

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

CRWP-226-2020

Date of Decision:-11.2.2020

MADHURI

... Petitioner

Versus

STATE OF HARYANA AND ORS

... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Gagandeep Singh, Advocate
for the petitioner.

Mr. Ashok Singh Choudhary, Addl. A.G., Haryana
assisted by ASI Rajbir Singh.

GURVINDER SINGH GILL, J. (Oral)

1. The petitioner has approached this Court seeking issuance of writ in the nature of Habeas Corpus for directing respondents No.2 & 3 to produce the minor children namely Aayush and Ansh Yadav aged 6 & 8 years, who are stated to have been illegally detained by respondent Nos.4 and 5, who are husband and mother-in-law of the petitioner.
2. Pursuant to issuance of notice of motion, a short reply by way of affidavit of Sh. Subhash Chand, HPS, Deputy Superintendent of Police, Yamuna Nagar has been filed on behalf of State of Haryana. Para Nos.3, 4 & 5 of said affidavit read as follows:-

- “3. That thereafter, HC Tejbir went at the house of respondents No.4 and 5. At the said addresses, the respondents No.4 and 5 found present at their house and both the children namely Aayush and Ansh Yadav were found present. The respondent No.4 gave an affidavit that Aayush and Ansh are residing with him and he has not detained them and he will produce both the children before the Hon’ble Court on 11.2.2020. The true translated copy of affidavit of Shiv Kumar is enclosed herewith as Annexure R-1.
4. That as far as not to interfere in the lives of the petitioner by the respondent No.4 and 5 is concerned, in this regard, it is submitted that respondent No.4 namely Shiv Kumar has stated in his statement that both the children namely Aayush and Ansh Yadav are residing with him and the petitioner herself left his house and he never threatened her. The said respondent stated that he wants to keep the petitioner with him and he will not take liquor in future. The translated copy of statement of respondent No.4 is enclosed herewith as Annexure R-2. It is also worth submitting here that the petitioner has not given any written complaint to the police so far.

5. That from the above facts, it is clear that Aayush and Ansh Yadav have not been detained by the respondents No.4 and 5 or any other person and he will produce both the children before this Hon'ble Court on 11.2.2020. The respondent No.4 has also further stated that he is ready to keep the petitioner and he will keep the petitioner nicely and he will not threaten the petitioner in any manner. As such the present petition has got no force and merits and deserves to be dismissed.”
3. The said reply is accompanied by an affidavit of respondent No.4 Shiv Kumar (husband of petitioner) wherein he has deposed that his wife Madhuri is not residing with him whereas his children are residing with him and that he has got them admitted in school.
4. Since it is a case where the children of petitioner are residing with their father, it cannot be said that they have been illegally detained. It is not even the case of petitioner that there was any order of Court in her favour as against her husband pertaining to custody of children. Under normal circumstances a father would have an equal right of custody of children. At this stage, it cannot be said that children of petitioner have been illegally detained. The petition, as such is dismissed.
5. However the petitioner would be at liberty to have recourse to all such efficacious remedies as may be available to her seeking custody of minor children, in accordance with law. It shall also be open to petitioner to move

appropriate application to police in case there is any imminent threat to her life or liberty.

6. It is clarified that dismissal of this “Habeas Corpus” petition shall not be construed as any kind of expression as regards rights of the parties qua custody of their children.

(GURVINDER SINGH GILL)
JUDGE

11.2.2020
Gaurav Sorot

Whether reasoned / speaking? Yes / No

Whether reportable? Yes / No