

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

CRWP No.558 of 2018

Date of Decision: 26.07.2018

Manmeet Kaur

....Petitioner

Versus

State of Punjab and others

....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Vikram Jeet Singh, Advocate
for the petitioner.

Ms. Rashmi Attri, A.A.G., Punjab.

Mr. Avtar Singh Khinda, Advocate
for respondents No.4 and 5.

DAYA CHAUDHARY, J.

Petitioner-Manmeet Kaur has approached this Court by way of filing the present petition under Article 226 of the Constitution of India for issuance of a writ in the nature of Habeas Corpus to release detenues, namely, Arvind Singh and Hareet Kaur from illegal custody of respondents No.4 and 5.

Briefly, the facts of the case, as made out in the present petition, are that the marriage of the petitioner was solemnized with one Balbir Singh on 03.01.2007 but soon after the marriage, his behaviour towards the petitioner was not good. The petitioner was being harassed by the family members of her husband. The husband of the petitioner was interested in divorce as he wanted to marry with some other girl settled in

Italy. He is residing in Italy for the last 10/11 years and is not sending any amount to the petitioner for her maintenance as well as for the children. The petitioner along with her children went to Malasiyan in the month of February, 2017 and stayed there with her brother. The husband of the petitioner came to India during that period and lodged DDR on 02.03.2017 alleging missing of petitioner and children. Thereafter, on 04.03.2017, an FIR No.19 was got registered at Police Station Bhulath, District Kapurthala against the petitioner and one Balraj Singh for committing theft of gold ornaments, laptop and other articles. An allegation was also levelled that the petitioner was having illicit relation with said Balraj Singh. Thereafter, on 08.03.2017, a divorce petition was also filed before the Court at Kapurthala. Petitioner came back to India along with her children. She was arrested and her two children were taken to police station and were given to husband of the petitioner-Balbir Singh on the ground that they could not be kept in jail. After having custody of the children, the husband of the petitioner went back to Italy by leaving the children in India with respondents No.4 and 5, who are his sister and brother-in-law.

As per case of the petitioner, her husband had solemnized second marriage. The petitioner has been meeting the children in the school and she was informed by them that they were not feeling comfortable and were not looked after by the relative with whom they are staying.

Learned counsel for the petitioner submits that the petitioner is having every apprehension that any harm can be caused to her children by respondents No.4 and 5. Neither the good education is being provided to them nor they are being looked after, whereas, the interest of the children is important.

Learned counsel for the petitioner has relied upon the judgment of this Court in case ***Manpreet Kaur vs State of Punjab and others 2015(3) RCR (Civil) 422*** in support of his arguments.

Learned counsel appearing on behalf of respondents No.4 and 5 has opposed the submissions made by learned counsel for the petitioner by relying upon the judgment of Hon'ble the Apex Court in case ***Lakhwinder Kaur vs Roshan Singh and others 2012(1) RCR (Criminal) 506*** and has submitted that the interest of the children should not be disturbed as both are getting good education and expenses are to be borne by husband of the petitioner. Learned counsel also submits that the petitioner was having relation with some other person and she cannot look after the interest of the children. He further submits that by considering the interest of the children, the custody of the children was given to husband of the petitioner vide order dated 27.03.2017 passed by the Judicial Magistrate Ist Class, Kapurthala. He also submits that the interest of the children cannot be looked after by their mother as she is not earning anything.

Heard the arguments of learned counsel for the parties and have also perused the documents available on the file.

Admittedly, the petitioner and her husband are residing separately. Presently, the husband of the petitioner is settled in Italy. An FIR No.19 dated 04.03.2017 was registered against the petitioner under Sections 454, 380, 120-B, 109 and 411 IPC at Police Station Bholath, Kapurthala at the instance of her husband. Only the interim custody was given to husband of the petitioner as the petitioner was in custody because of registration of aforesaid FIR. Under the changed circumstances as now the husband of the petitioner is away to Italy and petitioner is in India; both the children are

minor and are residing with sister and brother-in-law of husband of the petitioner.

In case ***Nirmal Kaur vs Kamaljit Kaur 2001(4) RCR (Criminal) 354***, three minor children were living with grandparents as father of the children was living abroad. An application was moved by the petitioner for custody of children under Section 97 of the Criminal Procedure Code, which was allowed. It was held that High Court was not to interfere even if Magistrate was not competent to order custody of children in proceedings under Section 97 of the Criminal Procedure Code. The parties were at liberty to approach the Guardian Court for the custody of the minor children under the provisions of the Hindu Minority and Guardianship Act, 1956 and the Guardians and Wards Act, 1890. As per order passed by the Magistrate, it was ordered that the children are minor and their custody should be given to the mother being the natural guardian as father of the children was away to abroad.

Being aggrieved, a petition under Section 482 Cr.P.C was filed for quashing of order passed by the Judicial Magistrate Ist Class, Kapurthala, which was dismissed.

In case ***Bharat Bhushan vs Smt. Madhu 2005(3) RCR (Civil) 206***, the issue was of the custody of female minor child, who was aged 5 years. In said case, it was held that the mother is always in a better position to look after and cater to the biological needs of a female child. By considering that the parents of the husband were old and infirm, the custody was given to the mother.

In another case ***Anita Krishna Kumar Kachba v. Krishana Kumar Ramachandra Kachba 2003(3) RCR (Civil) 402 (Bombay)***, it was

held that it is the mother who can look after the physical, biological, psychological, mental, spiritual or ethical growth of a child.

Under the similar circumstances, in case, ***Chethana Ramateertha v. Kumar vs Jagirdar 2003(3) RCR (Civil) 52 (Karnataka)***, it was held that the company of the mother is most natural thing for a child and that is what nature has evolved over a period of generations. So long as mother does not suffer any disqualification, she does not disentitle herself to bring up her child, neither father nor any other person can endow the same kind of love and affection, care and sympathies to a child which a mother can do.

In another judgment of Division Bench of this Court in ***Gurmukh Singh and another vs Amardeep Kaur and another 2015(3) RCR (Civil) 892***, the children were twins of five years of age. The custody was given to mother in preference to grandparents. It was held that grandparents might have given love and affection but still, the preference was given to the mother. It was held that the mother would be the best choice to send the children in her custody.

In the present case also, the minor children are with the sister and brother-in-law of husband of the petitioner and the petitioner is in India, who can look after the children. The custody of the children was given to husband of the petitioner by considering the fact that at that time, the mother of the children, who is the petitioner, was in custody in a case of theft registered at the instance of her husband. Presently, she is not in custody because of bail and is in a position to look after both the children.

Accordingly, the present petition is allowed and respondent No.2 i.e Senior Superintendent of Police, Kapurthala is directed to take the

interim custody of children from respondents No.4 and 5 and hand over to the petitioner within a period of one week from the date of receipt of certified copy of the order.

However, the custody will remain with the petitioner till her husband remains abroad. The parties are at liberty to avail the remedy before the appropriate Court.

26.07.2018
gurpreet

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No