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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRWP-743-2019

Date of decision-04.12.2019

Priya Bhatti

...Petitioner

Vs.

State of Punjab and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Saurabh Dalal, Advocate for the petitioner.

Mr. Ramdeep Partap Singh, DAG, Punjab.

MANOJ BAJAJ, J. (Oral)

Priya Bhatti-Petitioner has filed this criminal writ petition praying for issuance of writ in the nature of habeas corpus for custody of her child, namely, Lakshya son of Tirath Singh Bhatti (detenu) who is allegedly in illegal custody of respondent Nos.4 and 5 (grand-parents of the detenu).

Notice of motion was issued in this petition on 28.08.2019. Pursuant to the said order, status report by way of affidavit of Major Singh (PPS) Assistant Commissioner of Police-V, Jalandhar on behalf of respondent Nos.1 to 3 has been filed, wherein it is revealed that the child was born in the year 2010 who initially resided with the parents for five years. However, w.e.f. year 2016, the child is being brought up by respondent Nos.4 and 5 (grand-parents) who got him admitted in Army

School, Jalandhar Cantt. As per the reply, relations between the husband and wife got strained and the child is living happily with the grand-parents.

Apart from it, the petitioner has already availed the statutory remedy to seek custody of the child through a petition filed under the Guardians and Wards Act, 1890 which is pending before the Additional Principal Judge Family Court, Jalandhar.

Learned counsel for the petitioner has vehemently argued that even if the petition is pending, the custody can be given to the mother by exercising an extra ordinary writ jurisdiction. He has placed reliance upon the judgment passed by this Court in “**Jaswinder Kaur Vs. State of Punjab and others**”, 2010 (2) R.C.R.(Criminal) 891.

During the course of hearing, it is not disputed by learned counsel for the petitioner that the petitioner separated from her husband in the year 2016 and the petition has been filed in the year 2019, for custody of the child who is presently nine years old. It is not a case where the custody of the child was recently taken away illegally from the mother warranting interference by exercising extra ordinary writ jurisdiction. The judgment relied upon by learned counsel for the petitioner is not attracted in the present set of facts of the present case as in the said case, husband had expired and the custody of the child was forcibly taken away by the grand-parents.

Considering the averments made in the petition, this Court does not find any valid reason to exercise the extra ordinary writ jurisdiction, particularly when the petitioner has already availed the statutory remedy

under the Guardians and Wards Act, 1890.

Petition is dismissed.

(MANOJ BAJAJ)
JUDGE

04.12.2019
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Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No