

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

**CRWP-287-2018 (O&M)
Date of Decision: 8.2.2019**

Gulzar Hasan

.....PETITIONER(s).

VERSUS

State of Punjab and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present: Mr. Karambir Singh Kahlon, Advocate
for the petitioner.

Mr. Sukhbeer Singh, AAG, Punjab.

Mr. S.K.Panwar, Advocate,
for respondent No.6.

RAJ SHEKHAR ATTRI, J.

The instant petition was filed under Articles 226/227 of the Constitution of India to issue a writ of Habeas Corpus for directing respondent No.6 to produce minor Gulshan and to restore custody of the child to the petitioner, who is the brother of the minor girl Gulshan.

FIR No.24 dated 8.2.2018 under Sections 363 and 366 of Indian Penal Code registered at Police Station 'C', Amritsar City was lodged by hapless brother, whose minor sister was kidnapped in his presence by respondent No.6-Sandeep Kumar on a motor cycle on 7.2.2018.

Efforts were made by the police but she could not be recovered. Ultimately, he preferred this habeas corpus.

In pursuance thereof and vide order of this Court dated 15.3.2018, Warrant Officer was appointed. However, detainee-Miss. Gulshan could not be recovered. Subsequently, a direction is issued to the State to recover her. Ultimately, she was recovered and now lodged in Gandhi Vanita Ashram, Jalandhar.

A report has been submitted before this Court by learned District & Sessions Judge, Amritsar that the detainee is a special child. However, it has been reported that she is not willing to go with her parents.

State filed reply wherein it is specifically stated that respondent No.6-Sandeep Kumar is already married having a living spouse and also having a male child from his first marriage.

It is averred in the petition that the prosecutrix/detainee as well as Sandeep Kumar respondent No.6 had approached this Court by way of CRM-M-8470-2018 for issuance of directions to the official respondents to protect their life and liberty at the hands of the family members of the prosecutrix as both of them were residing in live-in relations. However, said petition was dismissed as withdrawn on 22.5.2018. Subsequently, the statement of the prosecutrix was recorded under Section 164 of the Code of Criminal Procedure and she was medially examined. Thereafter, offence under Section 376 of IPC has been added in the FIR.

It has been argued that the prosecutrix is not of sound mind. However, this argument has been contested and on the perusal of a photocopy of the certificate issued by Vidya Sagar Institute of Mental Health, Amritsar, it transpires that the patient has average intelligence and she does not have any mental retardation. But to the mind of this Court, her custody cannot be handed over to Sandeep Kumar respondent No.6, who is already married having living spouse and a male child, as it will amount to traversity of justice. The very version of respondent No.6 that he has been cohabiting with Gulshan in live-in relation amounts to admission of offence and ethics, during the subsistence of his first marriage.

In this view of the matter, this petition is disposed of with a direction to the State to handover custody of the minor Gulshan to her brother, who is the custodian and guardian of the minor Gulshan. The petitioner would submit an undertaking that he shall be responsible for the safety of life, limb and liberty of Gulshan before releasing the custody of the minor Gulshan to her brother.

February 8, 2019
Paritosh Kumar

(RAJ SHEKHAR ATTRI)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
<i>Whether Reportable:</i>	<i>Yes/No</i>