



2026:DHC:2685-DB



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

***Reserved on: 12.03.2026***  
***Pronounced on: 01.04.2026***

+ **W.P.(CRL) 2049/2022 & CRL.M.A. 17762/2022, CRL.M.A. 21553/2022, CRL.M.A. 8060/2023, CRL.M.A. 12478/2023**  
**AMAN KATHPAL** .....Petitioner

Through: Mr.Jai Anant Dehadrai,  
Ms.Srutee Priyadarshini,  
Ms.Bhavya Jain, Advocates

versus

**UNION OF INDIA & ANR.** .....Respondents

Through: Mr.Shadan Farasat, Sr. Adv.  
with Mr.Arkaprava Dass, Adv.  
for R-2.

+ **W.P.(CRL) 3029/2024 & CRL.M.A. 29390/2024**  
**PANKAJ DHINGRA** .....Petitioner

Through: Mr.Shadan Farasat, Sr. Adv.  
with Mr.Arkaprava Dass, Adv.

versus

**STATE OF NCT OF DELHI & ANR.** .....Respondents

Through: Mr.Sanjay Lao, Standing  
Counsel (Crl.) for the State with  
SI Sandeep, P.S. Bindapur.  
Mr.Jai Anant Dehadrai,  
Ms.Srutee Priyadarshini,  
Ms.Bhavya Jain, Advocates for  
R-2.

**CORAM:**

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

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



## **JUDGMENT**

### **NAVIN CHAWLA, J.**

1. As the present petitions concern the custody of the minor daughter- Ms.XXX of the private parties referred to as AK (mother) and PD (father), they are, therefore, being disposed of together by this common judgment.

2. W.P.(Crl.) 2049/2022 has been filed by AK, the mother of the minor child alleging therein that AK and PD had married each other on 24.08.2011. Their marriage got registered on 07.09.2011. She alleges various acts of sexual and physical violence against her by PD. From the wedlock, Ms.XXX was born on 30.03.2015 in Pennsylvania, United States of America (USA), and is therefore, a citizen of the USA by birth. AK claims that in April 2017, she had reason to suspect that PD had sexually abused Ms.XXX during her second birthday celebrations. She alleges that she was thereafter witness to other acts of sexual assaults by PD on Ms. XXX. While being in United States, on 18.09.2017, alleging physical assaults, AK had called the police by dialing 911 and also reported the incidents of sexual assault by PD on Ms.XXX. PD was arrested and a Protection Order dated 19.09.2017 was passed.

3. PD filed a case of divorce before the Superior Court, Judicial District of New Haven (hereinafter referred to as “Superior Court”) on 30.04.2019, wherein, by an order dated 06.05.2022, while granting divorce to AK and PD, the Superior Court also passed a direction of joint-parenting of Ms.XXX as under:



*“1. The dissolution of marriage shall enter; the parties are declared single and unmarried.*

*2. The parties shall share joint legal custody of the minor child, and the minor child shall primarily live with mother. Each party shall be listed as a parent of the minor child on all records related to the minor child, including but not limited to educational, medical, mental health, religious and extracurricular records. Each party shall be entitled to access to all records related to the minor child.*

*3. (a) Father shall have weekly supervised parenting time in the community for a period of three hours per day every Saturday and every Sunday from 12:00 noon to 3:00 p.m. commencing on Saturday, May 14, 2022. The parties shall equally share the cost of the supervisor. The parties may, by mutual agreement, modify this order.*

*(b) Caseflow shall schedule a two-hour remote hearing in approximately sixty (60) days to address the potential expansion of father's parenting time. The hearing shall be scheduled before a judge other than Goodrow, J. Each party shall file with the Court five (5) days prior to the scheduled hearing a list of witnesses each party intends to call at the hearing and Proposed Orders regarding any expansion of father's parenting schedule ordered herein, including any request that father's parenting time be unsupervised.*

*4. The parties shall communicate through Our Family Wizard and each shall pay their own expense. In the event that a comparable application is available free of charge, the parties shall utilize the free of charge comparable application to communicate.*

*5. The Court takes judicial notice of the pending Family Support Magistrate case, Arnan Dhingra v. Pankaj K. Dhingra, NNH-*



*FA18-6086742. A hearing on the father's Motion for Modification and Motion for Contempt is scheduled for May 23, 2022. The father's current child support order is \$246 per week, which is incorporated into this judgment.*

*Any modification ordered by the Family Support Magistrate shall be incorporated as a modification of this judgment.*

*6. The parties shall equally share the cost of all extra-curricular activities of the minor child, provided the parties consent to the activity and cost prior to incurring any expense. The parties may, by mutual agreement, modify this order.*

*7. The court finds that had the parties remained intact, it is more likely than not that they would have contributed to the post-majority secondary educational costs for the minor child; the court shall retain jurisdiction for said purpose.*

*8. Plaintiff/husband shall pay to the defendant/wife alimony in the amount of three hundred dollars (\$300) per week for a period of two (2) years. Alimony shall terminate upon the death of either party, the remarriage of the wife, or two (2) years from the date of judgment, whichever shall first occur. Alimony shall be non-modifiable as to term and amount, with the following exception: alimony shall be modifiable upon a showing that the wife is living with another person under circumstances which the court finds should result in the modification, suspension, reduction or termination of alimony because the living arrangements cause such a change in circumstances as to alter the financial needs of the defendant/wife pursuant to C.G.S. 46b-86(b). No alimony shall be paid by the wife to the husband. To the extent that Defendant/wife*



*seeks retroactive alimony, that request is denied.*

*9. The plaintiff/husband shall maintain life insurance in the amount of \$100,000 naming the defendant/wife as irrevocable beneficiary for as long as the husband is subject to an alimony or child support obligation.*

*Xxxx”*

4. AK claims that her father was unwell because of which she had to urgently travel to India on 09.06.2022 alongwith Ms.XXX. She claims to have informed PD of the same by way of an email dated 11.06.2022.

5. AK claims that in retaliation, PD again approached the Superior Court and by an order dated 13.07.2022, the order dated 06.05.2022 was modified with the following directions:

*“1. The Father shall have sole legal and physical custody of the minor child, born on 03/30/2015. Within 48 hours of this order, the Mother shall return the minor child to the Father or to a member of his family designated by him. The court is requesting that local authorities in India assist the Father in taking custody of the child by himself or by way of a member of his family designated by him.*

*2. The Mother shall have supervised parenting time with the minor child upon her return to the State of Connecticut.*

*3. The Father's child support obligation to the Mother is terminated.*

*4. The Mother shall immediately return the minor child's passport to either the father's attorney, Daniel W. Adelman, or the minor child's Guardian ad Litem, Attorney Aisha*



*Roche, or to anyone designated by Attorney Adelman or Attorney Roche.*

*Judicial Notice (JDNO) was sent regarding this order.”*

6. Aggrieved of the same, AK filed W.P.(Crl.) 2049/2022 praying for the following reliefs:

*“A. ISSUE a Writ of Mandamus for an Order of protection for the Petitioner and her daughter against the Decision of the Superior Court of New Haven, Connecticut, United States of America dated 06.05.2022 and Order 414024 dated 13.07.2022 of the Superior Court of New Haven, Connecticut.”*

7. This Court by an *ad interim* order dated 13.09.2022, stayed the operation of the order dated 13.07.2022 passed by the Superior Court.

8. Various applications were thereafter filed by the parties in the above writ petition, including Crl. M.A. No. 2007/2024 by PD seeking vacation of the *ad interim* order of stay. The said application was filed only on or about 13.01.2024.

9. A learned Single Judge of this Court disposed of the said application of PD, that is, Crl. M.A. No. 2007/2024, *vide* the Order dated 23.12.2024, *inter alia* observing as under:

*“17. Thus, perusal of this makes it clear that the Court while dealing with such petition is duty bound to consider the welfare of the child as of paramount interest and foreign court orders are considered as factors but are not conclusive In the present case, it cannot be said that the child as has been divorced from the social customs or subjected to a system which could physiologically disturb the child. It is also to be taken into account that the*



*present application seeking vacation of stay has been moved after around 15 months so it cannot be said that the same has been moved promptly and quickly. It is also pertinent to mention that in the present application, the only prayer has been made for vacation of the stay and no consequential relief has been asked for.*

*18. Thus, in view of the facts and circumstances, I consider that there is no ground for vacation of the stay. The question involved in the present petition concerns of welfare of child namely Ms. xx Dhingra which requires detailed deliberation and consideration. Thus, the present application is dismissed. The stay order granted vide order dated 13.09.2022 shall operate till the decision of the present petition.”*

10. Aggrieved by the same, PD filed a Special Leave Petition, being SLP (Crl.) No. 2831/2025, before the Supreme Court, which came to be disposed of by the Supreme Court *vide* its order dated 24.02.2025, observing that W.P.(Crl.) 2049/2022 be disposed of at the earliest.

11. During the pendency of W.P.(Crl.) 2049/2022, PD filed W.P. (Crl.) 3029/2024 on 26.09.2024, praying for passing of a Writ in the nature of Habeas Corpus directing the production of Ms.XXX from the custody of AK. We quote the prayer of the said petition as under:

*“a. Issue a writ in the nature of Habeas Corpus directing Respondent No. 1 to secure the release of ----- d/o the Petitioner forthwith from Respondents No.2 and transfer her physical custody to the Petitioner so that she can return to her country of citizenship and habitual residence, the United States of America;*



*b. Issue a writ in the nature of mandamus and/or any other appropriate writ or order that all further issues in respect of custody of ----- shall be adjudicated by the appropriate jurisdictional court in the United States of America; ...”*

12. From the above narration of facts, it would be evident that both the petitions are concerned with the custody of Ms.XXX and involve the effect of the order dated 13.07.2022 passed by the Superior Court. They were, therefore, taken up together for disposal.

**SUBMISSIONS OF THE LEARNED COUNSEL FOR AK**

13. Mr.Jai Anant Dehadrai, the learned counsel appearing for AK, submits that there are serious allegations of sexual assaults on Ms.XXX by PD, for which PD was even arrested in USA. He submits that such sexual assaults have had a psychological effect on Ms.XXX as would be evident from the report of Ms.Lauren F. Lavoie, LPC Holistic Psychotherapy. He submits that therefore, it is not in the welfare of the child to be taken back to USA.

14. He submits that in any case, the child has been in India now for almost four years and therefore, again it will not be in the interest of the child to be uprooted.

15. He submits that merely because PD has obtained a judgment from the Superior Court, the same cannot be a ground to ignore the welfare of the child, which should be the sole governing factor for this Court. In support of his submission, he places reliance on the judgments of the Supreme Court in *Nithya Anand Raghavan v. State*



*(NCT of Delhi )& Anr.*, (2017) 8 SCC 454, and *Nirmala v. Kulwant Singh & Ors.*, (2024) 10 SCC 595.

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

16. On the other hand, Mr. Shadan Farasat, the learned senior counsel appearing for PD, submits that the Superior Court, on consideration of the evidence led by the parties before it, had found no merit in the allegations of sexual assaults made by AK against PD. In fact, it found that AK had been tutoring the minor child against PD. The Superior Court, on holistic consideration of the evidence, had directed a joint parenting plan which was subject to further modifications with the passage of time. He submits that AK, instead of complying with the same, on a false pretext, illegally removed the child, Ms.XXX from the jurisdiction of the Competent Court at Connecticut and brought her to India without the permission of the Court or PD. It was in these circumstances that PD was forced to move an application before the Superior Court seeking an emergency order of custody of Ms.XXX. Again, after considering the entire facts and substantial change in circumstances, the Superior Court was pleased to pass the order dated 13.07.2022. He submits that in these facts, the petition filed by AK is liable to be dismissed while that filed by PD is entitled to be allowed.

17. Without prejudice to his submissions, he contends that PD is, even now, willing to abide by the order dated 06.05.2022 passed by



the Superior Court and with any other directions that this Court may pass in exercise of its jurisdiction under Article 226 of the Constitution of India.

18. In support of his submission that the child having been wrongfully removed from the jurisdiction of the competent court which has passed orders for custody of the minor, a Writ of Habeas Corpus directing the child to be taken back from where she was unlawfully removed is maintainable, he places reliance on the judgment of the Supreme Court in *Elizabeth Dinshaw (Mrs.) v. Arvand M. Dinshaw & Anr.*, (1987) 1 SCC 42, and of this Court in *Sunaina Rao Kommineni v. Abhiram Balusu*, 2025:DHC:4483-DB, as upheld by the Supreme Court *vide* order dated 22.09.2025 passed in SLP(Crl.) No. 8800/2025, titled *Sunaina Rao Kommineni v. Abhiram Balusu*.

### **ANALYSIS AND FINDINGS**

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

20. Way back, in the year 1987, the Supreme Court in *Elizabeth Dinshaw* (supra) had highlighted the complexities that arise when one of the warring parents unauthorisedly removes the child from one country to another. Since then, the Supreme Court has considered this issue on a numerous occasions.

21. In *Tejaswini Gaud & Ors. v. Shekhar Jagdish Prasad Tewari & Ors.*, (2019) 7 SCC 42, examining the maintainability of a petition





*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.”*

22. The Supreme Court, when faced with similar issues, in ***Lahari Sakhamuri v. Sobhan Kodali***, (2019) 7 SCC 311, placing reliance on its earlier Judgments in ***Smt. Surinder Kaur Sandhu v. Harbax Singh Sandhu & Anr.***, (1984) 3 SCC 698; ***Elizabeth Dinshaw*** (supra); ***Surya Vadanam v. State of Tamil Nadu & Ors.***, (2015) 5 SCC 450; and in ***Nithya Anand Raghavan*** (supra), observed that the crucial factors which have to be kept in mind by the Court for determining the welfare of the child are, *inter alia*, maturity and judgment, mental stability, ability to provide access to schools, moral character, ability to provide continuing involvement in the community, financial sufficiency, and the relationship of the warring parents with the child. In cases, such as the present, the doctrine of comity of Courts, intimate connection, orders passed by Foreign Courts having jurisdiction in the matter regarding custody of the minor child, and the citizenship of the parents and the child, etc., can override the consideration of the best interest and the welfare of the child. However, the Court must ensure that any direction to return the child to a foreign jurisdiction does not result in any physical, mental, psychological, or other harm to the child. A holistic consideration of the entire case must be undertaken.

23. In ***Yashita Sahu v. State of Rajasthan & Ors.***, (2020) 3 SCC 67, the Court held that a Writ of Habeas Corpus is maintainable even





is guided by the well-settled principles, wherein the Court while giving adequate importance, acknowledgment and respect to the orders passed by the Courts of competent jurisdiction *albeit* of a foreign country, at the same time, gives paramountcy to the welfare of the child. In this regard, the Court also considers whether the custody of the child with the person having it, can be termed as illegal. The jurisdiction being summary in nature, where complex question of facts need to be determined or addressed on the basis of evidence, the Court is generally restricted in entertaining a Writ Petition and is more open to leave the parties to avail of their remedies under the general law.

26. Applying the above standard to the facts of the present case, we find that act of AK bringing Ms.XXX to India having suffered the order dated 06.05.2022 passed by the Superior Court cannot be termed as *bona fide*. The order passed by the Superior Court is on appreciation of the evidence led before it. If AK had any grievance against the same, she should have availed of her remedies there-against. The Writ Petition challenging the judgment of a foreign court may even otherwise not be maintainable.

27. In normal circumstances, therefore, we would have dismissed the Writ Petition filed by AK as being not maintainable, while allowing the Writ Petition filed by PD, however, for the reason that we shall hereinafter discuss, we refrain to do so.

28. As noted hereinabove, on the Writ Petition filed by AK, this Court had passed *ad interim* order dated 13.09.2022 staying the operation of the order dated 13.07.2022 passed by the Superior Court.



