

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

CRWP-4922-2020 (O&M)
Date of decision : 21.07.2020

Sanjay Arya

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. K.B.S. Mann, Advocate for the petitioner.

ANIL KSHETARPAL, J.

The petitioner has filed Criminal Writ Petition under Article 226/227 of the Constitution of India praying for the issuance of a writ in the nature of Habeas Corpus directing respondent Nos.2 to 4 to get the detenue namely Sanchit Arya (petitioner's son) released from custody of his mother.

It has been pleaded that the petitioner performed the marriage with respondent No.5 in the year 2007 and out of their wedlock, a son- Sanchit Arya was born on 28.07.2010. The petitioner claims that his father fell ill and on account thereof, he went to meet his father at Kota (Rajasthan) in the month of March. Due to lockdown, he could not come back immediately. On coming back, he came to know that the respondents have already removed all the household articles and his wife and child are missing.

The petitioner went to the house of his in-laws but did not find

them. On being questioned, even his in-laws failed to give any satisfactory reply about their whereabouts. Thereafter, the petitioner came to know from his sister-in-law that respondent No.5 (his wife) has eloped with respondent No.8 on the instigation of respondent Nos.9 (brother-in-law of respondent No.5) and 10. The petitioner submitted a complaint to respondent No.3 but no action has been taken. In para 8 of the petition, it has been pleaded that wife of the petitioner is being enticed to marry with some other person.

The petitioner's son is approximately 10 years of age. At present, he is residing with his mother. The petitioner has equally efficacious alternative remedy of filing petition either under the Guardians and Wards Act, 1890 (hereinafter to be referred as "the 1890 Act") or under the Hindu Minority and Guardianship Act, 1956 (hereinafter to be referred as "the 1956 Act"). No doubt, in some appropriate cases, the petitions under Article 226 of the Constitution of India have been entertained and decided, however, such cases are rare and exceptional. The normal remedy for a parent seeking custody of child is to file a petition before the competent Court. An application for grant of interim custody of the child can also be filed in appropriate cases.

Still further, learned counsel for the petitioner failed to draw attention of the Court towards any special reason or circumstance to exercise its extraordinary jurisdiction. Learned counsel has also failed to draw attention of the Court to reasons for not availing alternative equally efficacious remedy available.

It is well settled that while deciding custody of child, his welfare is of paramount consideration. The Court while deciding such

petitions, is required to appreciate the evidence and look at various facts which come on record and thereafter, decide what would be in the best interest of the child. In such circumstances, in the considered view of this Court, a petition filed under Article 226 of the Constitution of India would not be appropriate remedy. The writ petitions are normally decided on the basis of pleadings and the documents filed in support thereof. Whereas in the proceedings under the 1890 Act and the 1956 Act, the competent Courts would have the benefit of appreciating the evidence to be led by the parties.

Keeping in view the aforesaid facts, the petitioner is relegated to the alternative remedy.

With these observations, the Criminal Writ Petition is disposed of.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

21.07.2020

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No