

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

**CRWP No.763 of 2018
Date of Decision: 12.11.2018**

Dharmender

...Petitioner(s)

Versus

State of Haryana & Ors.

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr. R.S.Mamli, Advocate
for the petitioner.

Mr. Anmol Malik, Addl. A.G. Haryana.

Mr. Prithvi Raj yadav, Advocate
for respondent No.9.

HARI PAL VERMA, J. (Oral)

Prayer in this petition filed under Article 226/227 of the Constitution of India read with Section 482 of Cr.P.C. is for releasing detainee Lakshit aged about 11 years and Vanshit aged 8 years from the illegal custody of private respondents.

Power of attorney filed on behalf of respondent no.9 in court today is taken on record.

The petitioner was initially married with one Sunita in the year 2001. Since Sunita has died, the petitioner solemnized marriage with Pooja-respondent No.9 on 17.02.2006 and out of this wedlock two sons namely Lakshit aged about 11 years and Vanshit aged 8 years were born. However, respondents no.9 has forcibly taken the custody of both children against their wishes.

Counsel for the petitioner has argued that the action of the respondent no.9 in taking away the children from his lawful custody is illegal.

He referred to the police report (Annexure P-1) to contend that respondent no.9

has taken forcible custody of the children.

Learned State counsel has filed reply by way of affidavit of Inderjeet HPS, Assistant Commissioner of Police, Sadar, Gurugram on behalf of respondents no.1 to 3, alongwith the statements of Lakshit and Vanshit, which are taken on record.

As per the statements of the alleged detainee, they are studying in Laxmi International School in class 5th and 3rd standard respectively. They have further stated that they have not been brought from Village Islampur under any duress.

Along with the reply, order dated 19.05.2018(Annexure R-1) passed by the Family Court of Gurugram has also been attached, whereby the custody of the children had been handed over to respondent no.9 till the disposal of the said petition. The order is reads as under:-

“Present:- Petitioner Pooja in person with Ms. Meena Kumari Advocate,counsel for the petitioner.

None for the respondent.

Court notice to respondent received back duly served. However, no one present on behalf of respondent. Case called several times since morning but no one has appeared on behalf of the respondent. It is 2.30 pm. Further wait is not justified. Hence respondent is proceeded against ex-parte.

After hearing the submissions of behalf of the petitioner, I have seen the minor children along with the petitioner. As per my observation, children are very comfortable and emotionally attached to their mother. Mother is also very attached and thoughtful of the needs and studies of the children. Keeping in view the present circumstances and the welfare of the minor children, the custody of the children is handed over to the petitioner till the disposal of the petition. Now, to come up on 13.08.2018 for ex-parte evidence.

*Rekha
J.W.II*

*Sd/- (Sudhir Parmar UID No.HR-0157)
Addl. Principal Judge,
Family Court, Gurugram,
19.05.2018.”*

I have heard counsel for the parties.

It has been observed, that the petitioner is the father of Lakshit aged about 11 years and Vanshit aged 8 years, who are in the custody of respondent no.9-Pooja who is the mother of these children. Therefore, it cannot be outrightly believed that they are in the illegal custody of the mother. Moreover, the Family Court is already dealing with the custody matter has handed over the custody of the children to the mother.

I find no merit in the present petition and the same is accordingly dismissed.

However, the observations, made hereinabove shall not be construed as expression of any opinion on the merits of the case which is pending before the Family Court, Gurugram.

November 12, 2018
Sunil Devi

(HARI PAL VERMA)
JUDGE

Whether speaking / reasoned?
Whether reportable?

Yes / No
Yes / No