

CRWP No.281 of 2021

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

CRWP No.281 of 2021

Date of decision:13.10.2021

Navneet Kaur

... Petitioner

Vs.

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

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

Mr. Prabhjot Singh Walia, AAG, Punjab
for respondents No.1 to 3.

Mr. Veneet Sharma, Advocate
for respondents No.4 to 6.

SUVIR SEHGAL, J.

Heard through video conferencing.

Instant petition has been filed under Article 226 of the Constitution of India for issuance of a writ in the nature of habeas corpus to locate the minor, Milap Singh (aged 03 years and 01 month), son of the petitioner and to hand over his custody to the petitioner as he has been illegally detained by respondents No.4 to 6.

Facts, in brief, leading to the filing of the instant petition are that the marriage of the petitioner was solemnized with Charapreet Singh, respondent No.4, on 27.02.2016 and a son, namely, Milap Singh was born out of the wedlock on 19.11.2017. Respondents No.5 and 6 are the in-laws of the petitioner. It has been averred that despite the fact that her husband and his family have landed property and are financially well-off, they have

been demanding dowry and costly gifts. In the first week of October, 2020, a notice from a Bank was served on her in-laws, when she came to know that they had taken a heavy loan which was over-due and they pressurizing the petitioner to get cash from her parents to make the payment. The petitioner was physically assaulted twice by her in-laws and she was compelled to call the police helpline. It is also alleged that she was forcibly taken to a mental hospital for a check-up. Later, FIR No.321 dated 07.11.2020 under Sections 323, 324, 452, 120-B, 34, IPC was registered by her father-in-law at Police Station Kathunangal against the petitioner and her family members on the allegation that they were assaulted and suffered injuries. Petitioner was arrested and later released on bail on 14.11.2020 (Annexure P-3). She was not allowed to enter her matrimonial home and she addressed complaint dated 23.11.2020 (Annexure P-4) to the police seeking custody of the child. It has been further pleaded that the FIR registered against her, has been recommended to be cancelled, vide report dated 04.02.2021 (Annexure P-7) and a petition seeking divorce by mutual consent (Annexure P-8) has been filed by her husband, which is pending.

The petition has been resisted by respondents No.4 to 6 by filing reply, wherein, it has *inter alia* been pleaded that the petition is not maintainable and the remedy available to the petitioner is under the Guardians and Wards Act, 1890. It has been further submitted that the petitioner is of a quarrelsome nature and used to leave the matrimonial home and the child for long period of time. As a result of her attitude, her in-laws were forced to live separately in their old age and were even

attacked by her family members. This incident was reported to the police, which resulted into lodging of the FIR(Annexure R-4/1). An outpatient ticket (Annexure R-4/2) has been appended to show that she has a personality disorder and is undergoing treatment at Vidya Sagar Institute of Mental Health, Amritsar.

By way of a short affidavit, the State in its reply has admitted the fact that petitioner submitted complaints and a compromise was effected between the parties but subsequently, FIR was registered on the complaint of respondent No.5.

I have considered the respective submissions of counsel for the parties and examined the paper book with their able assistance.

There can be no possible dispute about the maintainability of the petition for habeas corpus for seeking the custody of the child. It has been held by the Hon'ble Supreme Court in **Tejasvini Gaud Vs. Shekhar Jagdish Prasad Tewari (2019) 7 SCC 42** as under:-

“19. In child custody matters, the ordinary remedy lies only under the Hindu Minority and [Guardianship Act](#) or the Guardians and [Wards Act](#) as the case may be. In cases arising out of the proceedings under the Guardians and [Wards Act](#), the jurisdiction of the court is determined by whether the minor ordinarily resides within the area on which the court exercises such jurisdiction. There are significant differences between the enquiry under the Guardians and [Wards Act](#) and the exercise of powers by a writ court which is of summary in nature. What

is important is the welfare of the child. In the writ court, rights are determined only on the basis of affidavits. Where the court is of the view that a detailed enquiry is required, the court may decline to exercise the extraordinary jurisdiction and direct the parties to approach the civil court. It is only in exceptional cases, the rights of the parties to the custody of the minor will be determined in exercise of extraordinary jurisdiction on a petition for habeas corpus.”

In the above background, the facts of the present petition deserve to be examined. A perusal of the FIR (Annexure R-4/1) shows that there are allegations against the petitioner of beating the child, who is just three years of age, and the father-in-law had submitted that the petitioner may end up killing the child, though this FIR subsequently has been recommended to be cancelled. Equally important are the averments of divorce petition (Annexure P-8), wherein, it has been specifically stated that the petitioner is arrogant and quarrelsome and does not even spare the minor son and has been beating him and ill-treating him, regarding which a recording has also been prepared. Allegation has also been levelled against her that she left behind the minor son with respondent No.4 and when the matter was compromised, she came back to the matrimonial home. However, her attitude and behaviour did not improve. It has also been mentioned that she is suffering from mental ailment and getting treatment from a Mental Institute. The OPD Card of Doctor, Vidya Sagar Institute of Mental Health, Amritsar (Annexure R-4/2) shows that on 14.10.2020, a

doctor was consulted, who has found the petitioner to be a probable case of BLPD (Border Line Personality Disorder) and prescribed medicines to her. The doses of the medication as per the OPD card were increased on subsequent visits to the Institute.

Though in normal circumstances, when a child is below 05 years of age, his/her custody deserves to be handed over to the mother, who is the best person to take care of the child, yet as welfare of the child is the paramount consideration and the Court has to keep in mind all the attending circumstances before passing any such order. Keeping in view the allegations regarding the misbehaviour of the petitioner towards the child and the fact that she is undergoing treatment at a mental hospital, the Court does not deem it appropriate to pass any such orders and is of the view that it would be in the fitness of things that the petitioner is relegated to the alternative remedy before the Family Court to seek custody of the child.

The petition is, accordingly, dismissed with liberty to the petitioner to avail the remedy available to her, in accordance with law. In case, she chooses to do so, the competent Court shall decide the petition uninfluenced by any observation made hereinabove.

October 13, 2021

savita

(SUVIR SEHGAL)
JUDGE

Whether Speaking/Reasoned	Yes
Whether Reportable	Yes