

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)

Writ Petition No. 6783 of 2026

IN THE MATTER OF:

An application under Article 102 of the
Constitution of the People's Republic of
Bangladesh.

-AND-

IN THE MATTER OF:

Mohammed Shah Alam

...Petitioner

-Versus-

Present:

Mr. Justice Sashanka Shekhar Sarkar
And
Justice Urmee Rahman

Government of the People's Republic of
Bangladesh, represented by the Secretary,
Ministry of Home Affairs and others

... Respondents

Mr. Mohammad Shamsul Alam, Advocate
...For the petitioner

Ms. Nadia Mehrin, Advocate
... For the respondent Nos. 2-5

Heard on 14.07.2026 and 19.07.2026

Judgment on 21.07.2026

Urmee Rahman, J:

In the instant writ petition Rule was issued in the following
terms:

*“Let a Rule Nisi be issued calling upon the
Respondents to show cause as to why Shah
Mohammad Ifzan (Minor) [date of birth 03.02.2024]
son of Mohammad Shah Alam and Shaila Khan,
address: Present “DELMONICO” 1st Floor, Flat No.
C-1, 405/1, Dilu Road, Eskaton, Ramna, Dhaka-1000
should not be brought before this Court so as to satisfy*

that the said minor son is not being held in custody without lawful authority or in an unlawful manner by respondent Nos. 2-5 and/or pass such other or further order or orders as to this Court may seem fit and proper.”

Relevant facts for disposal of the instant Rule, as narrated in the writ petition, in short, are that, the Petitioner got married with the Respondent No. 2 on 22.11.2021 following the Islamic Sharia Law, which was registered under Muslim Registration Act, 1974. Thereafter, a son was born out of the said wedlock on 03.02.2024 namely, Shah Mohammad Ifzan. Later on, their relationship became strained and the wife i.e. the respondent no. 2 started living at her parents' residence with her minor son. At one point she sent a divorce notice on 28.12.2025 to the petitioner. The petitioner wanted to visit his minor son several times but he was not allowed by the respondents no. 2-4. Without finding any recourse, the petitioner sent a legal notice dated 05.05.2026 to the respondent no. 2 through his lawyer requesting to handover the minor child to him but without any result.

Being aggrieved and dissatisfied with the impugned unlawful custody of the minor son of the petitioner and finding no other alternative efficacious remedy available, the petitioner has filed the instant writ petition and obtained the present Rule.

Mr. Mohammad Shamsul Alam, learned Advocate, appeared on behalf of the petitioner. At the very outset, he submitted that an

order granting the father visitation rights to his minor son would be sufficient to safeguard the father's interest.

He also submitted that, the minor son of the petitioner is entitled to receive his parental love and if he is deprived of that at this age it will cause irreparable loss and injury to the child. Therefore, the custody of the minor son should be given to the petitioner.

Learned Advocate finally submitted that, a child's welfare and betterment is of paramount interest in this case and due to the broken relation of the parents the child should not suffer.

In support of his submission learned Advocate for the petitioner placed reliance on the reported decision in the famous case of *Abdul Jalil and others Vs. Sharon Laily Begum Jalil* reported in **50 DLR (AD) 1998, 55** and another recent decision in case of *Eriko Nakano, Tokyo, Japan Vs. Bangladesh, represented by the Secretary, Ministry of Home Affairs and others* reported in **29 BLC [2024] (AD) 95**. In both these cases father's right to visit the minor children was considered by the High Court Division as well as the Appellate Division.

Conversely learned Advocate Ms. Nadia Mehrin appeared on behalf of respondent Nos. 2-5, who are respectively the mother, maternal grandfather, maternal grandmother and the maternal uncle of the child. She strongly opposed the Rule by filing an affidavit in opposition.

Learned Advocate for the respondents candidly submitted that, the petitioner had an adequate, efficacious and specific remedy before the competent Family Court, which is the appropriate forum vested with the jurisdiction to adjudicate all questions relating to the custody of a minor. The relief sought in the instant writ petition falls squarely within the exclusive jurisdiction of the Family Court, which is empowered to conduct a comprehensive inquiry, record oral and documentary evidence, determine disputed question of fact and pass appropriate ad interim and final orders in accordance with law. In view of the availability of an adequate and efficacious remedy before the competent Family Court, the petitioner cannot bypass the said forum and invoke extraordinary writ jurisdiction of this Court and therefore the instant writ is not maintainable and the Rule is liable to be discharged.

She also submitted that, the determination of custody is not merely a question of legal entitlement of either parent but is fundamentally governed by the paramount consideration of the welfare and best interest of the child. Such determination necessarily involves a comprehensive inquiry into various factual aspects which cannot be decided in this writ jurisdiction.

She further submitted that, the mother being the proper natural custodian of the child, has the lawful authority to continue with the custody unless she earns any disqualification. The son is only about two years old at present and a breastfed baby, he is exclusively dependent upon his mother both physically and

emotionally. At such a tender age, a child requires continuous maternal care, nursing, supervision, which can never be provided by the petitioner-father.

Learned Advocate for the respondents finally submitted that, the writ of Habeas Corpus is a high prerogative constitutional remedy to secure the liberty of a person against unlawful detention. It is not intended to adjudicate complex and disputed question of fact regarding custody of a minor, parental fitness or matrimonial discord. Therefore, the instant writ petition is not maintainable and the Rule is liable to be discharged.

In support of her submission learned Advocate for the respondent Nos. 2-5 referred to an unreported decision passed by this Division Bench in Writ Petition No. 12525 of 2021 in the case of *Md. Zahedul Hoque (Mithun) Vs. Bangladesh, represented by the Secretary, Ministry of Home Affairs and others*.

We have heard the learned Advocates for both the parties and considered their submissions and perused the writ petition, affidavit in opposition and all the documents on record as well as the decisions relied on by them.

This writ petition has been filed in the form of Habeas Corpus in which Rule was issued as to why the minor child should not be brought before this Court so as to satisfy that the said minor son is not being held in custody without lawful authority or in an unlawful manner by the respondent Nos. 2-5.

It is admitted by the petitioner that, the respondent No. 2 being the mother of the minor son is holding the son in her custody and it is not denied by the learned Advocate for the petitioner that mother of a minor child is the natural guardian and is lawfully entitled to have the custody of the minor son. Moreover, he could not show of any disqualification of the mother to disentitle her from having the custody of the minor son who is about only two and a half years old at present.

The extraordinary jurisdiction of Habeas Corpus is invoked to secure the release of a person from unlawful detention. In the case of a minor child, however, the court is guided predominantly by the welfare of child. The custody of a two year old child with his mother, in the absence of any allegation on proof of unfitness, neglect, abuse or other exceptional circumstances cannot be characterized as unlawful detention. The dispute essentially relates to custody and guardianship, which is to be adjudicated by the competent forum and not in a proceeding for Habeas Corpus.

The Constitutional jurisdiction under Article 102(2)(b)(i) is not intended to become an alternative forum for adjudicating private custody dispute merely because a litigant perceives the writ jurisdiction to be speedier or more advantageous. Parties must not be allowed to circumvent the jurisdiction expressly conferred upon the Family Court by resorting to a petition of Habeas Corpus, unless the facts unmistakably disclose unlawful detention or

exceptional circumstances warranting immediate constitutional intervention.

In this case, it has been admitted by the learned Advocate for the petitioner that no family suit seeking custody of the minor son has been filed by the petitioner.

It has been settled by the apex court of this Country in a number of decisions that Family Court is the appropriate forum in order to decide the matter of custody and guardianship etc. of the children. Without availing the appropriate forum, the petitioner has come before the High Court Division in the form of writ of Habeas Corpus.

We find that since the petitioner admitted the lawful custody of the mother of the minor son, the instant writ petition in the form of Habeas Corpus is absolutely misconceived and not maintainable.

The learned Advocate for the petitioner referred two reported decisions in which the visitation right of the father was considered by the apex court. On this point it is our view that, the facts and circumstances of those two cited cases are totally distinguishable from the facts and circumstances of the instant case before us. In both the reported cases it was the mother, who filed the writ petition in the form of the Habeas Corpus challenging the unlawful custody of the minor children by the father and both the Divisions entertained those writ petitions finding those maintainable. Since family suits were pending in both the cases, this Division as well as

the Appellate Division were inclined to pass a direction upon the parties by allowing the visiting right of the father on agreement between the parties. However, in the present case before us, we do not see any such agreement having been reached by the parties. Furthermore, since we have found the writ petition as not being maintainable, we are not inclined to pass any order as to the right of visitation of the father i.e. the petitioner. The prayer made by the learned Advocate for the petitioner is also completely beyond the terms and prayer made in the Rule. Any such order if given by this Court will give rise to an unwarranted situation which may hamper the wellbeing of the minor.

Before parting we are inclined to make an observation regarding the recent growing practice of invoking the extraordinary jurisdiction of this Court by filing a writ petition in the nature of Habeas Corpus seeking custody of a minor child, when admittedly the child is in the custody of the mother, who is the natural and lawful guardian. The allegation of any unlawful or illegal detention is totally misconceived in these cases. Such a practice not only misconceives the true scope and purpose of the writ but also tends to convert a constitutional remedy of an extraordinary nature into an alternative forum for determination of ordinary custody disputes. We therefore, deprecate such growing tendency. The sanctity of the constitutional remedy of Habeas Corpus must be preserved and its jurisdiction should not be allowed to be invoked as a matter of course in every dispute concerning the custody of a minor.

In view of the facts and circumstances, we find that the Rule is devoid of any substance.

Accordingly, the Rule is discharged.

However, there is no order as to cost.

Communicate the judgment and order at once.

Sashanka Shekhar Sarkar, J:

I agree.

Helal/ABO