

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

234

CRWP-541-2021 (O&M)
Date of decision: 09.02.2021

SUPREET KAUR

.....Petitioner

Versus

U.T CHANDIGARH AND OTHERS

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Suresh K. Jindal, Advocate
for the petitioner.

Mr. Abhinav Gupta, APP, U.T., Chandigarh
for respondents No.1 to 3.

Mr. Hardeep Singh, Advocate
for respondent No.4.

ARUN KUMAR TYAGI, J (ORAL)

The petitioner has filed the present petition under Article 226 of the Constitution of India for issuance of a writ in the nature of Habeas Corpus directing the respondents No.1 to 3 to get her minor son Agamveer Singh, aged 10 years and minor daughter Jasgun Kaur, aged 6 years released from custody of her husband-respondent No.4 and hand over the same to her.

Briefly stated the petition has been filed on the averments that marriage between the petitioner and respondent No.4 was solemnized on 22.02.2009 at Kurukshetra. Son named Agamveer was born on 19.07.2010 and daughter Jasgun Kaur was born on 12.06.2014 out of the wedlock. Respondent No.4 maltreated the petitioner and turned her out of her matrimonial home on 06.07.2020 while snatching the minor children on which FIR No. 50 dated 12.08.2020 under

Section 323, 406, 498-A and 506 of the Indian Penal Code, 1860 was registered against respondent No.4 and his father in Police Station Krishna Gate Thanesar, District Kurukshetra. The family of respondent No.4 consists of respondent No.4 and his father and there is no lady and servant in the house. Respondent No.4 is permanent resident of Chandigarh but he is doing private job in Yamaha Motors at Noida and lives at Noida and comes on weekends to Chandigarh. In his absence the minor children live alone and can be barely looked after by their grand father. The minor daughter is also suffering from atopic dermatitis and needs constant care. The welfare of the minor children lies in entrusting their custody to the petitioner who can better look after them.

Short reply by way of affidavit of Inspector Malkit Singh, Station House Officer, Police Station-19, Chandigarh on behalf of respondents No.1 to 3 has been filed in the Registry which is taken on record.

Respondent No.4 has filed application CRM-W-121-2021 for placing on record his reply to the petition which is taken on record. In the reply respondent No.4 has taken objections as to maintainability of the petition due to custody of respondent No.4 father and natural guardian not being illegal and availability to the petitioner of alternative remedy of filing petition for custody of the minor children, abandonment of the children by the petitioner for the last more than seven months, the petitioner suffering from epilepsy and the minor children being properly looked after by him, his father, his aunt and maid servant employed by him.

I have heard learned Counsel for the petitioner, learned State Counsel for respondents No.1 to 3 and learned Counsel for respondent No.4 and have gone through the relevant record.

Even though Habeas Corpus petition for custody of minor child is maintainable as held in ***Gohar Begam Vs. Suggi alias Nazma Begam (1960) 1 SCC 597; Manju Tiwari Vs. Rajendra Tiwari : AIR 1990 SC 1156; Syed Saleemuddin Vs. Dr. Rukhsana : 2001(2) R.C.R.(Criminal) 591 and Tejaswini Gaud and others Vs. Shekhar Jagdish Prasad Tewari and others (SC) : 2019(3) R.C.R.(Civil) 104.*** but the question of custody of the minor children has to be decided on the paramount consideration of welfare of the child and not legal rights of the parties as held in ***Dr. Veena Kapoor Vs. Varinder Kumar Kapoor : AIR 1982 Supreme Court 792 and Syed Saleemuddin Vs. Dr. Rukhsana : 2001(2) R.C.R.(Criminal) 591.*** The question as to what is in the interest of the child cannot satisfactorily be determined without recording evidence. This Court cannot, in the course of summary inquiry on habeas corpus petition, take evidence and determine the disputed questions of facts and law regarding welfare of the minor child and therefore, the same have to be decided by the Guardian Court or the Family Court exercising jurisdiction in the concerned district/sub-division as the case may be. For judicial precedent reference in this regard may be made to judgment of this Court in ***LPA No.3716-2018 titled as 'Reetu Verma Vs. State of Haryana' decided on 23.05.2019.***

After arguing for some time, learned counsel for the petitioner has submitted that the petitioner does not want to continue

with the present petition and the same may be dismissed as withdrawn with liberty to file petition for custody of the minor children before Guardian Court/Family Court but prayed that visitation/contact rights may be granted to the petitioner till the question of custody of minor children is decided by the Guardian/Family Court.

Learned counsel for respondent No.4 has no objection to grant of interim visitation/contact rights to the petitioner subject to final order to be passed by the Guardian/Family Court.

In *Criminal Appeal No.127 of 2020 titled Yashita Sahu Vs. State of Rajasthan and others decided on 20.01.2020* Hon'ble Supreme Court has observed as under :-

“18. The child is the victim in custody battles. In this fight of egos and increasing acrimonious battles and litigations between two spouses, our experience shows that more often than not, the parents who otherwise love their child, present a picture as if the other spouse is a villain and he or she alone is entitled to the custody of the child. The court must therefore be very wary of what is said by each of the spouses.

19. A child, especially a child of tender years requires the love, affection, company, protection of both parents. This is not only the requirement of the child but is his/her basic human right. Just because the parents are at war with each other, does not mean that the child should be denied the care, affection, love or protection of any one of the two parents. A child is not an inanimate object which can be tossed from one parent to the other. Every separation, every reunion may have a traumatic and psychosomatic impact on the child. Therefore, it is to be ensured that the court weighs each and every circumstance very carefully before deciding how and in what manner the custody of the child should be shared between both the parents. Even if the custody is given to one parent the other parent must have sufficient visitation rights to ensure that the child keeps in touch with the other parent and does not lose social, physical and psychological contact with any one of the two parents. It is only in extreme circumstances that one parent should be denied contact with the child. Reasons must be assigned if one parent is to be denied any visitation rights or contact with the child. Courts dealing

with the custody matters must while deciding issues of custody clearly define the nature, manner and specifics of the visitation rights.

22. In addition to 'Visitation Rights', 'Contact rights' are also important for development of the child specially in cases where both parents live in different states or countries. The concept of contact rights in the modern age would be contact by telephone, email or in fact, we feel the best system of contact, if available between the parties should be video calling. With the increasing availability of internet, video calling is now very common and courts dealing with the issue of custody of children must ensure that the parent who is denied custody of the child should be able to talk to her/his child as often as possible. Unless there are special circumstances to take a different view, the parent who is denied custody of the child should have the right to talk to his/her child for 5-10 minutes everyday. This will help in maintaining and improving the bond between the child and the parent who is denied custody. If that bond is maintained the child will have no difficulty in moving from one home to another during vacations or holidays. The purpose of this is, if we cannot provide one happy home with two parents to the child then let the child have the benefit of two happy homes with one parent each."

In view of the above, the petition is dismissed as withdrawn with liberty to the petitioner to approach the Guardian Court/Family Court for grant of custody of the minor children to the petitioner. Needless to say that in view of the nature of the matter, the Guardian Court/ Family Court shall decide the petition, if any so filed, expeditiously.

However, till passing of the interim/final order by the Guardian Court/Family Court, respondent No.4 is directed to allow the petitioner to talk to the minor children through video calling facilities such as WhatsApp, Skype etc., on every Saturday for about half an hour from 5:00 p.m. to 6:00 p.m. and to visit the minor children and take them for an outing in Chandigarh from 10:00 a.m. to 2:00 p.m. on every Sunday, as may be convenient to her and also to talk to the minor

children at any other time or to take them for an outing in Chandigarh on any other day as may be mutually agreed to between the petitioner and respondent No.4.

09.02.2021
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(ARUN KUMAR TYAGI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No