

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CRIMINAL APPLICATION (HABEAS CORPUS) NO. 14406 of
2024**

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KUTBUDDIN INAYAT MITHIBORWALA POA OF AAMIR ALI ASGHAR
Versus
STATE OF GUJARAT & ORS.

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Appearance:

MR D M AHUJA(115) for the Applicant(s) No. 1
PUBLIC PROSECUTOR for the Respondent(s) No. 1

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CORAM: HONOURABLE MS. JUSTICE SANGEETA K. VISHEN
and
HONOURABLE MR. JUSTICE SANJEEV J. THAKER

Date : 28/10/2024

ORAL ORDER

(PER : HONOURABLE MS. JUSTICE SANGEETA K. VISHEN)

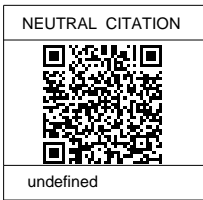
1. The captioned writ petition, *inter alia*, under Article 226 of the Constitution of India has been filed by the petitioner being Power of Attorney holder of Aamir Ali Asghar seeking custody of minor Azlaan Aamir Ali Asghar. The petitioner has prayed for the following prayers:

“A. YOUR LORDSHIPS BE PLEASED to issue a writ of habeas Corpus and direct the Respondents to produce Minor Azlaan Aamir Ali Asghar and direct that the Minor be handed over to his father Aamir Ali Asghar and petitioner may be permitted to accompany Minor Azlaan Aamir Ali Asghar to Atari - Wagah Border, Amritsar, Punjab, India to pursue the proceedings in Court of Family Judge XVIII at Karachi, Pakistan being Guardian and Ward Appl No 3168/2024.

B. Pending admission, hearing, and final disposal of this Petition, YOUR LORDSHIPS BE PLEASED pass necessary directions in the interest of justice.

C. To pass any other appropriate and just order/s;”

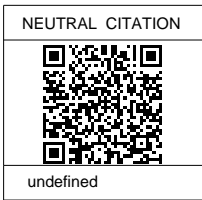
2. Mr D. M. Ahuja, learned advocate appearing for the petitioner submitted that the marriage of the respondent no.4 with Aamir Ali



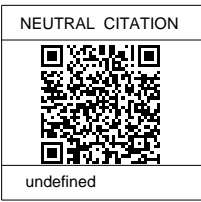
Asghar was solemnized at Karachi, Pakistan on 07.01.2019. Minor Azlaan was born at Pakistan and presently is aged 4 years and 20 days. It is submitted that the respondent no.4 illegally brought the son to India on 23.09.2024 who has been granted tourist visa and its validity is upto 06.11.2024. It is submitted that respondent no.4 has stopped contacting with her husband and it is an apprehension that the respondent no.4, would not take sufficient care of the minor Azlaan and he would be deprived of its culture and values. Child is kept in isolation outside the country and it is not in doubt that the child is in force confinement and hence, the custody be handed over to the father.

3. It is further submitted that proceedings have been initiated before the Court of Family Judge - XVIII at Karachi being Guardian & Ward Application No.3168 of 2024 for permanent custody of minor Azlaan under the provisions of Section 25 of the Guardians and Wards Act, 1890. In the proceedings, notice has been issued; however, the husband is unable to serve upon the respondent no.4 as he cannot travel to India. It is submitted that considering the welfare and well-being of the child, the respondent be directed to hand over the custody and hence, the captioned writ petition for writ of Habeas of Corpus.

4. On the other hand, Ms.Jirga Jhaveri, learned APP, submitted that the respondent no.4 is a biological mother and if the child is in her custody, it cannot be said that it is illegal confinement. Except the proceedings pending before the District and Sessions Court Karachi, there is no order in favour of the husband and therefore the captioned writ petition, cannot be entertained.



5. Heard learned advocates appearing for the respective parties.
6. Grievance raised by the husband through the Power of Attorney holder is that the respondent no.4- the mother together with her minor son has traveled to India and after some days, she has stopped responding to the husband. The concern raised is that the respondent no.4 would keep the minor Azlaan in India. It is also the case of the petitioner that the minor Azlaan aged 4, is Pakistani Passport holder and is granted long term visa up to 06.11.2024. Nothing has been pointed out by the learned advocate appearing for the petitioner and could not substantiate his claim seeking custody of his son and as to how the child, is illegally detained by the mother - respondent no 4. From the record, it appears that recently on 15.10.2024, the Guardian and Wards Application no.3168 of 2024 has been filed with the Family Judge-XVIII at Karachi (Central) for grant of permanent custody of the minor child-Azlaan under the provisions of Section 25 of the Guardians and Wards Act, 1890. From the record, it further appears that the notice has been issued requiring the respondent no.4 to appear on 09.11.2024, failing which, the application would be heard and determined ex-parte.
7. The minor Azlaan aged 4 years, is in the custody of his mother and hence, it is difficult to believe that the welfare and the best interest of the child is at stake. The Court has repeatedly requested the learned advocate to substantiate the claim of illegal detention or the welfare and interest; however, the learned advocate could not point out, except the bare assertion about the nationality, culture and values. Thus, the claim of the petitioner that the minor Azlaan has been illegally detained, cannot be accepted.
8. Reliance is placed on the judgment in the case of *Rajeswari*



Chandrasekar Ganesh Vs. The State of Tamil Nadu and Ors. reported in 2022 (10) SCALE 163: MANU/SC/0890/2022. The said judgment would not apply to the facts of the present case inasmuch as, in the said case, there was an order granting temporary custody of the minor child to the petitioner therein. As stated herein above, in the present case, there is no order passed and hence, on mere assertion that the minor is illegally detained, cannot be considered and hence, the petition is not entertained and is dismissed.

(SANGEETA K. VISHEN,J)

(SANJEEV J.THAKER,J)

RAVI P. PATEL