IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 3950 OF 2023

Dr. Shreyas Dilip Mandre ..Petitioner
Versus
The State of Maharashtra & Anr. ..Respondents

Ms. Avani Bansal a/w. Ms. Parika Singh, Aryan Chourasia and Rishi Thakur for Petitioner.

Ms. Mahalakshmi Ganapathy, Addl.PP for State/Respondent No.1.

Mr. Wesley Menezes a/w. Waqaar Pathan, Hemali Mehta Tejani and Yash Athre i/b. Saamya Partners for Respondent No.2.

CORAM : SARANG V. KOTWAL &
SANDESH D. PATIL, JJ.

RESERVED ON : 18 APRIL 2026
PRONOUNCED ON : 29 APRIL 2026

JUDGMENT: (PER SARANG V. KOTWAL, J.)

1. Heard Ms. Avani Bansal, learned counsel for the Petitioner, Mr. Wesley Menezes, learned counsel for the Respondent No.2 and Ms. Mahalakshmi Ganapathy, learned APP for the State-Respondent No.1.

2. The petition is filed with the following two main prayers (a) and (b):

(a) "That this Hon'ble Court be pleased to issue Writ of Habeas Corpus or any other Writ, thereby directing the Respondent No.2/Respondents to produce the Petitioner's Child 'N' before this Hon'ble Court forthwith;

(b) That this Hon'ble Court be pleased to issue Writ of Habeas Corpus or any other appropriate Writ, thereby directing the Respondent No.2/Respondents that all steps be taken by the Respondent No.2/Respondents to return the child to the United Kingdom as per the orders dated 20/10/2023 and 17/11/2023 passed by Hon'ble Family Court of Justice, Family Division England, United Kingdom, in case No. FD 23 P 00382, who continues in the illegal custody of the Respondent No.2."

3. The brief facts leading to filing of the present petition are as follows:

(i) The Petitioner and the Respondent No.2 got married on 16.06.2008 in Mumbai. After the marriage, both of them shifted to Cambridge MA USA. Their son 'N' was born on 24.12.2014 in USA. In 2014, the Petitioner and the Respondent No.2 had become US citizens. Their son was born in USA, therefore, by birth he is also a citizen of USA. The Petitioner got a job in UK in the year 2019 and, therefore, the family shifted to UK on 30.07.2019 on a Tier Work-1

VISA. ‘N’ started going to school at Burton Green, Kenilworth. The parties purchased a house at 147 Duggins Lane, Coventry, CV-049GP and started residing there since 01.03.2021. Differences arose between the couple. The Petitioner shifted to a different residence at Turning Way, Cambridge, UK.

(ii) It is the case of the Petitioner that, ‘N’ told his teacher that he was afraid of visiting India. The Petitioner made an application for child care arrangement including an interim care plan that required interim custody of ‘N’ and prohibition of International travel with ‘N’. It is the case of the Petitioner that, in the meantime, the Respondent No.2 took ‘N’ with her to India without the Petitioner’s knowledge and consent. The Petitioner approached the High Court of Justice, Family Division, England UK pointing out the fact that the Respondent No.2 had taken their son to India without his knowledge and permission. Learned counsel for the Petitioner referred to the various orders passed by the said Court in those proceedings.

(iii) In the meantime, the Respondent No.2 had preferred

Petition No. A-2394 of 2023 in the Family Court at Bandra, Mumbai, for divorce along with an application restraining the Petitioner from taking away custody of the child.

In this background, the present petition is filed for the aforementioned reliefs.

SUBMISSIONS OF MS. AVANI BANSAL, LEARNED COUNSEL FOR THE PETITIONER:

4. Learned counsel for the Petitioner emphasized that the Respondent No.2 had left UK without informing the Petitioner. There are various orders passed by the High Court of Justice, Family Division, UK giving specific directions to the Respondent No.2 to bring back the child. The Respondent No.2 has violated those orders. Custody of 'N' with the Respondent No.2 is completely illegal. She had illegally removed 'N' from UK and illegally retained his custody in India. Therefore, it was necessary that the custody was restored with the Petitioner and 'N' was sent back to UK.

5. Learned counsel for the Petitioner invited our attention to the various orders passed by the Hon'ble Court in England. She

invited our attention to the various orders as follows:

(i) In the order dated 07.09.2023, the Court had recorded its satisfaction and had declared on a provisional basis that, on the date of the application, 'N' was habitually resident in the jurisdiction of England and Wales. 'N' was removed from England in July 2023 and retained out of the jurisdiction thereafter. That the Courts of England and Wales had primary jurisdiction in the matters of parental responsibility over the children pursuant to Article 5 and 7 of the 1996 Hague Child Protection Convention. It was ordered that, 'N' was made a ward of the said Court during his minority or until further orders.

(ii) The order dated 12.10.2023 records satisfaction and declaration based on consideration of the parties' statements on the issues. It was ordered that, 'N' would remain a ward of the said Court during his minority or until further orders.

(iii) Vide the order dated 17.11.2023 the Respondent No.2 was directed to return 'N' to the jurisdiction of England and Wales by not later than 06.12.2023. The same order was continued and

further dates were given.

(iv) The order dated 14.03.2024 records that, in addition to the earlier directions, the Respondent No.2 was directed to return to England and Wales, at least under the auspices of a tourist visa, whilst her immigration position was further considered and regularized. The order also notes a warning that if the Respondent No.2 disobeyed that order, she would be held to be in contempt of Court and may be imprisoned or fined. Pending such return, the Respondent No.2 was directed to make 'N' available for indirect contact with the Petitioner-father either by telephone or video link at 3:00pm Indian time every Saturday.

(v) The subsequent order shows that the Petitioner had initiated the contempt application.

(vi) The order dated 03.09.2024 records that the proceedings in India initiated by the Petitioner were returned to the High Court of Bombay by the Hon'ble Supreme Court for expeditious disposal. In those circumstances, the Petitioner did not seek any final determination of his application for the Respondent

No.2-wife to be held in contempt of Court for her repeated breaches of the return order made in respect of 'N' by the Court. The Petitioner's contempt application was adjourned generally with liberty to the Petitioner to restore the same forthwith upon any relevant developments in the proceedings in India.

6. The compilation includes the proceedings mentioning that the Respondent No.2 had put forth her case before the said Hon'ble Court.

7. Learned counsel for the Petitioner relied on certain Judgments as follows:

(I) ***Nithya Anand Raghvan Versus State of NCT of Delhi & Anr.***[1]. She submitted that the said Judgment emphasizes that the paramount consideration in this case is the best interest and welfare of the child.

(II) ***Lahari Sakhamuri Versus Sobhan Kodali***[2]**.** In this case, the parameters of the principles of welfare of the child were mentioned.

1 (2017) 8 Supreme Court Cases 454
2 Civil Appeal Nos.3135-3136 of 2019 : Decided on 15.03.2019

(III) ***Rohith Thammana Gowda Versus State of Karnataka and others[3];*** in which, it was held that the desire of the child can be ascertained through interaction, but the question as to what would be the best interest of the child, is the matter to be decided by the Court taking into account all the relevant circumstances.

(IV) ***Yashita Sahu Versus State of Rajasthan and others[4].*** This Judgment discussed the necessity to grant visitation rights to other parent who does not have custody of the child.

(V) ***Vivek Singh Versus Romani Singh[5].*** This judgment discussed the Parental Alienation Syndrome.

(VI) ***Abhay Versus Neha Joshi and another[6].*** This judgment is passed by a Division Bench of this Court, in which, the custody of the child was handed over to the father. He was permitted to take his child to USA for his better future.

Learned counsel referred to some other Judgments, but these are the main judgments on which she based her submissions.

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3 (2022) 20 Supreme Court Cases 550
4 (2020) 3 Supreme Court Cases 67
5 (2017) 3 Supreme Court Cases 231
6 2023 SCC OnLine Bom 1943

8. To support her contention that the best interest of the child would be served if he is sent back to UK, she submitted that, 'N' is still admitted in a school at UK. He is eligible to all health care services. The petitioner is able to provide financial stability for both i.e. for 'N' and for the Respondent No.2. 'N' already has permanent residency and if he is in UK for one full year, he can get UK citizenship as well. Thus, he would have dual citizenship in UK and USA which would be excellent for his future. The Respondent No.2 can come to UK on a tourist visa or even on spousal visa and then she can approach the Court in UK for appropriate reliefs. In fact, the Hon'ble Court in UK had heard the Respondent No.2 on video conferencing for quite some time.

9. Learned counsel further submitted that the Respondent No.2 deliberately brought 'N' to India. It would amount to forum shopping. She is choosing a forum in the country of her choice i.e. India.

SUBMISSIONS OF MR. WESLEY MENEZES, LEARNED COUNSEL FOR THE RESPONDENT NO.2:

10. Learned counsel for the Respondent No.2 relied on the

Affidavit in Reply filed by her. He submitted that the circumstances in which the Respondent No.2 had to leave UK will have to be taken into consideration. He invited our attention to Paragraph-4(iii) of the Affidavit in reply. He submitted that the Respondent No.2 had received a letter from UK Home Office informing that her visa was revoked and she was to leave the country by 16.07.2023. He submitted that, it was a direct result of the complaint/letter sent by the Petitioner against the Respondent No.2 to UK Home Office informing them that the Petitioner had separated from the Respondent No.2. At that time, 'N' was in Respondent No.2's custody and, therefore, she was forced to leave with 'N' for India. Learned counsel invited our attention to the said letter dated 17.05.2023 issued by UK Home Office to the Respondent No.2. The said letter includes the reasons for that decision. It was mentioned that on 30.07.2019 the Respondent No.2 was granted permission to enter the UK until 30.11.2024 as the spouse of the Petitioner. The decision was made to cancel the said permission in respect of the Respondent No.2. It was mentioned that, since the Petitioner and the Respondent No.2 were no longer living together

as spouses, the Secretary of the State was not satisfied that their marriage was subsistent and, therefore, she did not meet the requirement of immigration rules under which the permission was granted.

11. Exhibit-A annexed to the Affidavit in reply is the letter dated 05.07.2023 issued by the Headteacher of Burton Green CofE Academy, wherein, it was mentioned that, 'N' was currently attending play therapy sessions to support him with the breakup of his parents' marriage and 'N' had expressed that he did not want to see his father and was worried about seeing him without his mother-Respondent No.2 being present. There are other documents annexed to the Affidavit in reply regarding the Respondent No.2's case that she had suffered domestic violence at the hands of the Petitioner.

12. Learned counsel for the Respondent No.2 submitted that, she has filed a petition for divorce U/s.13(1)(ia), interim application for maintenance U/s.24 and 25 and application for custody of minor son U/s.26 of the Hindu Marriage Act, 1955.

13. The Petitioner has not established his bonafides by filing an Affidavit that he will give NOC for renewal of 'N's USA passport. Learned counsel submitted that the Petitioner is not co-operating in giving NOC for renewal of USA passport. This will seriously prejudice N's prospect. It will have adverse effect on his future. 'N' cannot go to UK because of the dispute between his parents. He cannot go to USA because neither of his parents has a job in USA and, therefore, it is imperative that his stay in India is legal. For that purpose, it is necessary that his USA passport is renewed; for which, the Petitioner's NOC is required. However, the Petitioner is not giving that NOC, thereby adversely affecting 'N's prospect.

14. The Petitioner has not even giving any assurance either on affidavit or otherwise to facilitate the Respondent No.2 in getting valid visa for her stay in UK. The Respondent No.2 is completely dependent on the Petitioner in this behalf. Learned counsel submitted that, if the Respondent No.2 gets tourist visa, it is only for six months. The prospect of getting spousal visa for UK is remote, looking at the earlier stand taken by the Petitioner.

15. The Petitioner has no close relatives in UK. His parents are in India. He himself suffers from bad health condition and, therefore, it is too risky to send 'N' to UK to stay alone with the Petitioner. In case of emergency, considering the tender age of 'N', it would be practically impossible for him to take effective steps and to look after himself.

16. In all cases cited by the learned counsel for the Petitioner, the facts situations were totally different to this peculiar situation when the parents and son are the citizens of USA, but the Respondent No.2 is not a citizen of UK and her valid stay in UK is not assured.

17. He submitted that the welfare of the child in this case lay with the prospect of 'N' staying in custody of the Respondent No.2.

IN RESPONSE, SUBMISSIONS OF THE LEARNED COUNSEL FOR THE PETITIONER:

18. Learned counsel for the Petitioner, in response, submitted that the Respondent No.2 could have made an application before 16.07.2023 in the UK Home Office for extending her stay. She had made such application, but she

withdrew that application which shows that she was never serious to stay in UK.

REASONS AND CONCLUSIONS

19. We have considered these submissions. Before we proceed to refer to the submissions made by both the contesting parties, we may note here that we have interviewed 'N' in our chambers on 08.04.2026. Our interaction with the child is noted in the order dated 08.04.2026. We ensured that neither of the parties nor their counsel were present in the chambers. We found 'N' to be quite capable of understanding the situation. He was giving intelligent answers. We specifically asked him about his choice. He told us that he would like to continue staying in India with his mother. He further stated that, though, he is not very comfortable, he would still try to have dialogue with his father.

20. In the background of the facts of this case, it is necessary to refer to the observations made by the Hon'ble Supreme Court in various judgments referred to herein above.

In ***Nithya Anand Raghavan's case***, the mother of the

child had approached the Hon'ble Supreme Court regarding the issue of the custody of her minor daughter challenging the order passed by the High Court of Delhi directing production of the minor daughter allegedly illegally removed by the mother from the custody of the father of the child from UK.

Though, in that case, the child in question was a minor daughter and in the present case it is the case of a minor son, but the facts of allegations of removing the child from UK are strikingly the same. In that case, the case of the mother of the child was that, she had come to India along with her daughter because of alleged violent behaviour of the father of the child. But in that case the father had also filed a custody/wardship petition before the High Court of Justice, Family Division, UK seeking return of the daughter to the jurisdiction of UK Court. In that case, the High Court of Justice passed an ex-parte order directing the mother to return the daughter to UK and to attend the hearing at the Royal Courts of Justice. The High Court of Delhi, in the impugned Judgment, had directed the mother to produce her daughter and to comply with the orders passed by the UK Court or handover her

daughter to the father. The said order was challenged. In that context, the Hon'ble Supreme Court made observations which are relevant for the present petition. Paragraph-47 reads thus:

> "47. In a habeas corpus petition as aforesaid, the High Court must examine at the threshold whether the minor is in lawful or unlawful custody of another person (private Respondent named in the writ petition). For considering that issue, in a case such as the present one, it is enough to note that the private Respondent was none other than the natural guardian of the minor being her biological mother. Once that fact is ascertained, it can be presumed that the custody of the minor with his/her mother is lawful. In such a case, only in exceptionable situation, the custody of the minor (girl child) may be ordered to be taken away from her mother for being given to any other person including the husband (father of the child), in exercise of writ jurisdiction. Instead, the other parent can be asked to resort to a substantive prescribed remedy for getting custody of the child."

21. In paragraph-48, it was observed that, merely because the order is passed by the foreign Court, custody of the minor will not become unlawful per se. In that reference, the paragraph-49 reads thus:

> "49. On a bare perusal of this order, it is noticed that it is an ex parte order passed against the mother after recording prima facie satisfaction that the minor Nethra Anand (a girl born on 7-8-2009) was as on 2-7-2015,

habitually resident in the jurisdiction of England and Wales and was wrongfully removed from England on 2-7-2015 and has been wrongfully retained in India since then. Further, the Courts of England and Wales have jurisdiction in the matters of parental responsibility over the child pursuant to Articles 8 and 10 of BIIR. For which reason, it has been ordered that the minor shall remain a Ward of that Court during her minority or until further order; and the mother (Appellant herein) shall return or cause the return of the minor forthwith to England and Wales in any event not later than 22-1-2016. Indeed, this order has not been challenged by the Appellant so far nor has the Appellant applied for modification thereof before the concerned court (foreign court). Even on a fair reading of this order, it is not possible to hold that the custody of the minor with her mother has been declared to be unlawful. At best, the Appellant may have violated the direction to return the minor to England, who has been ordered to be a Ward of the court during her minority and further order. No finding has been rendered that till the minor returns to England, the custody of the minor with the mother has become or will be treated as unlawful including for the purposes of considering a petition for issuance of writ of habeas corpus. We may not be understood to have said that such a finding is permissible in law. We hold that the custody of the minor with the Appellant, being her biological mother, will have to be presumed to be lawful."

22. Paragraph-63 is also relevant; which reads thus:

"63. As regards the fourth factor noted in Clause *(d)* of para 56, *Surya Vadanan case [(2015) 5 SCC 450]*, we respectfully disagree with the same. The first part gives weightage to the "first strike" principle. As noted earlier, it is not relevant as to which party first approached the Court or so to say "first strike" referred

> to in para 52 of the judgment. Even the analogy given in para 54 regarding extrapolating that principle to the courts in India, if an order is passed by the Indian Court is inapposite. For, the Indian Courts are strictly governed by the provisions of the Guardians and Wards Act, 1890, as applicable to the issue of custody of the minor within its jurisdiction."

Applying the ratio of this case to the present facts of the case, it is not possible to hold that custody of the minor child with the Respondent No.2 is illegal. This Judgment covers almost all the issues raised in this petition. The ratio squarely applies in favour of the Respondent No.2's case.

23. In ***Lahari Sakhamuri's case***, custody of two children was considered. Both these children were born in USA and were USA citizens and held USA passport. They were in USA from their birth. The mother of the children had filed a petition for divorce and custody of minor children in USA in December 2016. In those proceedings, both the parties were directed not to change the residence of the children. The efforts were going on for conciliation. The mother travelled to India with both minor children in March 2017 with return tickets of April 2017. But when she came to India, at Hyderabad, she filed a petition in the Family

Court at Hyderabad seeking custody of the minor children and injunction against the father of the children. She got an ex-parte injunction. She also filed an FIR against her husband and his family members, mainly U/s.498A of the IPC. In this background, the Hon'ble Supreme Court considered the facts and ultimately directed the mother to return to USA along with her children. It was observed that the best interest of the children being of paramount importance would be served if they returned to USA and enjoyed their natural environment with love, care and attention of their parents including grandparents and to resume their school and be with their teachers and peers.

24. In the present case, there is a crucial difference in the facts of the case, as, though the Petitioner's son is a USA citizen, he cannot return to USA because neither of his parents i.e. the Petitioner and the Respondent No.2 is in a position to go back to USA. These are the peculiar facts where the Petitioner seeks custody of the minor son to be taken to UK and not to USA where the mother i.e. the Respondent No.2 and 'N' have citizenship. In the facts mentioned herein above, it is extremely difficult and/or

impossible for the Respondent No.2 to stay in UK without the active support and consent of the Petitioner. Considering the issues between the parties, there is real apprehension that she would always be at the mercy of the Petitioner in UK for her valid stay.

25. Learned counsel for the Petitioner referred to ***Rohith Thammana Gowda's case***, to contend that though the desire of the child can be ascertained through interaction, but the question as to "what would be the best interest of the child" was the matter to be decided by the Court, taking into account all the relevant circumstances. Paragraph-21 of the said Judgment is important; which reads thus:

> "21. The child in question is a boy, now around 11 years and a naturalised US citizen with an American passport and his parents viz., the Appellant and Respondent No. 3 are holders of Permanent US Resident Cards. These aspects were not given due attention. So also, the fact that child in question was born in USA on 3-2-2011 and till the year 2020 he was living and studying there, was also not given due weight while considering question of welfare of the child. Merely because he was brought to India by the mother on 3-3-2020 and got him admitted in a school and that he is now feeling comfortable with schooling and stay in Bengaluru could not have been taken as factors for considering the welfare of the boy aged 11 years born and lived nearly for a decade in USA. The very fact that he is a naturalised citizen of US with American passport

> and on that account he might, in all probability, have good avenues and prospects in the country where he is a citizen. This crucial aspect has not been appreciated at all. In our view, taking into account the entire facts and circumstances and the environment in which the child was born and was brought up for about a decade coupled with the fact that he is a naturalised American citizen, his return to America would be in his best interest."

In the present facts of the case, though the Petitioner and the Respondent No.2's son has the USA citizenship and passport, it is practically not possible for him to go to USA and it is not possible that either of the parents can accompany him to stay in USA. Therefore, the question of 'the best interest of the child' will have to be decided in the facts of the present case.

26. In ***Yashita Sahu's case*** the Hon'ble Supreme Court considered the doctrine of comity of Courts and reiterated that the best interest of the child was of paramount importance. In addition, the Hon'ble Supreme Court observed that, if the custody is given to one parent, the other parent needs to have sufficient visitation rights to ensure that the child keeps in touch with the other parent and does not lose social, physical and psychological contact with any one of the two parents. It was only in an extreme

circumstance that one parent should be denied contact with the child. A case where the parents are of two different continents, efforts should be made to give maximum visitation rights to the parent who is denied custody. In addition to 'visitation rights', 'contact rights' are also important for development of the child specially when both parents live in different countries. The concept of contact rights in the modern age would be contact by telephone, e-mail or best would be video calling.

27. In ***Vivek Singh's case*** the Hon'ble Supreme Court considered the term "Parental Alienation Syndrome". It was observed that, it has at least two psychological destructive effects: First, it puts the child squarely in the middle of a contest of loyalty, a contest which cannot possibly be won. Second, the child was required to make a shift in assessing reality. One parent is presented as being totally to blame for all problems, and as someone who is devoid of any positive characteristics.

28. Learned counsel for the Petitioner submitted that, in this case, the interaction with the child will not depict the true picture

of reality because the son is with the mother who is in a position either to pressurise or at least influence him against the father.

While, there could be substance in the submissions of the learned counsel, the best possible way is to interact with the child at least to elicit from him his desire. In the present case, we are taking into consideration the best interest of the child as paramount consideration, and the practical difficulty faced by the Respondent No.2 along with his wish.

29. We have narrated the history of the dispute between the parties. In this case, it is practically impossible for the Respondent No.2 to go to UK and settle down there on her own. It is an admitted fact that, neither the Petitioner nor the Respondent No.2 has got a job and are likely to get any job in near future in USA. If the child and both parents could go to USA, then there could be at least some solution to the problem. In that case, all three of them had their independent right to reside in USA. But unfortunately that is not possible. The Respondent No.2 simply cannot go to USA without a job. It is not possible for her to survive there.

30. On the other hand, if the Respondent No.2 were to go to UK, she would be constantly at the mercy of the Petitioner. Their history shows that the Petitioner himself had withdrawn his consent to enable the Respondent No.2 to stay in UK. Specifically for that reason, the Respondent No.2 was served with the notice by the UK Home Office to leave the country. She was left with no choice but to leave UK. At that time, the son was residing with her and, therefore, it is understandable that the Respondent No.2 had no choice but to take her son to India. The Petitioner's son was in USA for his first five years and then for about four years he was in UK. Since 2023, the son is in India. We already interacted with him and he has expressed his strong desire to stay in India with his mother. He reluctantly agreed to have conversation with the petitioner.

31. In these circumstances, there is a strong possibility that, if the Petitioner is permitted to take his son to UK and if the Respondent No.2's stay in UK is not assured with reasonable certainty, then there is a real possibility that the son may not see his mother for a very long time. That certainly would not be in his

best interest. On the other hand, it is always possible for the Petitioner to visit India and meet his son whenever it is possible for the Petitioner. Thus, if the custody is directed to be handed over to the Petitioner, then there would be irreparable emotional loss to the child, if he is unable to meet his mother. In the present circumstances, we cannot hold that the Petitioner's son's stay in India with the Respondent No.2 is unlawful or that his custody with his mother is unlawful. The son is getting good education in India as per our interaction with him.

32. It must also be noted that the Respondent No.2 has demonstrated as to how the Petitioner is not acting in the best interest of the child. It was submitted on behalf of the Respondent No.2 that the Petitioner was not giving NOC for renewal of 'N's USA passport. Without a valid passport, there were legal hurdles in getting OCI Card for the son. Thus, the Petitioner's son's stay in India could be affected. In other words, by his action, the Petitioner has raised serious apprehension that the Petitioner is not acting in the best interest of the child. The petitioner's conduct shows that he is trying to close all the options for the Respondent

No.2 and making her life extremely difficult. This is another reason why we are not inclined to allow this petition. We find justifiable reasons made out by the Respondent No.2 to entertain the apprehension against the petitioner's conduct.

33. The facts in this case are very peculiar and are very different from all the Judgments cited before us. In all these judgments, the prayer was for returning the child to one country when it was possible for both the parents to stay in that country; either separately or with each other. But in the present case, USA is the country where the petitioner and the child have their citizenship, but the son is not to be taken to USA; instead the Petitioner wants the son in his custody in UK.

34. The circumstances show that, in UK itself the Respondent No.2 and the child were staying separately from the petitioner. Therefore, it would be even more difficult for the son to get adjusted living with his father to the exclusion of his mother who would be living far away in India.

35. Learned counsel for the Respondent No.2 expressed

another apprehension regarding the health issues of the petitioner. It is also an admitted fact that, in the past, the petitioner had suffered from the health issue related to the heart. The Petitioner does not have close relatives in UK. Therefore, in case of any unforeseen emergency, the son would be totally helpless.

36. The Respondent No.2 has already filed a petition for divorce, maintenance and custody of the child in the Family Court at Bandra. The father-petitioner can participate in those proceedings. The said Court shall decide the petition before it in accordance with law, without being influenced by the observations made in this order. In our opinion, the remedy availed by the Respondent No.2 in approaching the Family Court for those reliefs is a proper remedy where both the parties get equal chance to prove their case by leading evidence. In this view of the matter, we are not inclined to allow this petition.

37. The question of access, interim access and/or interim custody, temporary access are the questions which can be effectively and expeditiously considered and decided by the Family

Court in the said petition, in accordance with law.

38. With these observations, the petition is dismissed.

(SANDESH D. PATIL, J.) (SARANG V. KOTWAL, J.)