

(229) IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRWP-2937-2021

Date of Decision:14.09.2021

Parvinder Kaur

... Petitioner

Vs.

State of Punjab and others

... Respondents

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present : Mr. Vijay Sharma, Advocate
for the petitioner.

Mr. Karanbir Singh, A.A.G. P:unjab.

Mr. Karan Singla, Advocate
for respondents No.4 and 5.

VIKAS BAHL, J. (Oral)

By way of filing the present criminal writ petition under Article 226 of the Constitution of India, petitioner prays for issuance of a writ, order or direction especially in the nature of habeas corpus for the release of the alleged detenue namely Dilraj Singh (brother of petitioner) minor aged about 4 years, son of Late Jasbir Singh alleged to have been forcibly and unlawfully detained by respondents No.4 and 5.

The brief facts of the case are that the present petitioner, aged about 34 years (born on 2.2.1987), is the sister of Dilraj Singh, the alleged detenue, aged about 4 years. The petitioner as well as Dilraj Singh are the daughter and son, respectively, of Jasbir Singh and Charanjit Kaur. The said Dilraj Singh is a test tube baby. During the delivery of Dilraj Singh, Charanjit Kaur had some medical problem due to which she expired on 1.5.2017. After the death of Charanjit Kaur, the health of Jasbir Singh also started deteriorating and he went into depression and he also expired on 8.12.2019.

As per the version of the petitioner, custody of the minor child Dilraj

Singh was temporarily given to respondents No.4 and 5, who are the sister and brother-in-law of Charanjit Kaur, respectively. It is the case of the petitioner that after some time, Jasbir Singh as well as the present petitioner had repeatedly asked respondents No.4 and 5 to give back the custody of the minor child but they kept on delaying the matter. The petitioner was constrained to file application No.4812 dated 20.08.2020 (Annexure P-4) before Senior Superintendent of Police, Patiala. In the inquiry conducted by the DSP, Headquarter Patiala, the factum of the petitioner and Jasbir Singh going to the house of respondents No.4 and 5 and requesting them to return the child came to the fore and the said fact has been mentioned in para-6 of the status report filed by way of affidavit of Deputy Superintendent of Police Circle Ghanour, District Patiala (Punjab) on behalf of Respondent No.s 1 to 3. However, when the petitioner was not given the custody, the present petition was filed.

Learned counsel for the petitioner has submitted that the present petitioner is the real sister of the minor son Dilraj Singh and she is the only blood relative of the said Dilraj. It has been submitted that minor Dilraj Singh is not secure in the hands of respondents No.4 and 5 as they do not have enough means necessary for the proper upbringing and education of the minor Dilraj Singh. It is further submitted the petitioner is having enough means to educate and secure the future of minor Dilraj Singh as she is married in a well to do family. Husband of the petitioner is the owner of 30 bigha of land and her father-in-law is also owning 2 ½ acres of land. It is further submitted that the petitioner can provide a good environment for her minor brother inasmuch as her own son is aged 8 years and her daughter is aged 13 years and they are studying in a reputed school. Thus, in the presence of other children, the minor child Dilraj would be able to play with them and a positive environment would be very good for his mental and physical development. Learned counsel for the petitioner has also submitted that Jasbir

Singh, father of the minor child had 6 acres of land and mutation with respect to

the said land has been sanctioned in the name of the petitioner as well as in the name of minor Dilraj Singh in equal shares i.e. 3 acres each approximately. Learned counsel for the petitioner on instructions from the petitioner has also submitted that she would not alienate the half share sanctioned in the name of the minor child till the minor Dilraj Singh attains the age of 18 years, after which he can utilize the property in the manner he wishes to. It is also submitted that the petitioner has love and affection for her minor brother and is also ready to make an FD amounting to Rs.10,00,000/- in his name to secure his future. Learned counsel for the petitioner has further referred to a civil suit (Annexure P-6) in which respondent No.5 is the plaintiff and he has filed the suit against his own father and against respondent No.4- Narinder Kaur who is the wife of respondent No.5. In the said suit, other relatives of Gurmukh Singh have also been made a party. Thus, it has been highlighted that there is a dispute in the family of respondent No.5. Moreover, a reference has been made to the written statement which has been filed on behalf of defendants No.1 to 5 in the said suit which includes the written statement of Narinder Kaur (respondent No.4 in the present petition). A specific reference has been made to paragraph 3, 8 and 9 of the said written statement to highlight that even as per the version of respondent No.4, respondent No.5 is a drunkard and has bad habits. It is further mentioned that respondent No.5 has also sold his property and in fact had taken a loan and has not returned the money on account of which the joint account of Respondent no.s 4 and 5 has been declared as NPA and recovery proceeding have been initiated by the concerned Bank.

Learned counsel for the petitioner has relied upon a judgment of the Hon'ble Supreme Court in Tejaswini Gaud and others v. Shekhar Jagdish Prasad Tewari and others; 2019 (7) SCC 42, decided on 6/5/2019, to contend that a habeas corpus petition is maintainable when the custody of a Minor appears to be with a person who is legally not entitled to custody of the Minor.

father of the petitioner had repeatedly requested respondent no.s 4 and 5 to give the custody of the Minor to him but the same was not given.

On the other hand, learned counsel appearing on behalf of respondents no.4 and 5 has submitted that in fact the custody of minor Dilraj Singh was given to respondents No.4 and 5 by the father of the petitioner. It is further submitted that there is nothing on record to show that the father of the said minor Dilar Singh had ever sought the custody of the child back. It is also pointed out that in fact the panchyat of two villages namely Fategarh Sahib and Chapar have also supported the fact that the child has been living with the answering respondents and the same was with the consent of the father of minor Dilraj Singh. It is further submitted that answering respondents are taking care of the minor child.

On a pointed query raised by this Court, learned counsel for respondents No.4 and 5 has submitted that they would not be in a position to get any FD in favour of the minor child.

Learned State counsel has referred to status report as per which it is submitted that after about one year of the death of Charanjit Kaur, the petitioner and her father Jasbir Singh had gone to bring back the minor child Dilraj Singh but respondents No.4 and 5 while making their excuses on one pretext or the other did not hand over the custody of the child. However, during the said period, Jasbir Singh father of the child also expired on 08.10.2019 and after his death, his property had been transferred in the name of the petitioner and her brother Dilraj Singh in equal shares.

Heard learned counsel for the parties.

It is not in dispute that the petitioner is the real sister of Dilraj Singh.

On a query put by this Court, learned counsel for the petitioner got instructions from the petitioner that she is ready to make an FD amounting to Rs.10,00,000/- in favour of minor child Dilraj Singh. It is also submitted that

sanctioned in the name of Dilraj Singh and they would not alienate the said half share of Dilraj Singh till he attains the age of majority i.e. 18 years after which he would be free to utilise the property in the manner he wishes to. Moreover, the petitioner herself has two children i.e. son aged 8 years and a daughter aged 13 years who are studying in a reputed school and in case minor child lives with the petitioner, he would be able to play with the children and it would be a conducive environment, very good for his mental and physical development. Since the paramount consideration is the welfare of the child, thus, it would be appropriate if the custody of the minor child Dilraj Singh is given to the petitioner. It is also brought to the notice of this Court that a suit (Annexure P-6) has been filed by Respondent no. 5 against his own father and against respondent No.4- Narinder Kaur who is the wife of respondent No.5. In the said suit, other relatives of Gurmukh Singh have also been made a party. Thus, it has been highlighted that there is a dispute in the family of respondent No.5. Moreover, a reference has been made to the written statement (P-7) which has been filed on behalf of defendants No.1 to 5 in the said suit (respondent No.4 herein being defendant no. 2 in the said suit). A specific reference has been made to paragraphs-3, 8 and 9 of the said written statement to highlight that even as per the version of respondent No.4, respondent No.5 is a drunkard and has bad habits. It is further mentioned that respondent No.5 has also sold off his property and in fact had taken a loan and has not returned the money on account of which the joint account of respondents no.s 4 and 5 has been declared as NPA and recovery proceeding have been initiated by the concerned Bank.

Relevant parts of the written statement filed in the said suit are as follows:

“3. That the para No.3 of the plaint is correct. It is pertinent to mention over here that the plaintiff is a drunkard person and to fulfil his vicious habits he has already sold his harvesting combine as well as agricultural land.

XXXXXXXXXX

8.

It is pertinent to mention here that the plaintiff is a drunkard person and is man of vicious habits and has filed the present suit just to put pressure on the defendants and extract money from them. Earlier also the plaintiff was in habit of selling things to fulfil his vicious habits, which is itself clear from this fact that he has sold his 6 Bighas 5 Biswas of land and his combine without any legal necessity. The above said land and combine was just sold by the plaintiff to fulfil his vicious habits. Previously also on 06.05.2003, the plaintiff had entered into the agreement of sale of his land measuring 6 Bighas 5 Biswas with one Tarsek Singh son of Sh. Rattan Singh of Village Chappar and had received an amount of Rs.2,00,000/- as earnest money from him and used the amount of earnest money to fulfil his vicious habits. When the defendant No.1 came to know about that agreement he contacted Tarsem Singh and returned the amount of earnest money received by the plaintiff No.1 and cancelled the agreement to sell dated 06.05.2003 in order to save the land of the plaintiff keeping in view of the welfare of the plaintiff and his family as they had no other source of income except this agricultural land. Copy of the writing issued by Tarsem Singh under his signatures and agreement to sell of dated 06.05.2003 are attached herewith. It is worthy to mention here that the plaintiff did not stop after this and again sold his 6 Bighas 5 Biswas of land as detailed by him in this para of the plaint.

9. *It is also pertinent to mention here that the plaintiff, who is a drunkard person and man of vicious habits and in order to fulfil his vicious habits, he has forced his wife to mortgage the land received by her in inheritance being the legal heir of her minor son namely Manpreet Singh to the Ghanaur primary Co-operative Agricultural Development Bank vide two registered mortgage deeds bearing vasika No.955 of dated 24.08.2012 of Rs.5,00,000/- and second mortgage deed bearing vasika No.1147 of dated 17.09.2012 of Rs.2,80,000/- and the amount of the mortgage money was withdrawn by the plaintiff himself from the joint account of the plaintiff and defendant No.2It*

is worthy to mention here that the plaintiff did not pay the amount of

mortgage money to the bank regularly and as such the account of defendant No.2 became NPA and recovery proceedings were initiated by the bank against defendant No.2 and the defendant No.2 had to make the payment of the mortgage money to the bank after arranging it from her sources and relatives. The defendant No.2 also had to give her land on rent to defendant No.5, Baljit Singh son of Sh. Harnek Singh vide agreement of rent dated 16.05.2018 and she had received an amount of Rs.4,27,000/- as advance in order to pay off the mortgage money of the bank. The plaintiff did not bother to pay the amount of mortgage money, which was used by him to fulfil his vicious habits.....”

A perusal of the aforesaid part of the written statement would show that there is a dispute in the family of respondents No.4 and 5. It is further mentioned that respondent No.5 has also sold off his property and in fact had taken a loan and has not returned the mortgage money to the concerned Bank regularly, on account of which the joint account of respondent no.s 4 and 5 has been declared as NPA and recovery proceeding have been initiated by the Bank.

Thus, on these grounds, this Court finds that it would not be in the interest of the minor child to be in the custody of respondent no.s 4 and 5.

Moreover, para-6 of the status report filed on behalf of respondents No.1 to 3 in the present petition, which is relevant for adjudication of the present case, is reproduced hereunder:

“6.
.....
.....And then after one year Parvinder Kaur and her father Jasbir Singh went to brought Dilraj Singh child from respondent No.4 Narinder Kaur but she on the one pretext and other did not hand over the custody of child to them and during this time Jasbir Singh father of the petitioner also expired on 08.12.2019 and later on being legal heir the property of Jasbir Singh was transferred in the name of petitioner and her brother Dilraj Singh (minor) and hence due to greed of property received by way of inheritance by Dilraj Singh, she is retaining the custody of Dilraj Singh minor forcibly. Hence to take action against her, legal opinion from District Attorney (Legal)

*Patiala be obtained and then Station House Officer Police Station Sadar Samana be directed to take further necessary action. True translated copy of report is annexed herewith as **Annexure R-1.***

A perusal of the above would show that even the father of the petitioner, Jasbir Singh, who was admittedly the natural guardian of the Minor, along with the petitioner, had gone to bring back his child from respondent no. 4 but she, on one pretext or another, did not hand over the custody of the child to them. Thereafter, even after the death of the Petitioner's father, the petitioner had requested the respondent no.s 4 and 5 multiple times to hand over the custody of the minor, but they did not comply. This was seemingly on account of the fact that the minor child had inherited the property of his father.

Further, the Apex Court in the case of **Tejaswini Gaud and others** v. **Shekhar Jagdish Prasad Tewari and others**; (supra) held in para 13 as under:

“Writ of habeas corpus is a prerogative process of securing the liberty of the subject by affording an effective means of immediate release from an illegal or improper detention. The writ also extends its influence to restore the custody of a minor to his guardian when wrongfully deprived of it. The detention of a minor by a person who is not entitled to his legal custody is treated as equivalent to illegal detention for the purpose of granting writ, directing custody of the minor child. For restoration of the custody of a minor from a person who according to the personal law, is not his legal or natural guardian, in appropriate cases, the writ court has jurisdiction.”

In the present case, the father of the minor child as well as the present petitioner who are the only blood relatives, have requested the respondent no.s 4 and 5 who are maternal aunt and uncle of the Minor child several times to hand over the custody to them and the refusal of the respondent no.s 4 and 5 to do the same would make the custody of the child with the respondent no.s 4 and 5 as illegal. Moreover, viewed from any angle, be it economic wellbeing, comfort of the child, his health, education, friendly environment, the custody of the minor

child deserves to be handed over to the petitioner.

And thus, keeping in view the above facts and circumstances of the case, this petition is allowed and respondents No.4 and 5 are directed to hand over the custody of the minor child Dilar Singh to the petitioner. For the said purpose, the petitioner would visit the house of respondents No.4 and 5 at 11:00 on Sunday to take custody of the minor child and respondents No.4 and 5 will hand over the custody of the child to the petitioner. Respondents No.4 and 5 are also directed to fully co-operate with the petitioner in handing over the custody of the minor child. It would be open to the petitioner to seek police help in case there is any apprehension of any untoward incident. The Station House Officer, Police Station Ghanaur, Tehsil Rajpura, District Patiala (Respondent no. 3) is also directed to provide necessary help in case the petitioner approaches the said SHO. The petitioner is also directed to make two FDs amounting to Rs.5,00,000/- each, in the name of minor child Dilraj Singh. The first FD shall be made within a period of one month from today, that is, upto 14/10/2021 and the second FD shall be made upto 14/11/2021. The petitioner would also be bound by her statement that she would not alienate the half share of Dilraj Singh in his father's property, which has been mutated in his favour, till he attains the age of majority i.e. 18 years after which he would be free to hold, utilise or dispose of the property in the manner he wishes to.

In case the petitioner does not fulfil the statement made by her with respect to the welfare of the child, it would be open to the respondents to file an appropriate application before this Court for appropriate orders.

(VIKAS BAHL)
JUDGE

14.09.2021

rajeev