction over the present matter as the minor child is not an ordinary resident of Singapore. She places reliance on the judgment of the Supreme Court in *Smt. Jeewanti Pandey v. Kishan Chandra Pandey*, (1981) 4 SCC 517, of this Court in *Philip David Dexter v. State NCT of Delhi & Anr.*, 2013 (135) DRJ 537 (DB) and *Paul Mohinder Gahun v. Selina Gahun*, 2006 (90) DRJ 77.

30. She submits that the minor daughter was diagnosed with ASD on 12.03.2024 and it is crucial for her to have a nurturing environment that caters to her unique needs. She submits that the petitioner is the primary caregiver to the minor daughter since her birth and the respondent no.2 has always been negligent towards her treatment. She places reliance on the judgment of this Court in *Paul Mohinder Gahun* (supra) and of the Supreme Court in *Yashita Sahu v. State of Rajasthan & Ors.*, (2020) 3 SCC 67, to submit that a girl child of tender age benefits from the mother's custody. She submits that even otherwise, in accordance with Section 6(a) of the Hindu Minority and Guardianship Act, 1956, the custody of a minor child under the age of five shall ordinarily be with the mother.

31. Placing reliance of the judgments of the Supreme Court in *Gohar Begum v. Suggi Alias Nazma Begum & Ors.*, 1959 SCC



OnLine SC 8, and *Ruchi Majoo v. Sanjeev Majoo*, (2011) 6 SCC 479, she submits that the welfare of the child should be of the paramount importance, and in the present case, the same lies with the minor being in the custody of the petitioner. She submits that the factual matrix demonstrates that every action of the respondent no.2, from the deceitful removal of the child to the subsequent neglect and abuse, has been in direct opposition to minor child's welfare.

32. Placing reliance on the judgment of the Supreme Court in *Shilpa Aggarwal (Ms.) v. Aviral Mittal & Anr.*, 2009 SCC OnLine SC 1893; of the Bombay High Court in *Abhay v. Neha Joshi & Anr.*, 2023 SCC OnLine Bom 1943; and of the Singaporean Courts in *XLK v. XLJ* (2025) SGHC (A) 22 and *BDU v. BDT* [2014] SGCA 12, she submits that the custody of the child is to be determined by the country with which the child has an intimate contact. A child habitually resident in a country, unilaterally taken to a foreign country must be returned in the child's best interest. In this regard, the learned senior counsel also places reliance on the Hague Convention of 1980 on 'Civil Aspects of International Child Abduction'. She submits that in the present case, the minor daughter, despite being born in Singapore, has spent the most crucial stages of her early life in India surrounded by her maternal family and underwent structured ASD therapies at Yatharth Hospital in Noida. Hence, it is in the best interest of the minor child that she is brought back to India.

33. The learned senior counsel further contends that a Habeas Corpus petition is maintainable, even during the pendency of a guardianship petition, to restore custody where parents have been



unlawfully deprived. She submits that when a child is removed from the territorial jurisdiction of a High Court, a Habeas Corpus petition can lie. In this regard, she places reliance on the judgment of this Court in *Paul Mohinder Gahun* (supra); of the High Court of Bombay in *Pravin Nathalal Parghi v. State of Maharashtra & Ors.*, 2025 SCC OnLine Bom 3100; of the High Court of Allahabad in *Ayra Khan & Anr. v. State of U.P. & Ors.*, 2024 SCC OnLine All 2426; and, of the High Court of Andhra Pradesh in *Alekhyia Yalamanchili v. State of Andhra Pradesh & Ors.*, 2012 SCC OnLine AP 779.

34. Without prejudice to her above submissions, she contends that even if this Court wishes to not exercise its extraordinary discretionary jurisdiction and refers the matter to the learned Family Court, *interim* custody/visitation rights over minor daughter can still be granted to the petitioner. She places reliance to this effect on the judgment of this Court in *Richa Bhasin v. Commissioner of Police and Ors.*, 2000 (52) DRJ (DB) and of the High Court of Bombay (Panaji-Goa) in *Ketaki Gokhale v. State of Goa & Ors.*, 2023 SCC OnLine Bom 698.

**SUBMISSIONS OF THE LEARNED COUNSEL FOR THE RESPONDENT NO.2**

35. The learned counsel for the respondent no.2 submits that a Writ of Habeas Corpus in child custody matters is maintainable only when the custody is unlawful or without any authority. He submits that the custody of the minor daughter with her father, that is, the respondent no. 2 cannot be deemed as being illegal. He submits that the Supreme Court in a catena of judgments has held that in child custody matters,



the ordinary remedy lies before the learned Family Courts. He highlights that in cases where a thorough examination of facts is required, the Court can choose not to use its extraordinary jurisdiction and instead instruct the parties to seek relief before the Civil Courts. In support, he places reliance on the judgment of the Supreme Court in *Tejaswini Guad & Ors. v. Shekhar Jagdish Prasad Tewari & Ors.*, (2019) 7 SCC 42; of the High Court of Allahabad in *Shradha Kannaujia (minor) & Anr. v. State of U.P. & Ors.*, 2022 SCC OnLine All 955 and *Krishnakant Pandey (Corpus) & Ors. v. State of Uttar Pradesh & Ors.*, 2021 SCC OnLine All 1993; of the High Court of Rajasthan in *Dharmendra Choudhary v. State of Rajasthan & Ors.*, 2024 SCC OnLine Raj 3770; and, of the High Court of Madras in *V. Krishnapriya v. Inspector of Police & Anr.*, 2025 SCC OnLine Mad 7457.

36. He submits that even otherwise, the petitioner has concealed various material facts and judicial orders pronounced by the Courts of Singapore to erroneously persuade this Court to entertain the present petition. He submits that therefore, the present petition is liable to be dismissed on the ground of concealment. In support of his submission, he places reliance on the judgment of the Supreme Court in *K.D. Sharma v. Steel Authority of India Ltd. & Ors.*, (2008) 12 SCC 481.

37. He reiterates that the welfare of the child is in the custody of the child remaining with the respondent no.2 at Singapore.

38. He submits that hence, the present petition is devoid of any merit and is liable to be dismissed.

### **ANALYSIS AND FINDINGS**



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39. We have considered the submissions made by the learned counsels for the parties.

40. At the outset, we would note that the various proceedings before the Court at Singapore that had taken place even prior to the filing of the present Writ Petition by the petitioner, and have not been disclosed by the petitioner in the present Writ Petition. Whether the petitioner wilfully submitted to the jurisdiction of the Court at Singapore or she did so under protest, one thing remains and cannot be disputed, is that she has to truthfully disclose these proceedings in the Writ Petition if she is to invoke the extraordinary discretionary jurisdiction of this Court. Concealment alone is a sufficient ground to dismiss the present Writ Petition and for refusing to exercise the discretionary jurisdiction of this Court under Article 226 of the Constitution of India.

41. Even otherwise, from the above narration of facts and submissions of both the parties, it is evident that the minor child was born in Singapore and, except for the period between February 2024 and 17.12.2024, when she came to India, she has primarily remained in Singapore. It is also evident that on 17.12.2024, the minor child had travelled back to Singapore along with the petitioner and the respondent no. 2. The petitioner left the custody of the minor child in the hands of the respondent no.2 when she travelled back to India on 25.12.2024. She thereafter went back to Singapore on 06.07.2025, and though she filed certain complaints, references to which have been given in the petition, the present Writ Petition was filed by her only on 16.12.2025, which is almost one year after she first left Singapore



without the minor child.

42. In between, various developments took place in the matrimonial proceedings filed by the respondent no.2 in Singapore, which resulted in an order dated 25.11.2025 passed by the Family Justice Courts of the Republic of Singapore, which is prior to the filing of the present Writ Petition. By the said order, the Family Court at Singapore dismissed the applications filed by the petitioner, being SUM 1540/2025, seeking stay of proceedings in favour of Indian jurisdiction, and SUM 1583/2025, seeking relocation of the minor child to India, by observing as under:

*“I dismiss the Wife’s summons to stay proceedings in favour of Indian jurisdiction.*

*... I find that the Wife has not discharged her burden of showing that India is more appropriate than Singapore for the hearing of the marital dispute. Although both parties are Indian nationals and solemnised their marriage in India, they have resided primarily in Singapore for more than a decade, and the Husband has been gainfully employed in Singapore under an Employment Pass.*

*The Wife has resided in Singapore since 2013 and the Husband since 2014. The Wife was also employed in Singapore until October 2023. It was only in 2024 that she had an extended stay in India from February to December 2024, and thereafter, left Singapore from December 2024 to July 2025.*

*More significantly, the child of the marriage was born in Singapore in 2021, and her schooling and special needs treatment for autism and ADHD are currently connect ed to Singapore. Issues of maintenance would likewise centre on cost of living issues*



*pertinent to Singapore.*

*As for the Wife's claim that there are parallel proceedings in India, note that the first Indian filings by the Wife were on 23 May 2025 ( for guardianship) and 29 July 2025 (for divorce), some time after the 27 January 2025 filing in the present case. The Indian matters also have not proceeded substantively. I therefore did not find the doctrine of lis alibis pendens to apply in the present case.*

*Finally, I do not find that the Wife would be prejudiced if proceedings continued in Singapore. She is not barred from entry to Singapore, and according to the Husband, has means to contest the proceedings having withdrawn a significant sum of \$207,000 from her Singapore bank accounts. She has also demonstrated that she can file applications in Singapore, having regard to her multiple PPO applications against the Husband and his family members. She has also shown herself capable of filing complaints to both the SPF and the CPS. She therefore would not suffer any prejudice if the case proceeded here.*

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*I similarly dismiss the Wife's application in SUM 1583/2025.*

*I note that four-year old \_\_\_ is on the autistic spectrum , has ADHD and has developmental and behavioral issues. Since her return to Singapore, she appears to have gained healthy weight, attends school full time on weekdays, and receives home based ABA therapy on weekends. She also continues to attend regular medical checkups at the National University Hospital (NUH), and is on a structured diet plan prescribed by the NUH feeding clinic.*

*While the Wife has put forward a care plan on an intended school and medical professional treatment upon the proposed return to India, I note that the disruption to the child over the*



*period when the mother and child were in India in 2024 and the recent disruptions following disputes since July 2025 have had a negative impact on the child's condition. For the child's best interest, stability and status quo should prevail, and it would clearly be preferable for her to remain in Singapore. Further, the Father has demonstrated that he has the support required in terms of domestic help to support the child's daily needs. By contrast, the Wife left the home in December 2024, and spent the first half of 2025 away from the child, including a two month holiday in North America. She is not to my mind best placed to cater to the daily needs of the child at present.*

*I further note that the Husband has pointed out that in May 2024, the Wife had been diagnosed by an Indian doctor to be suffering from episodic schizophrenia and bipolar disorder, and was prescribed strong medication. That is also a significant factor militating against placing the child in her sole care by way of a relocation to India.*

*I accordingly dismiss SUM 1583/2025."*

43. Though the above order may not be binding on this Court, it would have a persuasive effect keeping in mind the comity of Courts. Most importantly, and as noted hereinabove, the petitioner intentionally concealed this order from this Court while filing the present Writ Petition.

44. We are also mindful of the fact that the petitioner has, during the pendency of the present petition, instituted a suit before the learned Family Court, Karkardooma Court, seeking an anti-suit injunction against the respondent no.2 restraining him from proceeding against her in the divorce case filed by him in Singapore.



In the said proceedings, *vide* an order dated 28.01.2026, the learned Family Court while deciding an application under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, 1908, has been pleased to pass an *ad-interim ex-parte* injunction in favour of the petitioner till the next date of hearing. However, we find that the said proceedings are of no relevance to the present petition.

45. In *Tejaswini Guad & Ors.* (supra), the Supreme Court, considering the maintainability of a Writ Petition of Habeas Corpus on a question of custody of a minor, held that the Writ, being a prerogative process of securing the liberty of the subject by affording an effective means of immediate release from an illegal or improper detention, the Court should leave the parties to an alternative remedy where, in the circumstances of a particular case, the ordinary remedy provided by law is available and is effective. We quote from the judgment 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.*

*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.”*

46. The Supreme Court further held that while deciding child custody cases, the Court is not bound by the mere legal rights of the parent or guardian, but is to be guided by the welfare of the minor, which has to be the prime consideration. The welfare of the child has to be determined keeping in view all the facts and circumstances, and the Court cannot take a pedantic approach.

47. As far as the Hague Convention is concerned, we may note that India is not a signatory to the same.

48. In the present case, the minor child is unfortunately suffering from ASD. She is getting her treatment from Singapore, where she



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was taken with the consent of the petitioner. As noted hereinabove, the petitioner travelled back to India and has filed the present petition belatedly. There are also allegations of her transferring all her funds to an account in India, and also travelling to Canada and the USA in the *interregnum*.

49. We are referring to these facts not to give a conclusive opinion on the welfare of the child or whether custody should be with the petitioner or the respondent no. 2, but only to indicate that there are various factors which need to be considered in detail for determining the said question.

50. The petitioner has already initiated proceedings under the Guardians and Wards Act, 1890 and has also filed proceedings seeking a divorce from the respondent no.2.

51. The proper and appropriate remedy for the petitioner to seek custody and visitation with the child, given the above factors as also the various disputed questions of fact, would, therefore, lie before the concerned Family Court and cannot be determined in a summary jurisdiction on affidavits by us in this Writ Petition.

52. We must also note herein that the respondent no.2 has challenged the territorial jurisdiction of not only this Court but also of the learned Family Court by contending that, as per the petitioner's own case in her guardianship petition, the minor child was last residing in Ghaziabad, UP, where the parents of the petitioner reside. It has been asserted that when this objection was taken before the learned Family Court, the petitioner produced a false Lease Deed showing that just days before shifting to Singapore, she had stayed in



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Delhi. She also filed an application seeking amendment of the petition. It is asserted by the respondent no.2 that the minor child was never an ordinary resident of Delhi and, therefore, the courts at Delhi lack territorial jurisdiction. This disputed question of fact would also need to be determined by the competent court.

53. In view of our above observations, we decline to exercise our discretion under Article 226 of the Constitution of India in the present Writ Petition, and instead leave the petitioner to agitate her claim of custody and visitation with the minor child before the competent Family Court. We further clarify that any and all observations made by us hereinabove should in no manner influence the competent court to adjudicate such claims on merits, as these observations are made only for the purpose of determining whether we would like to exercise our discretionary jurisdiction in the present Writ Petition, and they do not constitute a final determination of the disputed facts and issues raised before us.

54. With the above clarification and reserving liberty in favour of the petitioner, the present Writ Petition is dismissed.

55. There shall be no order as to costs.

**NAVIN CHAWLA, J**

**RAVINDER DUDEJA, J**

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