

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

CRWP-540-2018 (O&M)

Date of decision:- 24.9.2018.

Amandeep Bains

....Petitioner

Versus

State of Punjab and others

....Respondents

CORAM: - HON'BLE MR. JUSTICE KULDIP SINGH.

Present: - Mr. K.S. Nalwa, Advocate for the petitioner.

Mr. Raman Mahajan, Advocate for respondent No. 4.

KULDIP SINGH J. (ORAL)

Petitioner has filed the present petition in the nature of habeas corpus for release of Sahib Inder Deep Singh, aged 6½ years from the illegal custody of the private respondents namely Inderbir Singh (father), Avinash Kaur (grandmother), Rajinderbir Singh (uncle) and Aditi Sharma (aunt), who are all residents of Jalandhar.

Heard.

It comes out from the petition that parties were married on 12.8.2007. Sahib Inder Deep minor son was born on 31.1.2012. It also comes out that child was earlier studying in Manav Mangal Smart School, Phase-10, Sector-64, Mohali. During the summer vacations, starting from 22.5.2016 when the petitioner and her husband-Inderbir Singh, happened to visit Jalandhar, a dispute arose between the parties. Petitioner was allegedly beaten up. She got her medico legally examined and lodged an FIR No. 0133 dated 28.6.2018 under Sections 323, 109, 379-B, 337, 34, 341 of the Indian Penal Code (Annexure P-2) claiming that she has been thrown out of the house. Later on, husband also lodged a cross-version.

Thereafter, child was residing with the father. Present habeas corpus was filed on 3.7.2018 in which coordinate Bench issued notice of motion and the minor was directed to be brought before the Court. Thereafter, Local Commissioner was also appointed to verify whether the child is studying in Manav Mangal Smart School or not. Local Commissioner submitted the report that child was studying in Manav Mangal Smart School, Mohali and last attended school on 22.5.2018. There was summer break from 26.5.2018 to 2.7.2018 in the school where mother-Amandeep Bains, the present petitioner is shown as the legal guardian with the Mohali address. He has further reported that the child is also shown admitted in the Mayor World School, Jalandhar where only father has signed and shown himself as separated from his wife.

The facts as culled out from the discussions are that earlier both the parties were living together and child was studying at Manav Mangal Smart School, Mohali with the mother being shown as the guardian. It appears that when the parties visited Jalandhar on 22.5.2018, the dispute arose between them for one or the other reason, which need not to be discussed and mentioned here and according to the petitioner, she was allegedly thrown out from the house.

It is still a debatable question as to what happened at Jalandhar and the said controversy is not to be discussed in the present order as it likely to crop up in some other litigation also. Now the fact is that child was living with the father at Jalandhar when the present petition was filed. Now the first and foremost question will arise as to whether the custody of biological father is illegal or is invited in the scope of habeas corpus petition?

Learned counsel for the petitioner has produced the following authorities of the Hon'ble Supreme Court **1:** (2011) 6 SCC 479, titled as Ruchi Manjoo versus Sanjeev Manjoo, **2:** (2001) 5 SCC 247 titled as Syed Saleemuddin vs. Dr. Rukhsana and other, **3:** (2010) 1 SCC 174 titled as V. Ravi Chandran vs. Union of India and others **4:** (2009) 1 SCC 42 titled as Gaurav Nagpal vs. Sumedha Nagpal, **5:** AIR 1960 SC 93 titled as Gohar Begam vs. Suggi @ Nazma Begam and other, **6:** AIR 1987 SC 3 titled as Mr. Elizabeth Dinshaw v. Arvand M. Dinshaw, **7:** 2009 1 RCR (Cri) 974 titled as Gurmeet Kaur Batth vs. State of Punjab and others, **8:** AIR 1987 HP 34, titled as Kamla Devi vs. State of Himachal Pradesh and others and further the authorities of this Court in CRWP-1256-2014 titled as Amita Chhabra vs. State of Haryana and (2012) 4 RCR (Civil) 397 titled as Gippy Arora vs. State of Punjab and others and has pressed that when the child is forcibly taken away, the jurisdiction of this Court under Article 226 of the Constitution of India can be invoked.

On the other hand, learned counsel for private respondents has produced the authority of Hon'ble Supreme Court in 2018 (1) RCR (civil) 2011 titled as Prateek Gupta vs. Shilpi Gupta and others, wherein it was held that custody of a biological father in such circumstances is not illegal.

In this case, vide order dated 21.9.2018, custody of the child was given to the mother for two days i.e. 22.9.2018 and 23.9.2018 (Saturday and Sunday) which has expired today.

After considering the facts and circumstances of the case, I am of the view that it is basically a custody dispute between the mother and father. At the time of the filing of the writ petition, child was living with the father.

I have communicated with the child in the chamber as the allegations were levelled against the real brother of the husband alleging that he kissed the child, therefore, it is alleged that the child has been abused and therefore, the custody should not be given to the father.

I am of the view that father of the child-Inderbir Singh is an IPS officer and he can defend his child against any alleged sexual abuse. Normally, father of a minor child will not allow abuse by anybody including his near relations. Child had remained in custody of mother for two days. Child want to live with mother and father. However, this Court at this stage cannot decide the merits as to with whom the child should live. Since, it is basically a custody dispute, therefore, I am of the view that the matter is required to be decided by the concerned Guardian Judge who will take into consideration all the facts and circumstances and decide as to in whose custody the child should remain. Since, I am of the view that the custody of a biological father of a minor son is not illegal, therefore, present habeas corpus petition stands dismissed.

The custody of the minor child, Sahib Inder Deep Singh is handed over to the father-Inderbir Singh. However, it is left open to the petitioner to approach the concerned Guardian Judge for custody of the minor child. If such petition is filed with application for interim custody of the minor child, the concerned Guardian Judge shall decide the same expeditiously in accordance with law. Since the welfare of the minor child also require that child should meet the mother regularly and the respondent-husband is having dual duty charge, one posting at Chandigarh and other at Jalandhar, therefore, it is required that till the concerned Guardian Judge decide about the visiting rights/interim custody, child shall be produced

before the Mediation and Conciliation Centre at Chandigarh on every Saturday and the mother will be allowed to meet the child from 10.00 AM to 4.00 PM. For this purpose, respondent-husband shall bring the child at Mediation and Conciliation Centre at Chandigarh. The Civil Judge, Senior Division, Chandigarh shall supervise the said meeting.

Father-Inderbir Singh, who is present in Court has ensured that he will keep the child in safe custody from his brother.

With the above noted direction, petition stands dismissed.

24.9.2018
preeti

(KULDIP SINGH)
JdUDGE

whether speaking/reasoned	yes
whether reportable	no