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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRWP-1387-2017

Date of Decision:- November 22, 2017

Navneet Kaur

....Petitioner

Versus

State of Punjab etc.

....Respondents

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

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

SHEKHER DHAWAN, J.

1. Present petition Article 226 of Constitution of India for issuance of a writ in the nature of Habeas Corpus for effecting the release of detenue, namely, Shiv Sher Singh, minor son of the petitioner and Navjot Singh, respondent No.4 herein, from the illegal custody of respondent Nos. 4 to 6.

2. Learned counsel for the petitioner contended that the marriage between the petitioner and respondent No.4 was solemnized on 12.03.2013 and out of the said wedlock, a male child, namely, Shiv Sher Singh, was born on 24.12.2013, who is now about 4 years of age. The relations between the petitioner and respondent No. 4 remained strained and the petitioner deserted alongwith her minor child and she had gone to her parents.

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3. Respondent No. 4 had filed a petition under Section 9 of the Hindu Marriage Act, 1956 and parties agreed to reside at Patiala, i.e., separate from respondents No. 5 and 6. On 27.9.2017, respondent No. 4 came to the rented accommodation at Patiala and took the petitioner and minor child to a Gurudwara and thereafter he took them to his residence. Ultimately, on 10.10.2017, the petitioner was again deserted after giving merciless beatings and the minor child was illegally kept in the custody of respondent No.4. Now, respondents No. 4 to 6 are not allowing the petitioner to meet the minor child and to talk to him.

4. Learned counsel for the petitioner fairly conceded that separate petition seeking the custody of the minor child is pending before the Guardian Judge.

5. Similar matter was before Hon`ble Supreme Court in **Sumedha Nagpal Vs. Stae of Delhi and others, 2000(9) SCC 745** and Hon`ble Apex Court held that in case there are serious disputed facts which require leading of evidence summary proceedings are impossible. The custody of the child cannot be handed over as the same would not be in the welfare of the minor child especially when in the present case, minor child is in the custody of his father. The proper remedy in such like cases is to file a petition seeking custody of the child by establishing legal rights and other ingredients under Section 6 of Hindu Minority and Guardianship Act, 1956 and Section 25 of Guardian & Wards Act, 1890 and that remedy has already been availed of by the present petitioner.

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6. In view of the above, the present petition is without any merit and the same stands dismissed.

November 22, 2017
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(SHEKHER DHAWAN)
JUDGE

Speaking/Reasoned	Yes
Reportable	Yes