2026:AHC:149612

HIGH COURT OF JUDICATURE AT ALLAHABAD

HABEAS CORPUS WRIT PETITION No. - 801 of 2026

Rudra Parashar And Another -

.....Petitioner(s)

Versus

State Of U.P. And 3 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Syed Fahim Ahmed
Counsel for Respondent(s)	:	G.A., Subir Lal

A.F.R.

Court No. - 73

HON'BLE SANDEEP JAIN, J.

1. Compliance affidavits filed by the learned counsel for both the parties in Court today are taken on record.

2. By order dated 10.07.2026, the petitioner, Smt. Garima Sharma, and respondent no.4, Akash Sharma, were directed to remain personally present before this Court along with the minor corpus, Rudra Parashar. In compliance with the aforesaid order, both the parties, along with the minor corpus, are present before this Court.

3. This Court interacted with respondent no.4, Akash Sharma, who disclosed that he is employed with the World Bank at Delhi and is earning approximately Rs.4.5 lakhs per month. He further stated that he has admitted the minor corpus to a school at Faridabad, where he is presently pursuing his education. He further submitted that the minor corpus was taken from his custody at Faridabad and, therefore, this Court lacks territorial jurisdiction to entertain and decide the present habeas corpus petition. He also submitted that the petitioner is employed in Mumbai and, being a working woman, would not be in a position to personally look after the minor corpus. Accordingly, he contended that the custody of the minor corpus ought not to be handed over to the petitioner.

4. This Court also interacted with the petitioner, Smt. Garima Sharma, who disclosed that till April, 2026, the minor corpus had been residing with her. She further stated that she had admitted the minor corpus to a school at

Ghaziabad, from where respondent no.4 allegedly took the corpus into his custody without her knowledge or consent. She submitted that, being the mother of the minor corpus and the corpus being below five years of age, she is entitled to his custody. She further disclosed that she is working as an Environmental Engineer in Mumbai and is earning approximately Rs.80,000/- per month. She also stated that during her working hours, the minor corpus would be looked after by her parents, who are willing to reside with her at Mumbai for that purpose.

5. This Court also interacted with the minor corpus, Rudra Parashar, aged about 3½ years, with a view to ascertaining his upbringing, emotional attachment, and recognition of the parties. During the interaction, the corpus recognized both his mother and his father. He also indicated that his mother takes good care of him and expressed his inclination to reside with her.

6. The petitioner was also directed to take the minor corpus in her lap, and she duly complied with the said direction. During the interaction, it became evident that the minor corpus shared a strong emotional bond with the petitioner. The corpus remained comfortable and at ease in her company, freely interacted with her, and exhibited a clear sense of security and affection towards her. Although the corpus, being only about 3½ years of age, is too young to express an independent and informed preference regarding his custody, this Court interacted with him solely for the limited purpose of assessing his emotional attachment and comfort level with the parties. From the interaction so held, this Court is of the prima facie opinion that the minor corpus is emotionally attached to and feels secure and comfortable in the company of his mother.

7. It is also apparent from the material brought on record that the minor corpus had been admitted to a school at Ghaziabad and that the petitioner's parents are available to look after the minor corpus during the petitioner's working hours.

8. A significant issue relating to the territorial jurisdiction of this Court has been raised by Sri Swetashwa Agarwal, learned Senior Counsel appearing for respondent no.4, which has been contested by Sri P.K. Jain, learned Senior Counsel, assisted by Sri Syed Fahim Ahmed, learned counsel for the petitioner.

9. Learned Senior Counsel appearing for respondent no.4 submitted that the minor corpus was in the custody of respondent no.4 at Faridabad and, therefore, the entire cause of action arose outside the territorial jurisdiction of this Court. It was accordingly contended that this Court lacks the territorial jurisdiction to entertain and adjudicate the present habeas corpus petition.

10. Per contra, learned Senior Counsel appearing for the petitioner submitted that the treatment records, school admission documents and fee receipts of the minor corpus have been brought on record, which clearly establish that the corpus had been residing at Ghaziabad and was admitted to a school there. He further submitted that both the petitioner and respondent no.4 were called to Police Station Vijay Nagar, District Ghaziabad, on 15.05.2026, where, with the intervention of the police authorities, a compromise was arrived at between the parties. Under the said compromise, it was agreed that the custody of the minor corpus would remain alternately with each parent for a period of one month. However, the respondent no.4 failed to abide by the terms of the said compromise. He further submitted that a copy of the compromise recorded at the police station has been annexed to the writ petition, wherein respondent no.4 expressly acknowledged that the minor corpus had been in his custody since 03.04.2026. According to the learned Senior Counsel, this admission itself establishes that, prior to the said date, the custody of the minor corpus was with the petitioner.

11. Learned Senior Counsel for the petitioner further submitted that the aforesaid admission made by respondent no.4 clearly establishes that the minor corpus was forcibly taken away from the custody of the petitioner at Ghaziabad. He contended that the cause of action, therefore, arose within the territorial jurisdiction of this Court, conferring jurisdiction upon this Court to entertain and adjudicate the present habeas corpus petition. In support of his submissions, learned Senior Counsel placed reliance upon the judgment of the Apex Court in the case of ***Nawal Kishore Sharma v. Union of India and Others, (2014) 9 SCC 329***.

12. I have heard the learned Senior Counsel appearing for the parties and have also interacted with the parties as well as the minor corpus for the purpose of ascertaining in whose custody the welfare and best interests of

the minor corpus would be best secured.

13. From the documents annexed to the writ petition, it is apparent that the minor corpus had been admitted to a school at Ghaziabad and that the school fees were being paid by the petitioner. It is also evident that a dispute arose between the petitioner and respondent no.4 regarding the custody of the minor corpus. In this regard, both the parties appeared before Police Station Vijay Nagar, District Ghaziabad, on 15.05.2026, where respondent no.4 made a statement admitting that the minor corpus had been in his custody since 03.04.2026. During the said proceedings before the police authorities, a compromise was arrived at between the parties, whereby it was agreed that, after a period of five days, the custody of the minor corpus would remain with the petitioner for one month and thereafter with respondent no.4 for the succeeding one month, on an alternating basis, until the issue of custody was finally adjudicated by a competent court.

14. From the material brought on record, it is apparent that the minor corpus had been residing with the petitioner and was taken away by respondent no.4 from Ghaziabad on 03.04.2026. Thus, a part of the cause of action has undeniably arisen within the territorial jurisdiction of this Court. Accordingly, in view of Article 226(2) of the Constitution of India, this Court has the territorial jurisdiction to entertain and adjudicate the present habeas corpus petition.

15. It is further apparent that the minor corpus is only about 3½ years of age. Under Section 6(a) of the Hindu Minority and Guardianship Act, 1956, the custody of a minor who has not attained the age of five years ordinarily rests with the mother, unless there exist circumstances disentitling her from such custody. No material has been brought on record, nor has any circumstance been pointed out before this Court, which would disentitle the petitioner from having the custody of the minor corpus.

16. During the course of interaction, the minor corpus also expressed his inclination to reside with his mother. Although, considering his tender age, such preference cannot be treated as determinative, his conduct and demeanour before this Court clearly reflected that he is emotionally attached to, and feels secure and comfortable in the company of, his mother. This circumstance, coupled with the statutory presumption under Section 6(a) of

the Hindu Minority and Guardianship Act, 1956, persuades this Court to hold that the welfare of the minor corpus would presently be best served in the custody of the petitioner. The corpus was very comfortable in the company of the petitioner and was having great emotional bonding with her, as such, the petitioner cannot be deprived from the company of the minor corpus.

17. It is also apparent that the petitioner is financially capable of taking good care of the corpus because she is educated and she is also supported by her parents and this Court is not under any apprehension that she will not ensure the welfare of the minor corpus.

18. This Court also tried its best to have a reconciliation between the spouses, but unfortunately this Court could not succeed in persuading them to reside together in order to ensure the paramount welfare of the minor corpus.

19. In view of the above circumstances, the custody of the minor corpus is forthwith handed to the petitioner Smt. Garima Sharma, who is her mother. In order to maintain the emotional bonding between the respondent and the corpus, the respondent no.4, Akash Sharma is granted visitation rights. He can visit the corpus as and when he desires after prior information to the petitioner at the residence of the petitioner. The respondent can also have interaction through video conferencing with the corpus as and when he desires, after the corpus returns from the school. The petitioner has assured that she will not create any obstruction or hindrance in such meeting or interaction. During school vacation, the respondent will be entitled to claim the custody of the minor corpus from the petitioner and after efflux of vacation, the respondent has assured that he will restore the custody of the corpus to the petitioner. The parties are restrained from taking out the corpus, outside India.

20. Subject to the above, this instant habeas corpus petition is ***disposed of***.

(Sandeep Jain,J.)

July 21, 2026
Mayank

Digitally signed by :-
MAYANK KUMAR SHARMA
High Court of Judicature at Allahabad