

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CRWP No. 408 of 2017

Date of decision : December 19, 2017

Priyanka Dhanda and another

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA

Present:- Mr. Gautam Dutt, Advocate and
Mr. Manish Soni, Advocate
for the petitioners.

Mr. Harish Rathee, Sr. DAG., Haryana.

Mr. Aashish Chopra, Advocate
for respondent No.4.

G.S. SANDHAWALIA, J (oral).

The present petition has been filed under Article 227 of the Constitution of India read with Section 482 of the Criminal Procedure in the nature of Habeas Corpus to produce the detenue Tanish minor son of petitioner No.1 and brother of petitioner No.2 who is also aged 11 years. The alleged illegal custody is of respondent No.4 who is none else but of the father.

In view of the order dated 11.4.2017 the child was produced before this Court on 14.4.2017. Interaction accordingly took place. As noticeable the marriage was of the year 2003 and the child has been born on 18.12.2009 whereas petitioner No.2 had been born on 2.6.2005. It also transpired that respondent No.4 had filed proceedings

Guardian and Wards Act, 1890 for his appointment as a sole and exclusive guardian as well for grant of exclusive custody of the said child. Before the said petition came to be listed, a FIR dated 2.4.2017 (Annexure P-1) had also been lodged by petitioner No.1. The concern of the father was that the child was required some therapy session.

Resultantly, it was directed that both the parents including the mother shall also be involved in the therapy session and the therapist should interact with the child directly without the parents interfering. It is also pertinent to notice that both the children were going to common school namely Shri Ram School, Gurugram. On account of the efforts made the parties had gone back together to the matrimonial home and the proceedings had been deferred to 28.4.2017.

On the said date, it was noticed that the elder child may have to undergo some counseling on account of friction between the parents. Accordingly, the proceedings were further deferred to 8.8.2017, since the matter before the Family Court was fixed for July and the Court had been informed that therapy sessions are continuing.

It is not disputed that written statement has also been filed before the Family Court. Thus, it is not disputed by the counsel that the couple continue to stay together whereas the petition for custody is still pending. On this factual position, though the husband and wife are living under a common roof but they are at variance on account of their temperamental differences with each other.

Keeping in view the aforesaid circumstances, this Court is of the opinion that the present petition has been rendered infructuous as such. Accordingly, the counsel have agreed on instructions from the parents

present in Court that the custody would remain joint of both the parents and they would stay together in H. No. D-35, Oakwood Estate DLF Phase II, Gurugram, during the pendency of the Guardian Court proceedings. This arrangement is totally interim and in case any party wishes to file any application for any other relief, it will be open for them to approach the said Gurardian Court. It is further clarified that as per order dated 14.4.2017 and 28.4.2017 the therapy sessions of the children would continue till they need the same.

The present Criminal Writ petition stands disposed of.

(G.S. SANDHAWALIA)
JUDGE

December 19, 2017
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Whether speaking/reasoned	Yes
Whether Reportable	No