

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRWP-742-2019
Date of Decision: 17.02.2020

Twinkle

.....Petitioner

Versus

State of Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. K.S. Bal, Advocate, for the petitioner, along with
petitioner in person.

Mr. Kirat Singh Sidhu, DAG, Punjab,
for respondent Nos. 1 to 3 and 5.

Mr. Pawan Kumar Jhanda, AAG, Haryana,
for respondent No.4.

Mr. Sandeep Gors, Advocate, for respondent No.6,
along with respondent No.6 in person.

Harnaresh Singh Gill, J.

By way of the present petition, the petitioner has
prayed for issuance of a writ in the nature of habeas corpus for
immediate release of the detenue, namely, Rajveer (son of the
petitioner) by appointing a Warrant Officer.

The aforesaid relief has been claimed by the
petitioner on the ground that the minor son is in the illegal
custody of her husband (respondent No. 6). It is further stated
that the minor child had been removed from the lawful custody
of the petitioner by the respondent-husband without the consent
of the petitioner.

Vide order dated 5.11.2019, this court had, upon the consent of both the parties, referred the matter to the Mediation and Conciliation Centre of this Court. However, the mediation proceedings remained unsuccessful.

Learned counsel for the petitioner has vehemently contended that respondent No.6 had removed the minor child aged 3-1/2 years from the lawful custody of the petitioner and that the petitioner being the mother of the child is legally entitled to his custody. It is further contended that the respondent-husband had deceitfully persuaded the petitioner to stay with him and taking benefit of the same, he on 25.7.2019 took the child to the park on the pretext of taking a round there, but he never returned back nor did he restore the custody of the child to the petitioner. However, thereafter, he had shifted his residence from Delhi to Faridabad and all this was done by the respondent-husband in a conspiratorial manner so as to deny the company of the child to the petitioner.

While laying emphasis on the maintainability of the habeas corpus petition regarding the custody of the minor, reliance has been placed by the learned counsel for the petitioner upon the judgments of the Hon'ble Apex Court in Nithya Anand Raghvan Vs. State of NCT of Delhi & Anr., (2017)8 SCC 454, Mrs. Kanika Goel Vs. State of Delhi through S.H.O. and Anr., (2018)9 SCC 578 and the judgments of this Court in Gippy Arora Vs. State of Punjab and others, 2012(4) RCR (Civil) 397 and Amita Chhabra Vs. State of Haryana and others, 2015(1) RCR (Civil) 43.

On the other hand, learned counsel appearing for respondent No.6 has contended that the petitioner-wife had willfully and deliberately neglected the child and it is respondent No.6 who is taking care of the minor. It is further stated that the petitioner-wife is living in a hostel at Delhi and there is none to look after and take care of the child. While referring to the averments made in the reply, wherein reference has been made to the telephonic conversations between different persons as regards the matrimonial relations of the petitioner and respondent No.6 and the custody of the minor child, it is contended that the petitioner-wife is least concerned about the custody of the child and rather, she is planning to go abroad. It is, thus, contended that the custody of the child with the petitioner, who is the father of the minor, cannot be said to be illegal.

I have heard the learned counsel for the parties and have gone through the case file.

There is no debate over the judgments referred to by the learned counsel as regards the maintainability of the habeas corpus petition regarding the custody of the minor child. However, the fact remains that there are allegations and counter allegations by the parties, which raise disputed questions of facts and the same cannot be decided or gone into by this Court in exercise of its writ jurisdiction under Article 226 of the Constitution of India.

However, this Court is inclined to accept the prayer of the learned counsel for the petitioner regarding grant of

visiting rights to the petitioner in order to meet the minor child and further have telephonic conversation with him.

In view of the above, the present petition is disposed of reserving liberty to the petitioner to approach the competent Court of law regarding the custody of the minor child. If such petition is filed, the Court concerned shall decide the same in accordance with law, without being influenced by any finding recorded in the present proceedings.

The petitioner, is, however, granted visiting rights regarding the minor child. She shall visit the minor child every Saturday & Sunday of the month between 10 a.m. to 12 noon. The respondent husband shall bring the child to the GIP Mall, Noida on the aforesaid days and allow the minor child to meet his mother i.e. the petitioner, during the time specified.

Disposed of in the above terms.

(HARNARESH SINGH GILL)
JUDGE

17.02.2020
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