

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

**CRWP No. 701 of 2016
DATE OF DECISION: MAY 23, 2016**

AMAR SINGH

.....PETITIONER

VERSUS

UT CHANDIGARH AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

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

Present: Mr.Sandeep Kumar Advocate
 for the petitioner.

JASPAL SINGH, J

Instant petition has been preferred under Article 226 of Constitution of India for issuance of writ in the nature of Habeas Corpus by Amar Singh seeking release of his wife namely Aashmeen-respondent No.14, who has been illegally detained by respondents No.6 to 13 since September 08, 2015.

2. Briefly stated the fact giving rise to the instant petition are that petitioner got married to Aashmeen, alleged detainee on September 01, 2015. They have been granted the protection by this Court vide order dated September 03, 2015 passed in CRM No. M-29896 of 2015. On September 05, 2015, respondents No.6 to 12 alongwith Meerut police and Chandigarh police came to the house of the petitioner and took away the petitioner as well as the alleged detainee to Meerut in a case bearing FIR No. 0235, under

Section 363, 366 IPC and Sections 7 and 8 of POCSO Act registered at Police Station Kithore, Distt Meerut (UP). The said FIR was registered at the instance of father of the alleged detainee. Ultimately, on September 08, 2015 respondents No.6 to 13 took the alleged detainee to their house in village Machhra, Meerut, UP against her wishes and since then she has been illegally detained by respondent No.6 to 13 at their house.

3. The contention of learned counsel for the petitioner is that the alleged detainee has been forcibly taken away by respondents No. 6 to 13 against her wishes in connivance with Meerut police and Chandigarh Police. He further contends that though petitioner has a remedy under the civil law but since the alleged detainee has been taken illegally and forcibly by private respondents and is being detained unlawfully, petitioner is entitled to her custody by way of instant criminal writ petition. 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.***

4. Before proceedings further, it is to be seen whether custody of the alleged detainee can be said to be illegal or legal with private respondents. The illegal detention of the alleged detainee has been alleged since September 08, 2015. Legally speaking, a writ in the nature of habeas corpus is maintainable only when the detainee is alleged to have been taken away by illegal means from the custody of a natural guardian. In Para 37 of the judgment passed in the case of ***Ruchi Majoo's case (Supra)***, Hon'ble Apex Court made following observation.

“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 a writ of habeas corpus can only be entertained where the minor son or daughter has been illegally detained, or his/her custody has been taken forcibly from husband or wife. As such, the above-said authority is distinguishable on facts.

6. In the afore-said case, the detention of detainee was illegal and the custody was obtained by illegal means and forcibly and accordingly, Hon'ble Apex Court came to the rescue of the detainee by observing that writ of Habeas Corpus is also maintainable. As such, it cannot be said at this stage, that she has been illegally detained by respondents No.6 to 13 who are parents and brother. Since, the detention of Aashmeen cannot be termed to be illegal or unlawful, at this stage, a writ in the nature of Habeas Corpus is not legally maintainable.

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

MAY 23, 2016
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(JASPAL SINGH)
JUDGE