

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

CRWP-694-2019 (O&M)

Date of decision : 03.10.2019

Kuljeet Kaur

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Simranjeet Singh, Advocate for the petitioner.

Mr. Surinder Pal Singh Tinna, Additional A.G. Punjab.

ANIL KSHETARPAL, J.

Petitioner, a mother of Assange Sandhu who is more than 8 years old, has filed this writ petition under Article 226 of the Constitution of India for issuance of a writ in the nature of habeas corpus or any other appropriate writ. She claims that Assange Sandhu is in illegal custody of his father Jaspal Singh, respondent No.5 since 2015 and, therefore, the Court should issue a writ.

At the outset, it must be mentioned that petitioner has already filed a petition under Section 25 of the Guardians and Wards Act, 1890 before the Family Court which was dismissed for non-prosecution during the pendency of the present petition. Respondent No.5 had also filed a petition for dissolution of marriage by way of decree of divorce which has also been dismissed on 04.02.2016.

It has also come in the pleadings particularly reply filed by Deputy Superintendent of Police as well as respondent No.5 that petitioner, respondent No.5 and their son Assange Sandhu were ordered to be deported by the authorities of U.K. when they were refused permission to stay vide order

dated 24.02.2015. It has come in the pleadings that respondent No.5 and his son Assange Sandhu left U.K. however, petitioner stayed there.

Question before this Court is whether this Court should exercise its jurisdiction under Article 226 of the Constitution of India for issuance of writ in the nature of habeas corpus or not?

In the considered view of this Court, answer to the aforesaid question has to be in negative in the facts and circumstances of the present case. The reasons for conclusion are as under:-

- 1) Assange Sandhu is in custody of his father which cannot be said to be illegal.
- 2) Petition under Section 25 of the Guardians and Wards Act, was filed by the petitioner, which of course has been dismissed for non-prosecution vide order dated 16.09.2019, however, the petitioner can file an application for restoration thereof.
- 3) Petitioner does not allege that there is any order of the competent Court either in United Kingdom or anywhere else ordering restoration of custody to the petitioner.

In view of the aforesaid, this Court declines to issue the writ. However, the petitioner shall be at liberty to move an application for seeking restoration of the petition under Section 25 of the Guardians and Wards Act, 1890.

Accordingly, the present petition is dismissed.

03.10.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

**Whether speaking/reasoned:- Yes/No
Whether reportable:- Yes/No**