



2026:DHC:3743-DB



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

***Reserved on: 22.04.2026***  
***Pronounced on: 04.05.2026***

+ **W.P.(CRL) 806/2026**  
**VIKRAM SHARMA**

.....Petitioner  
Through: Mr.C.M. Grover and Ms.Payal  
Budhiraja, Advs.

versus

GOVT OF NCT OF DELHI & ORS. ....Respondents  
Through: Mr.Sanjay Lao, SC (Crl.) with  
Ms.Priyam Agarwal, Mr.Aryan  
Sachdeva, Mr.Abhinav Kr.  
Arya for R-1 to R-3/State with  
SI Gunjan Singh, ER-II, Crime  
Branch  
Mr.Suraj Prakash Sharma, Adv.  
for R-4 to R-7

**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 (hereinafter referred to as 'BNSS'), seeking issuance of a Writ in the nature of Habeas Corpus, directing production of the minor daughter of the petitioner- Ms. XXX, who is in the custody of the respondent nos.4 to 6, that is the parents-in-law



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and the brother-in-law of the petitioner.

2. It is alleged in the petition that the marriage of the petitioner was solemnized with Late Uma Sharma, daughter of the respondent no.4 on 23.11.2023. From the wedlock, Ms. XXX was born on 28.08.2024. She is presently aged about 1 ½ years. Unfortunately, on 24.09.2025, the wife of the petitioner committed suicide by hanging herself. On a complaint filed by the respondent no.4, FIR bearing no.520/2025 under Section 80/3(5) of the Bharatiya Nyaya Sanhita, 2023 was registered at Police Station: Welcome *inter alia* against the petitioner. The petitioner was arrested in the same on 29.09.2025, and remained in custody till 13.01.2026. He was thereafter released on bail pursuant to the order passed by the learned Additional Sessions Judge, Shahdara, Karkardooma Courts, Delhi. It is alleged that on the death of the wife of the petitioner, the respondent nos. 4 to 6 had taken away Ms. XXX in their custody.

3. The petitioner alleges that on being released on bail on 13.01.2026, he sought custody of the minor child and even approached Police Station: Welcome with a complaint dated 25.02.2026 made to the DCP (North East), seeking assistance in obtaining the custody of the minor child, however, since no action was taken on the same, he approached the Court of the learned Judicial Magistrate First Class (JMFC), Shahdara, Karkardooma Courts, Delhi with another complaint under Section 223 read with Section 175(3) of BNSS, 2023, wherein notice has been issued and Action Taken Report has been called by the learned JMFC (Shahdara). Another complaint under Section 100 of BNSS has also been filed by the petitioner



before the said Court but was withdrawn *vide* order dated 07.03.2026 with liberty to approach appropriate forum. Hence, the petitioner has preferred the present Writ petition.

4. The learned counsel for the petitioner submits that, as the petitioner is the father of the minor child, he is the natural guardian and is, therefore, entitled to the custody of the minor child. He submits that the respondents not being the natural guardians, are illegally retaining the custody of the minor child and, therefore, appropriate directions ought to be passed in the present Writ Petition directing them to hand over the custody of the minor child to the petitioner. In support of his submissions, he places reliance on the judgment of the Supreme Court in *Tejaswini Gaud & Ors. v. Shekhar Jagdish Prasad Tewari & Ors.*, 2019 7 SCC 42.

5. On a notice of this petition being issued to the respondent nos.4 to 6, they have filed a reply, *inter alia*, challenging the very maintainability of the present writ petition by contending that the writ jurisdiction cannot be used as a substitute for regular custody proceedings under the Guardians and Wards Act, 1890 or under the Hindu Minority and Guardianship Act, 1956. In support of the said submission, the learned counsel for the respondents has placed reliance on the judgment of the Punjab and Haryana High Court in *Jaspreet Singh v. State of Punjab & Ors.*, 2026:PHHC:056584.

6. It is further submitted that the petitioner is involved in a criminal case involving the suicide of his wife and the mother of the minor child, therefore, he is not fit to obtain the custody of the minor child. In support of the said submission, reliance is placed on the







force. The Court also observed that as the child was six years old, the High Court should have interacted with the child. The Court further held that one of the matters which is required to be considered by the Court in these matters is the ‘character’ of the proposed guardian. The Court should keep in mind the relevant statutes and the rights flowing therefrom, but such cases cannot be decided only by interpreting legal provisions, as it involves a human problem and is required to be solved with human touch. The Court exercises *parens patriae* jurisdiction in such matters. It was emphasised that it is not a negative test, that is, that the father is unfit or disqualified to have custody of the child, that is relevant, but the positive test, that is the custody would be in the welfare of the minor, which is material. On the facts of the said case, the Court took cognizance of the allegations against the father of assaulting the mother leading to her death as also of the child being found in a sick condition at his residence.

12. In *Shaurya Gautam* (supra), the Court while reiterating the above principles and denying the father’s claim for custody of the minor children in a writ of Habeas Corpus, had not only interacted with the elder of the two minor children but also was influenced by the fact that the father was facing trial on the charge of murder of his wife. The Court opined that in the totality of circumstances on record, unless acquitted, it would not be appropriate to place the two minor children in the custody of the father.

13. Applying the above principles to the facts of the present case, admittedly, till the unfortunate demise of his wife, the custody of the minor child was with the petitioner, of course, along with the deceased



wife. In the reply filed by the respondent nos. 4 to 6, apart from the reference to the criminal case and the objection on the maintainability of the present petition, there is no other reason given as to why the petitioner would be unfit to take the custody of the minor child, though he is her natural and legal guardian.

14. As far as the criminal case against the petitioner is concerned, the learned counsel for the petitioner has drawn our attention to the order dated 13.01.2026 passed by the learned Additional Sessions Judge, whereby the petitioner has been released on bail. It *inter alia* observes as under:

*“From all the above-stated diary notes, it appears that deceased was an emotional and sensitive person. Even in past prior to her marriage, she was having suicidal thoughts, may be due to her oversensitive nature. She used to love her husband (applicant/ accused). She wanted to live happily with her husband. In the entire diary notes, there is no mention qua any dowry demand made to her by her husband or his family members.*

*8. Even as per allegations of the complainant, dowry harassment was qua non-giving of top model of Swift car in marriage which had taken place two years ago. Even this alleged harassment was not soon before the death of the deceased. Thus, in the present case, there are no specific allegations against applicant/ accused in regard to the demand of dowry soon before the death of the deceased. There are only general allegations, however, there is no specific allegation or instance of cruelty or dowry demand soon before the death of the deceased.*

*10. Similarly in the present case, whatever be the cause of death of the deceased, her parents*



*have instantly alleged allegations of dowry demand and murder which are not supported by the circumstances of the case. Though, the unfortunate death of the deceased did occur within two years of the marriage, however, the proof or otherwise of dowry demand having been made by the applicant/ accused and his family members would be best left for the trial and no observations regarding the same would be justified at this stage in view of the above-stated circumstances.”*

15. Though the learned counsel for the respondent nos.4 to 6 submits that the notes alleged to be made by the deceased in the diary that had been relied upon by the learned Additional Sessions Judge, are forged and have been written by the petitioner himself and a report in this regard has also been called from the Forensic Science Laboratory (FSL), however, as the learned Additional Sessions Judge has also relied upon them and reached a *prima facie* conclusion as reproduced hereinabove, we need not say anything further on that aspect at this stage. In case upon receipt of FSL report, the diary is found to be forged, we are sure that appropriate action shall be taken by the learned Trial Court and the respondent nos.4 to 6 would also be free to reclaim the custody of the minor child. At this stage, however, based on the *prima facie* view of the learned Trial Court, it cannot be said that the petitioner is not entitled to the custody of the minor child only because of the pendency of the above criminal case pending against him. The petitioner being the natural guardian in terms of Section 6 of the Hindu Minority and Guardianship Act, 1956, is entitled to the custody of the minor child.

16. In the present case, the minor child is aged only about 1 year



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and 8 months and is unable to express her opinion or feelings regarding the custody. Therefore, we have to be guided by the nature's law, wherein the father would be better suited to take care of the needs and welfare of the child as compared to the maternal grandparents and uncle.

17. Keeping in view the above, we direct the respondent nos.4 to 6 to hand over the custody of the minor child to the petitioner forthwith. We, however, reserve liberty in the respondent nos.4 to 6 to seek modification of this judgment in case of any subsequent development in the criminal case, including receipt of the FSL report.

18. We further direct the petitioner to give reasonable unrestricted visitation rights over the minor child to the respondent nos.4 to 6, which, for the present, we fix as between 11 AM and 6 PM on every Saturday. This, however, is only an *interim* arrangement and the petitioner and the respondent nos.4 to 6 may move appropriate applications to seek modification in the arrangement before the learned Family Court.

19. The petition is disposed of in the above terms.

**NAVIN CHAWLA, J**

**RAVINDER DUDEJA, J**

**MAY 04, 2026/ns/pb**