

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

**CRWP No. 46 of 2015 (O&M)
DATE OF DECISION: MAY 06, 2015**

JAGANDEEP KAUR SANDHU

.....PETITIONER

VERSUS

STATE OF PUNJAB AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. B.S. Bhalla, Advocate
 for the petitioner.

Ms. Priyanka Sadar, AAG, Punjab.

Mr. Rajesh Bhatheja, Advocate
for respondent No.3.

JASPAL SINGH, J (ORAL)

Instant petition has been preferred under Article 226 of Constitution of India for issuance of writ in the nature of Habeas Corpus directing respondent No.3 to release her minor daughter namely Preet Kaur Sandhu, aged about 02 years and 4 months illegally detained by respondent No.3 and to produce her alongwith her passport in Court for handing over her custody to petitioner.

2. Briefly stated the facts giving rise to instant petition are that marriage of petitioner with Kuldeep Singh Sandhu was solemnized on April 24, 2011 in Punjab. In the month of June 2012, on sponsorship of Kuldeep Singh Sandhu, husband of petitioner arrived in Canada and started residing

with him in Abbotsford, BC with his parents. The marriage was consummated and they were blessed with a girl child on September 23, 2012. It has further been alleged by petitioner that on account of birth of female child neither Kudeep Singh Sandhu nor his other family members including his parents were happy. They started disrespecting, maltreating and harassing her. In the month of September 2013, petitioner and her husband separated from each other. In mid March of 2013, petitioner left to India with her child and stayed there approximately for about one month. She was forced to leave her child there with elder brother of her husband i.e. respondent No.3 and his wife Charanjeet Kaur Sandhu. After she returned to Abbotsford, she constantly asked her husband to contact respondent No.3, so that she could skype her child. But it fetch no fruitful result and the matter was put off on one pretext or the other. Even on her asking, her parents namely Balbir Singh Gill-father and Amarjeet Kaur Gill-mother visited the house of respondent No.3 thrice but they were not allowed to have a glance upon minor child. Lastly, on third occasion in the month of October 2013, Balbir Singh Gill alone went to see the minor child but was flatly refused to meet the child. Subsequent thereto, petitioner took up the matter with her husband time and again and on September 17, 2013 she was advised to visit Punjab (India) to bring the child back. Apprehending that girl child would not be returned by her husband and finding no other option, she approached the Supreme Court of British Columbia by moving an application against her husband, in which, a direction was issued against her husband that he has wrongfully removed the child from Canada and shall secure the prompt return of child in Canada.

He was also directed to associate with returning of child to Canada but the

said order was not either implemented or complied with by Kuldeep Singh Sandhu. Thereafter, petitioner visited India and asked respondent No.3 to hand over the custody of minor child to her. When he refused to deliver the custody of child, instant petition was preferred.

3. In response to notice of motion, respondent No.3 appeared and resisted the petition. He filed reply by way of his affidavit raising preliminary submissions *inter alia* on the grounds that petitioner has not approached this Court with clean hands and has not given true facts; that criminal writ petition is not maintainable as other efficacious remedies seeking custody of minor child under the provisions of Guardian and Wards Act 1890 are available to petitioner and further that custody of minor child is permissive one and not illegal and as such, issuance of a writ in the nature of Habeas Corpus is not legally maintainable. On merits, all the allegations raised in the petition have been denied and respondent No.3 accordingly, prayed for dismissal of instant writ petition.

4. Through instant writ petition, petitioner has sought the custody of minor child and contention of learned counsel for the petitioner is that petitioner is the natural guardian of minor child being her mother and as such she is legally entitled to the custody of minor child. Further, it has been contended by petitioner that writ in the nature of Habeas Corpus is legally maintainable and in support of this contention, learned counsel for the petitioner has relied upon para 37 of the judgment of Hon'ble Apex Court passed in **Ruchi Majoo vs. Sanjeev Majoo; 2011 AIR SC (Civil) 1570**. It would be appropriate to reproduce the said paragraph, which reads as under:

“We do not propose to burden this judgment by referring to a

long line of other decisions which have been delivered on the subject, for they do not in our opinion state the law differently from what has been stated in the decisions already referred to by us. What, however, needs to be stated for the sake of a clear understanding of the legal position is that the cases to which we have drawn attention, as indeed any other case raising the question of jurisdiction of the court to determine mutual rights and obligation of the parties, including the question whether a court otherwise competent to entertain the proceedings concerning the custody of the minor, ought to hold a summary or a detailed enquiry into the matter and whether it ought to decline jurisdiction on the principle of comity of nations or the test of the closest contact evolved by this Court in [Smt. Surinder Kaur Sandhu v. Harbax Singh Sandhu and Anr.](#) (1984) 3 SCC 698 have arisen either out of writ proceedings filed by the aggrieved party in the High Court or this Court or out of proceedings under the Guardian & [Wards Act](#). Decisions rendered by this Court in [Mrs. Elizabeth Dinshaw v. Arvand M. Dinshaw and Anr.](#) (1987) 1 SCC 42, Sarita Sharma's case (supra), V. Ravi Chandran's case (supra), Shilpa Aggarwal's case (supra) arose out of proceedings in the nature of habeas corpus. The rest had their origin in custody proceedings launched under the Guardian & [Wards Act](#). Proceedings in the nature of Habeas Corpus are summary in nature, where the legality of the detention of the alleged detainee is examined on the basis of affidavits placed by the parties. Even so, nothing prevents the High Court from embarking upon a detailed enquiry in cases where the welfare of a minor is in question, which is the paramount consideration for the Court while exercising its parens patriae jurisdiction. A High Court may, therefore, invoke its extra ordinary jurisdiction to determine the validity of the detention, in cases that fall within its jurisdiction and may also issue orders as to custody of the minor depending upon how the court views the rival claims, if any, to

such custody. The Court may also direct repatriation of the minor child for the country from where he/she may have been removed by a parent or other person; as was directed by this Court in Ravi Chandran's & Shilpa Agarwal's cases (supra) or refuse to do so as was the position in Sarita Sharma's case (supra). What is important is that so long as the alleged detainee is within the jurisdiction of the High Court no question of its competence to pass appropriate orders arises. The writ court's jurisdiction to make appropriate orders regarding custody arises no sooner it is found that the alleged detainee is within its territorial jurisdiction”.

5. A glance at the aforesaid paragraph transpires that proceedings in the nature of Habeas Corpus are summary in nature, where the legality of the detention of the alleged detainee is examined on the basis of affidavits placed by the parties. Even so, nothing prevents the High Court from embarking upon a detailed enquiry in cases where the welfare of a minor is in question, which is the paramount consideration. Thus High Court *may*, invoke its extraordinary jurisdiction to determine the validity of the detention.

6. The ***Ruchi Majoo's*** case (supra) relied upon by learned counsel for the petitioner is not at all attracted in the facts and circumstances of the case in hand and is distinguishable.

7. Adverting to the facts of the case in hand, after the birth of girl child her custody was handed over to respondent No.3 by petitioner as well as her husband when she was aged about 6 months. Since then, she is being looked after and taken care of by respondent No.3. Meaning thereby, that custody of minor child given to respondent No.3 is/was permissive one.

There is nothing on record to suggest that minor child is being illegally detained by respondent No.3 or that minor child has been taken away by

fraud or force.

8. Hence this Court is constrained to hold that child is not in unlawful detention of respondent No.3. Judgment relied upon by learned counsel for the petitioner captioned as **Ruchi Majoo vs. Sanjeev Majoo's** case (supra) is not applicable in the facts and circumstances of the case in hand. Especially, in view of the fact that custody of the alleged detainee is neither illegal and forceful, rather is permissive one. Moreover, petitioner has got other efficacious remedy to secure the custody of minor child under the provisions of Guardian and Wards Act, 1890.

9. In the light of what has been discussed above, this Court does not find any merit in the instant writ petition. Accordingly, instant petition is dismissed.

May 06, 2015
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(JASPAL SINGH)
JUDGE