

CRWP No.2030 of 2021

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

**CRWP No.2030 of 2021
Date of decision:11.10.2021**

Kuldeep

... Petitioner

Vs.

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. P.S.Ahluwalia, Advocate with
Mr. Jagat Vir Dhindsa, Advocate
for the petitioner.

Mr. Gurmeet Singh, AAG, Haryana
for respondents No.1 to 6.

Mr. Sovi Bipneet Singh, Advocate
for respondents No.7 to 11.

Ms. Monika Dhankar, Respondent No.9 in person.

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 against official respondents No.1 to 6 for production and release of detenue, Master Reyansh, aged 2 years and 11 months, from the illegal detention of private respondents No.7 to 11.

Facts, in brief, leading to the filing of the petition, are that the petitioner was married to Sonika on 19.03.2017 and a son, who was named Reyansh, was born out of the wedlock on 01.03.2018. Sonika expired on 07.12.2020 at her parental home, Rohtak due to cardiac arrest. When the

petitioner went to attend the Tehrvi ceremony at Rohtak, private respondents No.7 to 11, who are his in-laws forcibly took away his minor son and threatened him. They got FIR No.448 dated 24.12.2020 registered for offences under Sections 304-B, 34 of Indian Penal Code, 1860 at Police Station Urban Estate, Rohtak against him and his family members but after investigation, a cancellation report was prepared on 19.01.2021 (Annexure P-13) as the allegations levelled against him, were found to be false. Petitioner filed an application under Section 97 of the Code of Criminal Procedure, 1973 in February, 2021 seeking issuance of search warrants and for restoration of custody of the child. Despite issuance of search warrants, by the Chief Judicial Magistrate, Sonipat, the private respondents did not hand over his custody and upon appearance before the Court, they contested the petition. By order dated 12.02.2021 (Annexure P-7), Chief Judicial Magistrate, Sonipat dismissed the petition.

Upon notice being issued, status report by way of an affidavit of Deputy Superintendent of Police, City, Sonipat has been filed on behalf of official respondents No.1 to 3 and 5 in which it has been submitted that when the police officials went to execute the search warrants, the minor started crying when he saw his father, who was accompanying them. The private respondents resisted the handing over of the child and as there was a possibility that the child may get hurt, if his custody is forcibly taken, the warrant was not executed and a report was submitted before the Chief Judicial Magistrate. Respondents No.7 to 11 in their joint reply have opposed the petition both on its maintainability as well as on merits. It has

been submitted that respondents No.7 and 8 are the parents of Sonika and respondents No.9 to 11 are her unmarried siblings. It has been submitted that Sonika got married and stayed with the petitioner at Ambala, where she was working as a Teacher at Army Public School since 2012. Sonika and her minor son were harassed, repeated demands of dowry were made and they faced unending cruelty from the petitioner and his family members resultingly in their separation in October, 2019. On pressure exerted by the petitioner on the landlord, Sonika had to vacate the rented accommodation and from 02.07.2020 onwards, she and her son started staying with the private respondents at Rohtak. The petitioner never visited his wife and son, rather his attitude towards them was of aloofness and he did not show any inclination to keep the child with him. After the death of Sonika, the customary rituals were never performed by her husband, rather they were performed by the private respondents at Rohtak and the petitioner never attended them. FIR (Annexure R-1) has been registered on account of the death of Sonika due to harassment and cruelty and as the FIR had not been properly investigated, it was ordered to be transferred from District Police Rohtak to State Crime Branch, Haryana, for further investigation, vide order dated 25.03.2021 (Annexure R-2). It has been submitted that the custody of the minor child has been handed over to the private respondents No.7 to 11, vide letter (Annexure R-20) by his mother before her death and the child has been admitted in the school at Rohtak since April, 2021. A petition for declaring respondents No.7 to 9 as legal guardians and for permission to allow them to keep the child has been filed and is pending since February,

2021. It has been further averred that the petitioner got himself enrolled as an Advocate on basis of forged Graduation Certificate from a University in Uttar Pradesh, regarding which complaints have been submitted to different authorities and during pendency of this petition, a show-cause notice has been issued to him by the Bar Council of Delhi.

Counsel for the petitioner has argued that the petitioner is a member of legal fraternity, being the father and the natural guardian, he is entitled to the custody of the child, who has been forcibly taken and illegally detained by the private respondents.

On the other hand, it has been argued by counsel for the private respondents that respondents No.7 and 8 are the grandparents, respondents No.9 to 11 are the maternal aunt and uncles of the child and being close relatives, custody of the child was handed over to them by the deceased before her death and a petition has been filed before the Family Court for declaring them as legal guardians wherein the petitioner has deliberately not appeared.

Having heard counsel for the parties and analyzing the material, this Court has come to a firm conclusion that there is nothing on record to establish that the custody of the child was forcibly taken from the petitioner. Wife of the petitioner alongwith minor child were residing separately from the petitioner since October, 2019 and shifted to Rohtak in July, 2020 to stay with the private respondents, where she expired on 07.12.2020. Electronic transfer of some money to a bank account of the deceased on 13.11.2020, as is apparent from the snapshot of the Whatsapp conversation

(Annexure P-13), upon which reliance has been placed by the petitioner, rather fortifies the fact that his wife and child were not with him, just three weeks before her death. Even if the submission of the petitioner that the child has been forcibly snatched from him when he went to Rohtak to attend the religious ceremonies after death of his wife is examined, it turns out that it is a mere bald assertion as the petitioner, who is a lawyer by profession did not submit any complaint in this regard, except for filing a petition, three months later, under Section 97 Cr.P.C.

Welfare of the child is of paramount consideration and it is the bounden duty of the Court to ensure that the child lives in a healthy and congenial atmosphere. Petitioner has failed to bring any material on record to show as to how he intends to take care of the child, who by now is more than 04 years old and is school going. On the other hand, private respondents are living in a joint family. Respondents No.7 and 8 are the grandparents, respondent No.9 is the unmarried aunt and respondents No.10 and 11 are the unmarried maternal uncles of the child and they are taking care of him. Respondent No.7, grandfather of the child, has retired from the Boarder Road Organization (BRO) and is getting pension, whereas, respondents No.8 to 11 are self-employed. This Court has not been able to come across any material to show that petitioner had ever made any attempt or tried to contact or meet the child after October, 2019. Uprooting a child of very tender age from the family atmosphere where he has been living for the last more than one year will not be in his best interest despite the fact that petitioner is the father and the natural guardian after the death of mother

of the child.

It also deserves to be noticed that a petition (Annexure R-3) under Section 7, 8 and 9 of the Guardian and Wards Act, 1890 read with Section 9 of Hindu Minority and Guardianship Act, 1956 for declaring respondents No.7 to 9 as lawful guardian and for permanent custody of the child is pending since February, 2021. Despite the fact that pendency of the petition was highlighted by the private respondents in their reply filed to the application under Section 97 Cr.P.C. filed by the petitioner, the petitioner has not put in appearance before the Family Court.

In view of the above background and discussions, this Court has come to the conclusion that the custody of the child in the hands of the private respondents cannot be said to be illegal and direction as prayed for cannot be issued. Consequently, the instant petition is dismissed.

The petition for declaring the petitioner as natural guardian is pending before the competent Court which shall decide the same uninfluenced by any of the observations made hereinabove, preferably within a period of six months from the date the petitioner puts in appearance before the Court.

(SUVIR SEHGAL)
JUDGE

October 11, 2021

savita

Whether Speaking/Reasoned

Yes

Whether Reportable

Yes