

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

**Criminal Writ Petition No.158 of 2018
Date of decision:16.08.2018**

Harpreet Singh

..Petitioner

Versus

State of Punjab and others

..Respondents

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Mr. Sandeep Sharma, Advocate
for the petitioner.

Ms. Rashmi Attri, AAG, Punjab
for respondents No.1 to 3-State.

Mr. Manoj Vashishtha, Advocate
for respondents No.4 to 6.

Daya Chaudhary, J.

The present writ petition has been filed by the petitioner under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of habeas corpus for releasing detenu, namely, Akaaljot Singh, who is son of the petitioner stated to be in illegal custody of respondents No.4 and 5.

The facts of the case as made out in the present petition by the petitioner are that the petitioner got married with Jyotdeep Kaur, the daughter of respondents No.4 and 5. After marriage, the petitioner went to Australia on 21.08.2014. The petitioner applied for spouse visa on behalf of his wife and as an interim arrangement to call his wife to Australia, he applied for tourist visa for her. On the basis of said tourist visa, the wife of the petitioner went to Australia on 05.10.2014. During stay in Australia,

their relations became strained. The wife of the petitioner came back to India on 29.12.2014 and again went to Australia on 19.01.2015. Both remained in Australia till 15.04.2015 and thereafter, they came back to India. The petitioner went back to Australia on 09.05.2015 on account of his work. The wife of the petitioner went to Australia on 19.08.2015 and during that period also, relations were not cordial between them. A son was born on 20.05.2016 in Australia. The petitioner along with his wife and son came back to India on 10.01.2017. Since then, they are residing in India. The parents of wife of the petitioner are also residing in Mohali. The wife of the petitioner visited the house of the petitioner on various occasions but on 16.06.2017, she left her matrimonial house and since then, she is residing with her parents. She also made a complaint against the petitioner and his family members. The petitioner approached this Court by way of filing Criminal Misc. No. M-24096 of 2017 for protection of his life and liberty as well as his family members, wherein notice of motion was issued and the same is still pending. Earlier the petitioner was allowed to meet his child but subsequently, he was not allowed to meet him. In December 2017, the petitioner came to know that his wife had gone to Australia leaving behind minor child in the custody of respondents No.4 and 5. The aforesaid petition was referred to Mediation and Conciliation Centre of this Court vide order dated 30.08.2017.

The petitioner being the natural guardian of the minor child, has claimed his custody and is also interested in taking him to Australia for his better future whereas his wife is not interested in sending the child with the petitioner.

Learned counsel for the petitioner submits that the child was born in Australia and is having citizenship of that country by birth. The petitioner is also citizen of Australia. Learned counsel further submits that the wife of the petitioner developed illicit relations with a married Australian citizen and she will not be able to protect interest of the minor child. Even when respondent No.6 left for Australia, the child was only one year of age. Learned counsel also submits that respondent No.6 will leave for Australia after decision of this petition leaving behind the minor child at the mercy of her old parents.

Learned counsel for respondents No.4 to 6 has opposed the submissions made by learned counsel for the petitioner by raising a preliminary objection with regard to maintainability of this petition. Learned counsel also submits that the petitioner has not approached this Court with clean hands and the petition deserves to be dismissed. Learned counsel further submits that the child is safe with the mother. The minor child was born in Australia and due to his birth in Australia, he enjoyed the status of Citizen of Australia and during his visit to India, the Australian Authorities issued the certificate of Overseas Citizen of India (OCI) in favour of minor child (Akaaljot Singh). Respondent No.6-wife has also applied for permanent resident status in Australia in the month of December 2016. Learned counsel also submits that respondent No.6-wife is not having any personal interest in residing Australia but since her son is citizen of that country, she has to reside there. The present petition has been filed by the petitioner by concealing and twisting certain facts. Learned counsel also submits that respondent No.6 has to visit India and Australia time and again

for completing certain formalities because of the pressure put by the petitioner with ulterior motive. The parents of respondent No.6 had to bear the expenses for sending her abroad and coming back to India on various occasions. At the end, learned counsel for respondents No.4 to 6 submits that even while staying with the petitioner's family, the minor child was not feeded properly. Respondent No.6 was thrown out from her matrimonial house and all documents like passport, educational, OCI certificate issued to Akaaljot Singh etc., were retained by the petitioner and his family members. All these documents were required to be submitted while visiting Australia.

Heard arguments of learned counsel for the petitioner as well as learned counsel for respondents No.4 to 6 and have also perused the documents available on the file.

The facts relating to relationship of petitioner and respondents No.4 to 6, the alleged detenu and his age are not disputed. It is also not disputed that the detenu, Akaaljot Singh, was born in Australia and he is citizen of that country by birth.

On perusal of facts, it appears that the minor child has been made scapegoat because of strained relations between the parties. The frequent visits to Australia and India are there by petitioner as well as respondent No.6.

The present petition has been filed by the petitioner for release of his minor son from the custody of respondents No.4 and 5, who are parents of respondent No.6. The child was staying with parents of respondent No.6 while she had to visit Australia.

Undisputedly, the paramount consideration while giving the

custody of the child is the welfare of child and not rights of parents under a statute for the time being in force. The custody of the child is with the mother and for the time being as the child was left by respondent No.6 with her parents. The petitioner and respondent No.6 have been visiting together but still they are having strained relations.

Admittedly, the child was born in Australia and he is Australian Citizen. During pendency of the petition, the wife of the petitioner was also impleaded as party-respondent No.6 to make the facts more clear. The child has been left by respondent No.6 with her parents because of her frequent visits to Australia. It is only the mother, who can look after the interest of minor child especially keeping in view the age of the child.

The present petition has been filed by the petitioner, who is father of minor child, without disclosing all material facts and the custody of the child with mother cannot be said to be an illegal detention.

Hence, the present petition being devoid of any merit and having disputed questions of facts is, hereby, dismissed.

However, the petitioner is at liberty to avail the appropriate remedy before the competent Court having jurisdiction as per law.

16.08.2018
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(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	No