

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

**Criminal Writ Petition No. 158 of 2015
Date of Decision: 4.3.2015**

Manpreet Kaur

.....Petitioner

Versus

State of Punjab and others

.....Respondent

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Vaibhav Narang, Advocate
for the petitioner.

Ms. Anmol Grewal, AAG, Punjab.

Mr. M.L.Saggar, Sr. Advocate with
Mr. Sunny Saggar, Advocate
for respondents No. 4 to 6.

RAMESHWAR SINGH MALIK J.(ORAL)

Petitioner, by way of present criminal writ petition, seeks to invoke the jurisdiction of this Court under Article 226 of the Constitution of India, for issuance of a writ in the nature of Habeas Corpus, directing respondents No. 4 to 6 to produce and release the detenue-master Balraj Singh, aged two and half years, son of the petitioner, from their illegal custody. Petitioner also seeks any other writ, order or direction as this Court may deem fit and proper in the facts and circumstances of this case.

Notice of motion was issued and pursuant thereto, reply by way of affidavit dated 4.3.2015, on behalf of respondents No. 4 to 6, filed in the Court today, is taken on record and copy thereof has been supplied to the learned counsel for the petitioner.

In compliance of the order dated 20.2.2015 passed by this Court, respondents No. 4 and 5 are present in the Court alongwith minor son of the petitioner, i.e. the alleged detainee namely master Balraj Singh.

Learned counsel for the petitioner submits that minor son of the petitioner is being illegally detained by respondents No. 4 to 6. Father of the child is staying abroad. He further submits that there is no female member in the family to look after this child of tender age. He would next contend that custody of the minor son of the petitioner may also be granted to the petitioner, so that she may look after her minor son, being the mother and natural guardian. He also submits that the petitioner is serving in a private concern at Ludhiana and she wants to admit her son in a school at Ludhiana. He concluded by submitting that since parents of the petitioner are also staying with her, she would be in a much better position to look after her minor son. He prays for allowing the present criminal writ petition.

Per contra, learned senior counsel for respondents No. 4 to 6 submits that the minor was not being illegally detained by respondents No. 4 to 6. It was the petitioner herself who left the child in the custody of respondents No. 4 to 6, when she was planing to go abroad to stay with her husband. In such a situation, it cannot be said that respondents No. 4 to 6 were detaining the minor illegally, as alleged by the petitioner. He further submits that if the petitioner wants custody of the child, she may be relegated to her alternative remedy before the appropriate forum under the Hindu Minority and Guardianship Act, 1956 ('Act of 1956' for short). He concluded by submitting that since the petitioner has concealed material facts from the notice of this Court, present petition amounts to misuse of process of law and the same is liable to be dismissed.

Having heard the learned counsel for parties at considerable length, after careful perusal of the record of the case and giving thoughtful

consideration to the rival contentions raised, this Court is of the considered opinion that keeping in view the peculiar facts and circumstances of the case, present petition deserves to be allowed, for the following more than one reasons.

It is a matter of record that date of birth of the child is 11.7.2012 and he is just two and half years old. Although custody of the child with respondents No. 4 to 6 may not be said to be illegal, yet being of tender age of two and a half years only, child should be in the custody of his mother, unless there are some exceptional circumstances against the mother. It is also undisputed on record that husband of the petitioner is staying abroad. Her mother-in-law is no more. Sh. Jaswinder Singh son of Sh. Nrain Singh-respondent No.4-father-in-law of the petitioner, is the only male member in the family.

Petitioner is stated to be serving in some private concern at Ludhiana and wants to stay there with her minor child. Although in the normal circumstances, petitioner ought to have sought custody of the child under the relevant provisions of law contained in the Act of 1956, yet keeping in view the peculiar fact situation of the present case, this Court has found the instant one to be a fit case for exercising its extraordinary writ jurisdiction under Article 226 of the Constitution of India, for declaring the petitioner entitled for the custody of her minor son, who is just two and a half years old. It will not only avoid another round of unwarranted litigation but will also ensure complete and substantial justice between the parties.

Age of the child is not in dispute. Relation between the parties is also undisputed on record. Petitioner is the mother and she claims the custody of her minor son, who is just two and a half years old. On the other hand, respondent No.4-father-in-law of the petitioner and grandfather

of the alleged detainee-master Balraj Singh claims custody of the child. The fact that petitioner herself left the child with respondent No.4 for some time under the compelling circumstances, will not be sufficient to deny the custody of the child to the petitioner.

Now the petitioner is staying at Ludhiana and serving in some private concern. She wants to live with her minor son and also wants to admit him in some good school at Ludhiana. Petitioner has every right to do so. When the right of the petitioner for custody of her minor son is compared with respondent No.4-father-in-law of the petitioner and grandfather of the detainee, the scale must tilt in favour of the mother, particularly when there is no other lady member in the family.

In the matters of custody of the minor, paramount interest to be kept in mind by the Court is the welfare of the minor. In the present case, there cannot be any person better than the petitioner, being the mother and natural guardian, to look after the minor who is of a tender age of just two and a half years. Bringing up of the child cannot be left in the hands of respondents No. 5 and 6, who are said to be collaterals of respondent No.4. It is so said, because they would not have natural love and affection for the child. Further, there is no strong reason or compelling circumstance to deny the custody of the minor son to the petitioner, she being the mother and natural guardian. Having said that, this Court feels no hesitation to conclude that the petitioner is entitled for the custody of her minor son-the alleged detainee namely master Balraj Singh.

No other argument was raised.

Considering the peculiar facts and circumstances of the case, noted hereinabove, coupled with the reasons aforementioned, this Court is of the considered view that petitioner is entitled for the custody of her minor son. Accordingly, custody of the child is directed to be handed over to the

petitioner in the Court itself and he has been handed over to the petitioner.

Faced with the above, learned senior counsel for respondents No. 4 to 6 submits that respondent No.4 may be granted visiting rights. When this proposal was put to the petitioner, she has graciously accepted this proposal and states that she has no objection in case her father-in-law namely Sh. Jaswinder Singh son of Sh. Nrain Singh-respondent No. 4 is granted visiting rights.

In this view of the matter, respondent No.4 is granted visiting rights. He shall be permitted by the petitioner to visit his minor grandson namely master Balraj Singh, on every second and fourth Friday of each month, between 10:00 A.M. to 1:00 P.M. Respondent No.4 shall be permitted to stay with the child from 10:00 A.M. to 1:00 P.M., however, only at the residence of the petitioner.

It is also clarified that if after some time, the day and time of visit of respondent No. 4 clashes with the school timings of the child, the parties will be at liberty to mutually change the day and time of visit, as per their suitability.

Let the good sense prevail and as a result thereof if the relations between the parties become cordial, petitioner alongwith her minor son shall also be at liberty to visit the house of her in-laws, so as to enable the grandfather and grandson meet each other.

With the abovesaid observations made and directions issued, present criminal writ petition stands allowed, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

4.3.2015
AK Sharma