

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

**CRM-M-53481-2018
Date of decision: 21.01.2019**

Simran Kaur and another

...Petitioners

Versus

State of Punjab and another

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. R. S. Pandher, Advocate
for the petitioners.

Mr. Sidakmeet Sandhu, DAG, Punjab.

ARVIND SINGH SANGWAN, J. (Oral)

The petitioners pray for grant of anticipatory bail in FIR No.215 dated 11.11.2018 under Sections 363, 120-B IPC, registered at Police Station City Malout, District Sri Muktsar Sahib.

The operative part of the order dated 04.12.2018, vide which the petitioners have been granted interim bail, is reproduced below:

“Learned counsel for the petitioners submits that the dispute is with regard to custody of minor son of petitioner No.1 and respondent No.2- complainant and in this regard, petitioner No.1 has already filed a petition under the Guardian and Wards Act before the Civil Court at Malout, in which some interim directions have been issued on 08.03.2018. It is further submitted that since birth of the child i.e. 2008 till 2015, when the parents separated, the child was living in joint custody of the parents and thereafter, petitioner No.1, being mother, the natural guardian, was taking care of the child, when he was taken by respondent No.2-father. Learned counsel further submits that as per allegations in the FIR, on 07.08.2018, the petitioners, being mother and maternal grandmother, have forcibly taken the child and since then he is residing with petitioner No.1 and immediately thereafter, petitioner No.1 has given an application (Annexure P-3) to SSP, Police District Khanna that the child is in her custody and she had also published a notice in the newspaper (Annexure P-4). Learned counsel for the petitioners has

submitted that petitioner No.1 has also filed a suit for permanent injunction, which is pending before the Civil Judge, Malout and a petition for divorce is also pending between petitioner No.1 and respondent No.2. Thereafter, son of petitioner No.1 and respondent No.2 had also filed CRM-M-34545-2018 through petitioner No.1, which was dismissed as withdrawn on 14.08.2018 with liberty to approach the competent authority. Learned counsel, with actual background, submits that registration of FIR against the petitioners, being mother and maternal grandmother, who are in custody of the child, even if taken in violation of the order dated 08.03.2018 passed by the Civil Judge, would only lead to civil consequences of filing a contempt petition by respondent No.2, which according to him, has not been filed till date. It is further submitted that as per Section 363 IPC, no offence is made out against the petitioners as petitioner No.1, being mother, herself is a lawful guardian of the minor child. Learned counsel for the petitioners has relied upon a judgment of the Hon'ble Supreme Court in Chandrakala Menon Vs. Capt. Vipin Menon, 1993 (2) RCR (Crl.) 5, in which in similar circumstances, the FIR against the father for forcibly taking the child was quashed. It is further submitted that incident pertains to 17.08.2018 and the FIR was registered on 11.11.2018 and as per the FIR, an enquiry was conducted and thereafter, opinion of the District Attorney (Legal), Sri Muktsar Sahib was taken and on his opinion, the FIR was registered. Notice of motion for 21.01.2019. At this stage, Mr. T.P.S. Makkar, Advocate has appeared on behalf of respondent No.2-complainant. The concerned police official, who has recommended for registration of the FIR as well as District Attorney (Legal), Sri Muktsar Sahib, who has given the opinion that the FIR be registered, are directed to remain present in the Court along with their respective affidavit to explain how the offence under Section 363 IPC, in the instant case is made out."

Pursuant to the aforesaid order, Mr. Navdeep Girdhar, District Attorney is present in Court today and submits that as per the provisions of Section 361 IPC, he has given an opinion that since the custody of the child was with the complainant, he was the lawful guardian, however, his explanation is not satisfactory as in the explanation attached with Section 361 IPC, the word 'lawful guardian' includes any person lawfully entrusted with the care or custody of such minor or other person and petitioner No. 1,

being the mother of minor child, regarding whom the primary dispute between the complainant and petitioner, is for custody of the child and, therefore, petitioner No. 1 is also a lawful guardian of the child.

However, learned counsel for the State, on instructions from HC Karnail Singh, has not disputed the factual position and submits that the petitioners have joined the investigation and are no more required for any further investigation.

In view of the above, the petition is allowed and the interim bail granted to the petitioners, vide order dated 04.12.2018, is made absolute subject to the conditions envisaged under Section 438(2) Cr.P.C.

January 21, 2019

Waseem Ansari

**(ARVIND SINGH SANGWAN)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No