

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

**CRWP No.243 of 2019
Date of Decision: April 10, 2019**

Varinderjit Kaur

...Petitioner

VERSUS

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Vivek K. Thakur, Advocate
for the petitioner.

Ms.Monika Jalota, DAG, Punjab
for the respondent-State.

Mr.Satinder Khanna, Advocate
for respondents No.4 and 5.

INDERJIT SINGH, J.

The petitioner has filed this criminal writ petition against State of Punjab and other respondents under Article 226/227 of the Constitution of India for issuance of a writ in the nature of Habeas Corpus ordering the production and release of daughter of the petitioner namely Sazel Momi from the illegal custody of respondents No.4 to 6 and to restore her custody to the petitioner being mother of the detainee.

Notice of motion was issued. Learned State counsel as well as learned counsel for respondents No.4 and 5 appeared and contested the petition.

Learned counsel for the petitioner suffered statement that petitioner does not want to press this petition qua respondent No.6.

Therefore, present petition stands dismissed as not pressed against

respondent No.6.

I have heard learned counsel for the parties as well as learned State counsel and have gone through the record.

As per the facts and as argued at the time of arguments, the petitioner was married with son of respondents No.4 and 5 on 03.01.2011 and detainee Sezal Momi, now aged about 6 years, was born in Australia on 25.08.2012. Both the husband and wife came to India in the year 2014. However, husband of the petitioner died on 07.09.2014 in an accident. As per the allegations and as argued, the petitioner was turned out from the matrimonial home with the minor child on 23.10.2014 and she stayed with the minor child at Kapurthala and got her admitted there in a school. Grand-father of the detainee filed a petition before Guardian Judge in 2014, which was withdrawn on 07.01.2016. As per case of the petitioner herself, the child was given to grand-father i.e. respondent No.4 in May 2017 when the petitioner had gone to Spain. On 12.07.2017, passport was also issued to the minor. The petitioner came back in November 2017 and as argued, detainee remained with mother for some time but this fact is contested by learned counsel for private respondents.

As per admitted fact, the petitioner re-married on 19.11.2017 and in January 2018, again, went to Spain and the minor child remained with respondent No.4-grandfather. In October 2018, the petitioner came back and since then, the petitioner is in India and child is with the grand-father.

Learned counsel for the petitioner argued that minor was given to the petitioner and there are some photographs showing minor with the

petitioner in the marriage of petitioner's brother. He further argued that till

January 2019, there was no dispute regarding the minor child, who was residing with the grand-parents with consent of the petitioner.

Learned counsel for the private respondents contended that even the parents of petitioner have sent affidavit from Spain against the petitioner regarding custody of the minor child.

The perusal of the record shows that minor child remained with respondents No.4 and 5 earlier with the consent of the petitioner, when the petitioner had gone to Spain in 2017, as argued by learned counsel for the petitioner. In these facts and circumstances, in no way, the custody of the minor can be held as illegal with the grand-parents. The fact that whether custody should be with the mother and step-father or with the grand-parents, is to be determined by the Guardian Judge on the basis of evidence and wish of the minor child, while considering welfare of the minor as being paramount consideration. In this petition, in the facts and circumstances, this Court, without any evidence, cannot held that custody of the minor child with the grand-parents is illegal. There are so many disputed facts, which are to be determined on the basis of evidence by the Guardian Judge.

In view of the above discussion, I find that present petitioner should approach Guardian Judge for the custody of the minor child as this fact of custody of the minor cannot be determined in the habeas corpus petition.

With the above observations, the present petition stands disposed of.

April 10, 2019
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No