

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CRWP-1315-2014.

Date of decision : 20.03.2015.

Lalit Mohan

.....Petitioner

Versus

State of Punjab and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

1. Whether Reporters of the local papers may be allowed to see the judgment ? Yes
2. To be referred to the Reporters or not ? Yes
3. Whether the judgment should be reported in the Digest ? Yes

Present: Mr. G.S. Nahel, Advocate for petitioner.

Mr. Jashanpreet Singh, Assistant A.G., Punjab.

Mr. K.R. Dhawan, Advocate for respondents No.4 to 6.

DARSHAN SINGH, J.

The present petition has been filed for issuance of a writ in the nature of habeas corpus under Articles 226/227 of the Constitution of India read with Section 482 of Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C.") for issuance of a roving writ for appointment of a Warrant Officer with a direction to get release the petitioner's son namely Madhav, who is in the illegal custody of respondents No.4 to 6 as his life and liberty is in danger.

2- The petitioner was married with Poonam, the daughter of respondent No.5. She died on 03.11.2008. Respondent No.5 lodged the criminal case vide FIR No.157 dated 03.11.2008 under Section 304-B of Indian Penal Code (for short "IPC"), Police Station Tapa against the petitioner, his brother and parents. The petitioner and his parents were convicted. The petitioner was sentenced to undergo rigorous imprisonment for life and his parents were sentenced to undergo rigorous imprisonment for a period of 10 years. The petitioner preferred an appeal against his conviction. During the pendency of the said appeal, his sentence was suspended vide order dated 07.04.2014. After getting bail, he contacted respondent No.5 to hand over the custody of his minor son but was shocked to know that his son has been residing with respondent No.4, who has even changed his father's name. Madhav is the legitimate son of the petitioner and he has a right to get his custody. He moved the representation (Annexure P-4) but of no avail. Hence, this petition.

3- Respondent No.5 contested the petition by raising the preliminary objection that petition is not maintainable. It is pleaded that there is a specific remedy before the Civil Court under the Guardian and Wards Act, 1890 (hereinafter referred to as "Act, 1890". It was further pleaded that the custody of minor Madhav was handed over to the maternal family by the SHO, Police Station Tapa in the presence of the relatives of both the sides vide Daily Diary Report (Annexure R-1). The father's name of the minor was never changed, rather that was a mistake on the part of the school authorities, which has been corrected later on.

The answering respondent denied that he has forcibly and illegally taken the custody of the minor child. The child is very safe and living happily with them. It is further pleaded that there are strong chances of conviction of the petitioner being upheld. The child is living with them for the last six years. With these pleas, the answering respondent prayed for dismissal of the petition.

4- Learned counsel for the parties have been heard and record of the case has been perused.

5- Learned counsel for the petitioner contended that Madhav, the minor son of the petitioner, is in illegal custody of respondents No.4 to 6. He, being the natural guardian of the minor child, is entitled for his custody. The respondents had gone to the extent that even the name of his father was changed in the school record. He further contended that the child is not living with his maternal grandparents, rather his custody has been further transferred to respondent No.4 Vishal Bansal, a distant relation, which is an illegal act and the custody of the minor son of the petitioner with respondents No.4 to 6 is illegal. The petitioner is entitled to the custody of the child being natural guardian by way of the present writ petition. To support his contentions, he relied upon cases **Gohar Begum Vs. Suggi alias Nazma Begum and others, 1960 AIR (SC) 93** and **Eugenia Archetti Abdullah Vs. State of Kerala, 2005(1) RCR (Civil) 259.**

6- On the other hand, learned counsel for respondents No.4 to 6 contended that the custody of the minor with his maternal grandparents

is not illegal. The custody of the child was handed over to them by the SHO, Police Station Tapa after the arrest of the petitioner and his parents. He is living happily with his maternal grandparents for the last seven years. He has only been sent to respondent No.4 for study purpose. The grandparents also regularly visit him. He contended that the petitioner can avail the remedy under the Hindu Minority and Guardianship Act, 1956 or the Act, 1890. Thus, the writ in the nature of habeas corpus is not maintainable.

7- I have duly considered the aforesaid contentions.

8- The Hon'ble Supreme Court in case **Gohar Begum Vs. Suggi alias Nazma Begum and others** (supra), relied upon by learned counsel for the petitioner, has laid down that the remedy of the writ in the nature of habeas corpus is available where the minor child is illegally or improperly detained. Similarly, in case **Eugenia Archetti Abdullah Vs. State of Kerala** (supra), the Division Bench of the Kerala High Court has laid down that wife can file habeas corpus petition to recover the child when there is illegal detention or wrongful custody. In that case, the children of tender age of less than three years were kept out of the motherland to the exclusion of their mother by their father and that was treated to be illegal detention.

9- In view of the ratio of law laid down in the aforesaid cases, the writ in the nature of habeas corpus shall only be maintainable where the custody of the minor child is illegal or he has been improperly detained.

10- In the instant case there is absolutely no such circumstance. Admittedly, respondent No.5 is the maternal grandfather of minor Madhav. It is also not disputed that Poonam, daughter of respondent No.5, was married with the petitioner. She died on 03.11.2008, as a result of which, a case FIR No.157 dated 03.11.2008 under Section 304-B IPC, P.S. Tapa was registered against the petitioner, his brother and parents. It is also not disputed that vide judgment dated 09.07.2011, the petitioner and his parents were convicted. The petitioner was sentenced to undergo imprisonment for life and his parents were sentenced to undergo rigorous imprisonment for a period of 10 years. It is evident from the copy of the Daily Diary Report No.25 dated 12.11.2008, Police Station Tapa (Annexure R-1) that after the registration of the case when there was nobody to look after the child, the custody of the child was handed over to respondent No.5 and his wife in the presence of the relatives. Since then, the child is residing with his maternal grandparents. This fact is also not disputed that the minor child is getting education in Shree Atam Vallabh Jain Vidyapeeth, Zira. This fact is also not disputed that mistake in his father's name in the school record has been corrected on the basis of an application (Annexure R-2) moved by respondent No.4, which is evident from the photocopy of the school certificate (Annexure P-4) dated 04.04.2012. Mere this fact that for the purpose of study, the child is residing with respondent No.4, it cannot be stated that her maternal grandparents have transferred his custody, which is only a temporary arrangement for the welfare of the

child in order to get education.

11- Thus, in view of the material available on record, it comes out that the custody of the minor child was handed over to his maternal grandfather after the death of his mother and arrest of the petitioner (his father) and his parents by the police vide Daily Diary Report No.25 dated 12.11.2008.

12- In these circumstances the custody of the child with his maternal grandparents cannot be stated to be illegal and there is also no material on record to conclude that minor Madhav is being improperly detained by them. So, the present writ petition is not maintainable. However, the petitioner can avail the remedy available to him before the Civil Court under the relevant provisions of law.

13- Thus, keeping in view my aforesaid discussion, the present writ petition is hereby dismissed.

Dated: 20.03.2015

sunil yadav

**(DARSHAN SINGH)
JUDGE**