

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

Criminal Writ Petition No.8954 of 2021(O&M)
Date of Decision: November 16, 2021

Sandeep Kumar @ Sandeep Chugh ...Petitioner

Versus

State of Haryana and Others ...Respondents

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. Anil Malhotra, Advocate for the petitioner.
Mr. Vishal Malik, DAG, Haryana.
Mrs. G.K Mann, Sr. Advocate with
Mr. Aditya Dassaur, Advocate and
Mr. J.S Bajwa, Advocate for respondent Nos.4 to 6.

HARINDER SINGH SIDHU, J.

The petitioner has filed this petition under Article 226/227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 praying for issuance of a writ of habeas corpus directing respondent Nos.2 & 3 (official respondents) to get released the detenue, namely, Nitya, aged about 10 years and Kiaan Chugh, aged about two years from the illegal custody of respondent Nos.4 to 6.

Respondent No.4 is the wife of the petitioner.
Respondent No.5 is the father of respondent No.4. Respondent No.6 is her brother.

It is stated that the marriage of the petitioner with respondent No.4- Latika Arora was solemnized on 29.11.2010 as per Hindu rites at Sonapat (Haryana). About a month after the marriage,

respondent No.4 forced the petitioner to move out from his home town-Jind. The petitioner along with respondent No.4 went to Singapore. Thereafter, the petitioner moved to London in October 2011. Respondent No.4 joined him there in March 2012. Two children named Nitya, daughter and Kiaan Chugh, son were born to them. In June 2019, petitioner and respondent No.4 jointly decided to move back to India. They had no family purport in U.K and were struggling with child care. They thought that they would have better family support in India. In July 2019, all four moved back to India. All their belongings weighing 300 to 400 kgs were also shifted to India. It is averred that on their return, respondent No.4 forced the petitioner to take up a separate rented accommodation in Sector 17, Noida instead of moving to her matrimonial home at Jind. Nitya (their daughter) was got admitted in SAPPHIRE, International School, Sector 17, Noida. The mother of the petitioner came to live with them at Noida as she is a widow and needed care and support. The relations of respondent No.4 with the mother of the petitioner were not cordial. She was maltreated by respondent No.4. Occasionally, the sister of the petitioner came to visit them. She was also not treated well by respondent No.4.

In October 2019, the petitioner had to go abroad. In his absence also, the behaviour of respondent No.4 with the mother and sister of the petitioner remained the same. So much so, the mother of the petitioner was thrown out of the house in January 2020. In March 2020, without the consent of the petitioner, respondent No.4

left the house at Noida along with the children and started living at her parental house in Sonapat. Respondent No.4 took away all documents, jewellery and clothes with her. Respondent No.4 got registered a false FIR No.0667 dated 25.09.2020 under Sections 323, 380, 392 and 498-A IPC against the mother and sister of the petitioner at City Police Station, Sonapat. The petitioner returned to India in October 2020. He visited the parental house of respondent No.4 with a view to take her back to Jind. On the last date of his stay at Sonapat i.e 22.10.2020, the petitioner celebrated the birthday of respondent No.4. Soon after the celebrations, respondent No.4 and her family called the police. The petitioner was arrested. On 31.10.2020, a compromise/settlement was arrived at between the petitioner and respondent No.4. Respondent No.4 agreed to withdraw the case. Thereafter, the FIR was cancelled by the police on 28.11.2020. However later respondent No.4 changed her mind and lodged a complaint for re-opening of the FIR. The petitioner has not been able to meet his minor children despite repeated requests.

The petitioner wants the marriage to survive particularly keeping in view the interest of the children. He has filed a petition under Section 9 of the Hindu Marriage Act on 03.02.2021 at Jind.

The petitioner alleged that he had learnt that respondent Nos.4 to 6 had kept the minor children at some unknown place. Their whereabouts were not known to him. He had approached the police but got no response. Despite repeated requests respondent Nos.4 to 6 were not disclosing the whereabouts of the minor children and were

not permitting the petitioner to meet them. In these circumstances, the petitioner filed the present habeas corpus petition.

The case came up for hearing on 17.05.2021 on which date, notice of motion was issued to respondent Nos.4 & 5 for 14.10.2021.

The petitioner filed Criminal Misc. No.1175 of 2021 seeking pre-ponement of date of hearing of the petition. He also filed an additional affidavit dated 21.09.2021 wherein he stated that on 21.5.2021, in a whatsapp chat, respondent No.4 disclosed to him that the children were in U.K. However, respondent No.4 refused to disclose her address in U.K. The petitioner complained to the police at Jind, Sonapat and Noida that respondent No.4 had taken his children to U.K without his consent and during the period when there was complete lock down putting their lives at risk. However, the police did not take any action. The petitioner thereafter got in touch with his Solicitors in London for seeking online remedy in U.K for return of the children to India. As per legal advice received, he filed an online application on 13.07.2021 in the High Court Justice, Family Division, London for an inherent jurisdiction order in relation to the minor children, Nitya Chugh, born on 13.9.2011 and Kiaan Chugh born on 15.2.2019. He sought the relief of summary return of children to India, for their location and passport orders and for a range of prohibited step orders. On 26.07.2021 the High Court Justice, Family Division, London passed an order that respondent No.4 shall make the children available to spend time with the

petitioner (father) by way of video and/or telephone calls every Monday, Wednesday and Friday at 18.00 GMT. As per the order, the petitioner was on video conferencing (Zoom calls) with his daughter and son twice a week. However, whenever he spoke to his son at 6.00 p.m British time (10.30 p.m Indian time), the background of the video calls was always hidden. Most of the times he found his son half asleep. He could not understand this. The petitioner further got suspicious when he found exposure in video call of a rotating ceiling fan. To know the exact location of his son Kiaan Chugh, on 16.09.2021, the petitioner accompanied by his brother Sanjiv Chugh, sister Poonam Rani and their mother visited the residence of respondent Nos.5 & 6 at Sonapat at about 5.00 p.m. When the petitioner was approaching the street near the house of respondents 5 and 6, he found his son Kiaan Chugh playing with his maternal grand-mother. Seeing the petitioner, Kiaan Chugh rushed towards him. However, he was snatched away by his maternal grand-mother who told the petitioner that the child was not his son. Meanwhile, respondents 5 and 6 also arrived there. They, along with some neighbours assaulted the petitioner. A CT scan of chest of petitioner revealed fracture of the anterior ends of right 5th and 6th rib. The petitioner remained hospitalized for two days i.e 16.9.2021 to 18.09.2021. He prayed that a warrant officer be appointed and minor Kiaan Chugh be produced before the Court along with his passport. The above application came up for hearing on 24.09.2021 and the following order was passed:

“CrL.M.No.1175 of 2021

The main case is fixed for 14.10.2021.

Prayer is for pre-poning the date of hearing.

Notice of the application.

Mr.Surender Singh, AAG, Haryana accepts notice on behalf of respondent – State of Haryana.

For the reasons recorded in the application, which is supported by an affidavit, the same is allowed. The hearing in the case is pre-poned to 28.09.2021.

CrL.M.No.1173 of 2021

Prayer is for placing on record additional affidavit of applicant/petitioner. Allowed, as prayed for.

CrL.M.No.1174 of 2021

By means of this application, the petitioner prays for appointment of a Warrant Officer to produce minor child Kiaan Chugh aged about two and half years, who is stated to be in illegal custody of respondent Nos.5 & 6.

Respondent No.4 is the wife of the petitioner. Respondent No.5 is his father-in-law. Respondent No.6 is his brother-in-law. The marriage of the petitioner and respondent No.4 was solemnized on 29.11.2010. From this marriage they have two children namely Nitya Chugh (daughter) aged about ten years and Kiaan Chugh (son) aged about 2 ½ years. Due to matrimonial discord between the couple, respondent No.4 left the matrimonial home in March, 2020 without informing the petitioner, who was abroad at that time. She (respondent No.4) took along her both the minor children and went to her parental home in Sonapat. When the petitioner came back to India in October 2020 he visited respondent No.4 and requested her to return with the children but she refused.

The petitioner has filed a petition under Section 9 of Hindu Marriage Act, 1955 before the Family Court at Jind on 03.02.2021 which is pending.

The petitioner filed the petition (CRWP-8954-2021) for

issuance of a writ in the nature of habeas corpus seeking directions to respondent Nos.2 & 3 i.e Superintendent of Police, Sonapat, and the SHO, P.S Shivaji Colony, Sonapat to get released minor children from the illegal custody of respondent Nos.4 to 6 and produce them before this Court. Notice of motion was issued to respondent Nos.4 & 5 for 14.10.2021.

The petitioner and respondent No.4 had been living and working in U.K from 2010 to 2018. They have permission for indefinite stay there. The petitioner filed an online application before the High Court Justice Family Division, London for an inherent jurisdiction order in relation to the minor children Nitya Chugh and Kiaan Chugh seeking relief of summary return of the children to India, for location and passport orders and for a range of other orders to ensure the well being of the children. Respondent No.4 appeared before the Court in London through VC and stated that she had removed the children from India without the knowledge or consent of the petitioner because she did not know his whereabouts. She also agreed to make the children available for telephone and/or video contact with the petitioner as may be directed.

Vide order dated 26.07.2021, High Court Justice Family Division, London directed respondent No.4 to make the children available to spend time with the petitioner by way of video and/or telephone calls on every Monday, Wednesday and Friday at 18.00 GMT.

Pursuant to the order, the petitioner was on video conferencing (zoom calls) with his daughter and son. However, during those calls, the petitioner found that most of the times his son was half asleep. Sometimes respondent No.4 stated that he was asleep. Whenever he spoke to his son he was muted. The background was always hidden. Because of this the petitioner became suspicious of whereabouts of his son. On 16.09.2021, the petitioner, his brother Sunil Chugh,

his sister-Poonam Rani and his mother Kamlesh Chugh visited residence of respondent Nos.5 & 6 at Sonapat at about 5.00 p.m to clear their doubts about the whereabouts, well-being and welfare of the minor children. The petitioner was shocked to see that his son Kiaan Chugh was playing with his maternal grand-mother Ms. Sushma Arora. On seeing the petitioner his son ran towards him. However, his maternal grand-mother snatched him away and told the petitioner that the child was not his son. Meanwhile, respondent Nos.5 & 6 arrived at the spot along with their neighbours. The petitioner was physically assaulted. He suffered 10 serious injuries and was referred to BPS Hospital, Khanpur. CT scan of his chest revealed fractures of the anterior ends of right 5th and 6th ribs. A copy of the medical record is Annexure P-3. The petitioner's statement was recorded by respondent No.3-SHO, P.S Shivaji Colony, Sonapat but despite his having suffered grievous injuries, no FIR was registered.

Sh. Anil Malhotra, Ld. Counsel for the petitioner submits that the 2½ year old son of the petitioner is presently in the illegal custody of respondent Nos.5 & 6. Respondent No.4 has gone to U.K. leaving him behind. The petitioner apprehends that his son may be removed to an undisclosed destination abroad or any other place beyond the jurisdiction of this Court.

In view of the aforesaid, respondent No.2-Superintendent of Police, Sonapat is requested to immediately depute a senior Police Official to visit the residence of respondent Nos.5 & 6 at #25, Shivaji Colony, Sonapat, locate the whereabouts of the son of the petitioner and satisfy that he is in the safe custody of respondent No.5 and 6. The passport of Kiaan Chugh be taken into possession and retained in safe custody of respondent No.2. The concerned police official would also ensure that the child is produced before the Court on the next date of hearing through Video Conferencing mode

from the residence of respondent No.5 and 6.

*List on 28.09.2021. To be shown in the **Urgent List**.*

Meanwhile, Respondents No.5 and 6 are directed not to remove/ take away Kiaan Chugh - the son of the petitioner to any place beyond the borders of District Sonapat.

A copy of this petition and the connected application be served on respondent Nos.5 & 6 through respondent No.2.

*A copy of this order be provided **Dasti** to Ld. State counsel for onward transmission to concerned quarters for compliance.”*

Respondent No.2 - Superintendent of Police, Sonapat was requested to depute a senior police official to visit the residence of respondent Nos. 5 & 6 at #25, Shivaji Colony, Sonapat, locate the whereabouts of the son of the petitioner and satisfy that he was in the safe custody of respondent No.5 and 6. The passport of Kiaan Chugh was directed to be taken into possession and retained in safe custody of respondent No.2. It was also ordered that the child be produced before the Court on the next date of hearing through Video Conference from the residence of respondent No.5 and 6. Respondents No.5 and 6 were directed not to remove/ take away Kiaan Chugh - the son of the petitioner to any place beyond the borders of District Sonapat.

The matter then came up for hearing on 28.09.2021 when the following order was passed :

“Pursuant to the directions contained in the order dated 24.9.2021, the police officials visited the house of respondents No. 4 to 6 at Sonipat. The minor child Kiaan Chugh was present in the house alongwith respondents No.5 and 6.

Respondents No.5 and 6 have appeared alongwith minor child Kiaan Chugh in Court today through video conferencing.

Mr. Surender Singh, learned AAG Haryana states that Mr. Hans Raj, DSP who was deputed to visit the house of respondents No.5 and 6 has specifically inquired about the passport of minor child Kiaan Chugh. Respondents No.5 and 6 have stated that the passport is not in their possession and they are not aware about the passport.

Mr. Sandhu, Advocate has put in appearance on behalf of respondents No.4 to 6. He states that respondents are trying to locate the passport. As and when the same is located, it would immediately be handed over to DSP concerned who is inquiring the matter.

Mr. Malhotra, learned counsel for petitioner has stressed that if the minor child Kiaan Chugh is presently in the custody of respondents No.5 and 6, then interim custody of minor child be handed over to him as he is the natural guardian.

Mr. Sandhu prays for time to address arguments. He undertakes on behalf of respondents No.5 and 6 that they would not remove/take away minor son of petitioner Kiaan Chugh to any place beyond the borders of District Sonipat during pendency of this petition.

Adjourned to 1.10.2021.

To be shown in urgent list.”

Respondents 4 to 6 through their Counsel undertook that they would not remove or take away Kiaan- the minor son of the petitioner to any place beyond the borders of District Sonapat during

the pendency of the petition.

On 11.10.2021, the following order was passed by this Court:

“Mr. Malhotra, learned counsel for the petitioner records an undertaking on behalf of the petitioner that the petitioner would not leave India and travel to any foreign nation during the pendency of this petition.

Ms. Mann, learned senior counsel appearing for respondents No.4 to 6 records the undertaking on behalf of respondents No.4 to 6 that the minor child Kiaan Chugh will not be taken out of the jurisdiction of this Court during the pendency of the present petition. She further states that respondent No.4 undertakes that during the pendency of this petition she will not act upon any emergency travel documents issued by the British High Commission/Government of U.K. for Kiaan Chugh to travel to U.K.

Both learned counsel affirm that as per the aforesaid undertakings, the petitioner will not leave India during the pendency of this petition and Kiaan Chugh will not be taken outside the jurisdiction of this Court during the pendency of this petition.

The petitioner and respondents No.4 to 6 will remain bound by the aforesaid undertakings.

To come up on 12.10.2021.

To be taken up at 3:00 P.M.”

Thereafter, the case was taken up on 14.10.2021 and both parties concluded their arguments.

Respondent No.6 has filed reply on behalf of respondent Nos.4 to 6. In the preliminary submissions, it has been pointed out

that the petitioner has filed the present petition by concealing material facts. He has made wrong averments and manipulated facts which dis-entitles him to relief.

It is stated that the marriage of the petitioner with respondent No. 4 was solemnized on 29.11.2010. Prior to the marriage, the petitioner was already working in Singapore. After the marriage, the couple stayed at Singapore upto June 2011. Petitioner shifted to U.K. in June 2011. Daughter Nitya was born on 03.09.2011. Respondent No.4 along with Nitya went to U.K in March 2012. The petitioner obtained British P.R in 2016 and British Citizenship in December 2017. Respondent No.4 and Nitya got Indefinite Leave to Remain (ILR) in UK in November 2017. Kiaan (the son) was born on 15.02.2019. He is British citizen by birth as per Rule 1 (1) of Part I of British Nationality Act, 1981 which is reproduced as under:

“1. Acquisition by birth or adoption;
(1) A person born in the United Kingdom after commencement [F1, or in a qualifying territory on or after the appointed day,] shall be a British citizen if at the time of the birth his father or mother is--
(a) a British citizen; or
(b) settled in the United Kingdom [F2 or that territory]”

Before filing the present petition, the petitioner had already filed an online application dated 09.07.2021 in the High Court of Justice, Family Division, U.K regarding location of respondent No.4 and the children as also for restraining them to leave

the jurisdiction of England and Wales in pending proceedings, as well as to seize their passports and travel documents. The petition came up for hearing on 26.07.2021. The Court had been informed on 23.07.2021 i.e prior to the hearing, that Kiaan was in India. The Court passed an order dated 24.09.2021 (as amended on 7th October, 2021) which is as under:

*“IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION SITTING AT THE ROYAL
COURTS OF JUSTICE*

THE CHILDREN ACT 1989

THE SENIOR COURTS ACT 1981

The Children:

Nitya CHUGH (A girl, born on 03.09.2011)

AND Kiaan CHUGH (A boy, born on 15.02.2019)

*BEFORE MR DAVID LOCK QC SITTING AS A
DEPUTY HIGH COURT JUDGE AT A REMOTE
HEARING, IN PRIVATE ON 24 SEPTEMBER 2021
AT THE ROYAL COURTS OF JUSTICE, STRAND,
LONDON WC2A 2LL.*

The Parties and representation at this hearing

*The applicant father is SANDEEP KUMAR
CHUGH who appears in person*

*The respondent mother is LATIKA CHUGH who
appears in person;*

*Cafcass officer, Emma Huntington was in
attendance at the hearing;*

*2. The names of the persons set out at
paragraphs 1 and 2 are not to be disclosed in
public without the permission of the Court.*

Recitals

3. The father has made an application for the summary

return to India of the children, Nitya Chugh (born 3 September 2011), a girl aged 10 years, and Kiaan Chugh (born 15 February 2019), and a boy aged 2 years and 7 months and for the children to be made wards of court;

4. *By Form C66 dated 9 July 2021 (accompanied by Form CIA) and issued in the Family Division, the Father sought orders pursuant to the inherent jurisdiction including location and passport orders and a range of prohibited steps orders.*

5. *The without notice application came before the court on 13 July 2021 when Mrs Justice JUDD made a location order against the Mother. The Mother and Nitya were located by the Tipstaff later that day, and their passport and travel documents were seized. The Mother was served with the notice of these proceedings on 15th July 2021.*

6. *A hearing was held on 26 July 2021 before Mrs. Justice ARBUTHNOT where orders were made (a) to prevent the mother changing the location of the children without informing the father's solicitor 7 days in advance and to prevent the mother taking the children outside of England and Wales and (h) for the father to have contact with the children via video/audio calls on every Monday at 18:00 GMT and (c) that the mother should not apply for a British passport or any other passport for the children, without the consent of the father.*

7. *The mother prepared a defence which alleged abusive and controlling behaviour by the father and set out her grounds as to why she asserted the children should stay with her in England and Wales.*

8. *The mother has now informed the court that, throughout the relevant period, Kiaan was not living with her in England but had remained living with her parents in India because Kiaan could not travel, the mother having explained to the court that she was unable to obtain a visa to permit Kiaan to travel to England because she understood him to be a British Citizen but she did not have a UK passport for him. It is the Father's case that Kiaan is an Indian national and has an Indian passport.*

9. *On 16 September 2021 the father and members of his family visited the mother's parents in India in order to seek to take Kiaan back into the father's care but after an altercation they were prevented from doing so by the mother. There is a dispute*

between the parties as to what happened on this occasion.

10. *The mother's case is that Kiaan has only lived with the father for initial 4 months when he was in the UK. After that the father has not stayed with the child Kiaan at all, and the child Kiaan does not know him at all.*

11. *The mother has raised allegations that Kiaan would be at serious risk if he were to go to live with the father and the father's family, and the court considers that it is unable to assess the validity of those allegations or make an assessment of the risk to Kiaan if he were to return to his father's care, but that it is in Kiaan's best interests to be able to resume living with his mother and sister.*

12. *CAFCASS have been instructed to prepare welfare reports concerning the children and have raised concerns about Kiaan's welfare in the light of the allegations made by the Mother but they are unable to complete their work until they can see Kiaan with his mother.*

13. *This matter is listed for a final hearing over 2 days on 18 and 19 October at which the court will decide issues of habitual residence and whether, if the children are habitually resident in India, the court should make a summary return order.*

The Applications

14. *This matter came before the Court for directions on Friday 24 September in advance of the proposed final hearing on 18 and 19 October.*

15. *The mother sought assistance from the court, supported by CAFCASS, in enabling Kiaan to travel to England and Wales but the Court has explained that it would not be appropriate to require the Secretary of State for the Home Department to issue either a passport or an emergency travel document so as to permit Kiaan to travel to England and Wales.*

AND IS FURTHER RECORDED as follows:

16. *That this hearing was conducted remotely, via Microsoft teams and that, due to the COVID 19 situation, advocates' FAS forms could not be submitted to the Court. The Court noted that the LAA's Civil Finance Electronic Handbook, paragraph 6.11, states as follows: "we do not require an advocate's attendance from where a hearing is heard by telephone call or video conference. In its place the Court Order and attendance note*

should be submitted to verify the hearing.

IT IS DECLARED THAT ON AN INTERIM BASIS UNTIL FURTHER ORDER:

17. *There is reason to believe that Kiaan may be habitually resident in the United Kingdom (whether he is a UK or Indian national), albeit the issue of the children's habitual residence remains a matter at dispute to be determined at the final hearing.*

18. *It is in Kiaan's best interests to live with his Mother in England until the hearing of this matter on 18 and 19 October 2021.*

19. *It is Kiaan's best interests to be able forthwith to travel to England and Wales so that he can resume living with his mother and so that CAFCASS can complete their work and report to the court so as to assist the court make a welfare assessment in the event that the court were to conclude that the children were not habitually resident in England and Wales.*

THE COURT HEREBY MAKES AN URGENT REQUEST OF THE SECRETARY OF STATE TO THE HOME DEPARTMENT AND THE SECRETARY OF STATE FOR FOREIGN, COMMONWEALTH AND DEVELOPMENT AFFAIRS TO CONSIDER AND, IF POSSIBLE, TO FACILITATE KIAAN CHUGH'S ENTRY INTO THE UNITED KINGDOM BY ISSUING KIAAN CHUGH WITH A PASSPORT OR EMERGENCY TRAVEL DOCUMENT

AND IT IS ORDERED THAT:

20. *The mother shall provide any information requested by the Secretary of State which is needed to facilitate the request set out above. **Information can be requested by the Secretary of State via Emma Huntington at CAFCASS.***

21. *The Secretary of State shall assist this Court by informing the court within 7 days of the date of service of this order on the Secretary of State what steps have been taken to issue a passport or other emergency travel document so as to facilitate Kiaan's entry into England or why, such a travel document has not been issued.*

22. *In the event that the Secretary of State issues a travel document for Kiaan, the mother is to make arrangements to bring Kiaan to live with her and Nitya at her present address as soon as practicable.*

23. *The existing orders requiring the mother to remain in the united Kingdom with the children are to remain in force.*

24. This matter shall be listed for a further review on a date to be fixed in the week commencing 11 October 2011 in order to determine whether it is possible to hold a final hearing on 18 and 19 October 2021 and to make directions.

(DATE 24 SEPTEMBER 2021)

RE-DATED & AMENDED 07 OCTOBER 2021

Directly by Deputy High Court Judge Mr. LOCK QC

Stamp

High Court of Justice

Family Division”

In the reply it was further stated that as the jurisdictional foreign court in U.K is already seized of the matter, on a petition filed by the petitioner prior to the filing of the present petition, and the foreign court has declared Kiaan to be habitually resident in the United Kingdom, the present petition does not survive. It was submitted that though the father may be natural guardian but he has no right to claim custody of minor children as paramount consideration in custody matters is welfare of the minor and not legal right of a particular party. The custody of the minor child is with respondent Nos.5 & 6 temporarily as the documents of respondent No.4 were stolen by the petitioner. Respondent No.4 and daughter Nitya were at the verge of losing their P.R at U.K on account of their stay for more than two years outside U.K during ILR as per paragraph 20 of Immigration Rules and Article 13 of the Immigration (Leave to Enter and Remain) Order 2000. So respondent No.4 and Nitya applied for duplicate documents and travelled to U.K. While they were in U.K., on the application filed by the petitioner, passport of respondent No.4 and daughter Nitya have been seized on the orders of the foreign Court. Under these compelling circumstances,

respondent No.4 could not come back to India to take her son Kiaan along with her.

It is denied that the petitioner and respondent No.4 had decided to permanently leave U.K and settle in India. In fact, the petitioner and respondent No.4 along with children had come on a vacation to India on 29.6.2019 with return tickets for 10.09.2019 which indicated that the petitioner and respondent No.4 along with the children had to go back to U.K. There they had a residential house and Nitya was already studying in U.K. The petitioner from the very beginning had malafide intentions. He intentionally got issued Indian passport for Kiaan though he was eligible for a British Passport. The petitioner had assured respondent No.4 that he would apply for the right to abode for Kiaan. After reaching India he refused to return to United Kingdom. He got Nitya admitted in a school at Noida. The petitioner himself went to U.K on 22.07.2019. He came back in the last week of September 2019. On 13.10.2019, he again went back to U.K. From there he went to USA in second week of November 2019 and returned only after registration of the FIR. While leaving for U.K. on 22.07.2019, he took away the documents, passports, BRP cards of respondent No.4 and the children on the pretext that he would apply for the right to abode for Kiaan.

Respondent No.4 and her children had been treated with cruelty by the petitioner, which compelled her to lodge FIR No.0667 dated 25.09.2020 under Sections 323, 380,392, 498-A IPC against the petitioner and his family members. The petitioner tendered an

unconditional apology. He admitted his guilt and submitted his affidavit dated 30.10.2020 assuring that he would hand over the documents and other goods to respondent No. 4 after tracing the same. He also promised that he would not repeat his mistakes.

Respondent No.4 has filed a police complaint on 19.05.2021 vide Crime Reference No.5314087/2021 at London. She also filed a petition on 07.06.2021 regarding non-molestation and occupation order in the Family Court, which is prior to the proceedings initiated by the petitioner. Respondent No.4 also filed a divorce petition dated 14.08.2021 in U.K in which the petitioner has been served with notice.

It is stated that the present petition was drafted on 10.09.2021. It came up for hearing on 17.09.2021. A day prior i.e 16.09.2021, the petitioner along with his brother tried to forcibly snatch minor Kiaan from his maternal grand-mother. He even forcibly trespassed into the house of the respondents No.5 and 6 but due to timely intervention of the neighbours, the child and his maternal grand-mother were saved. Regarding this incident FIR No.340 dated 24.9.2021 under Sections 323, 447, 34 IPC has been registered against the petitioner. The petitioner has also got registered FIR No.339 dated 24.9.2021 under Sections 323,325,34,506 IPC at P.S Civil Lines, Sonapat.

It is stated that the atmosphere at the house of the petitioner is not congenial for the upbringing of the minor child. Though the petitioner is having a house in U.K he has rented out the

same intentionally. It is submitted that if the petitioner was concerned about the welfare of wife and children, he would have not rented out the said house but kept it for the use of his family and would have joined them in U.K.

It is stated that the daughter Nitya has levelled allegations of sexual abuse against the family members of the petitioner and proceedings qua the same are pending in U.K.

On the basis of their respective pleadings Ld. Counsel have advanced arguments.

Mr. Malhotra Ld. Counsel for the petitioner has argued that the petition is maintainable. No doubt Kiaan by virtue of his birth in U.K. is entitled to acquire British Citizenship but he has not yet acquired British Citizenship. He holds an Indian Passport and is thus an Indian citizen. He is presently residing within the jurisdiction of this Court and this Court in exercise of its *parens patrie* jurisdiction would pass an order regarding custody keeping in view the best interests of the child. The petitioner being the father is the natural guardian of the child. He has not been declared unfit to be a guardian by any competent Court. Hence he ought to be given the custody of the child in preference to the maternal grandparents. Respondent No.4 - the mother has gone to U.K. leaving him behind in the care of his maternal grand-parents. The family had taken a conscious decision to return to India as they were struggling with issues of child care. It would be in Kiaan's best interest to stay in India with the petitioner where he can also enjoy the love and affection of the grand-

parents, both on the paternal and maternal side. He stressed that he earnestly wished respondent No.4 returns to India to be with the child. That would be the most conducive arrangement. He contended that the allegations of respondent No.4 against the character of the petitioner are false and baseless. They have not been established in any forum.

Ms. G.K. Mann, Ld. Senior Counsel for the respondents No.4 to 6 on the other hand argued that the present petition is not maintainable. The petitioner has filed the present petition by concealing facts about his earlier application filed in U.K for identical relief. It ought to be dismissed on this score alone. Kiaan cannot be said to be in the illegal custody of respondents No.5 and 6. Respondent No.4 always intended to return to India and take Kiaan to U.K. but she is unable to do so because of the interim order of the British Court whereby her passport has been ordered to be seized. In these circumstances Kiaan should be deemed to be in the custody of respondent No.4- his mother. Kiaan is a British citizen by birth. The petitioner had got the birth of Kiaan registered with the Indian Consulate without the consent of Respondent No.4 and hence such registration can be of no consequence. She argued that this Court has no jurisdiction in the matter. There is an earlier interim direction of the foreign Court requiring that Emergency Travel Documents be issued for Kiaan to be able to travel to U.K. She stressed that on the principle of 'Comity of Courts' and the 'First Strike Principle' this Court should desist from proceeding further in the matter. She further

argued that Kiaan is of tender age i.e., about 2 years and 8 months and it is in his best interest to be united with his mother and his elder sister Nitya. Petitioner has never stayed with Kiaan ever since they came to India on 29.06.2019. He has been out of the India most of the time. Kiaan has been with respondent No.4 or his maternal grandparents. She further stressed that the petitioner is not of good character, is prone to violence as evidenced by the incident at Sonapat when he tried to forcibly snatch Kiaan from his grandparents. Moreover, Nitya has also levelled allegations of sexual abuse against family members of the petitioner and the proceedings are pending in the U.K.

Consideration

(i) Jurisdiction

The law regarding jurisdiction of the High Court to entertain a habeas corpus petition in relation to production and custody of a minor child on the allegations of illegal detention is well settled.

It has been held by Hon'ble Supreme Court that the writ court's jurisdiction to make appropriate orders regarding custody arises no sooner it is found that the alleged detenu is within its territorial jurisdiction.

In *Ruchi Majoo v. Sanjeev Majoo*, (2011) 6 SCC 479 it was observed as under:

“58. Proceedings in the nature of habeas corpus are summary in nature, where the legality of the detention of the alleged detenu is examined on the basis of affidavits

placed by the parties. Even so, nothing prevents the High Court from embarking upon a detailed enquiry in cases where the welfare of a minor is in question, which is the paramount consideration for the Court while exercising its parens patriae jurisdiction. A High Court may, therefore, invoke its extraordinary jurisdiction to determine the validity of the detention, in cases that fall within its jurisdiction and may also issue orders as to custody of the minor depending upon how the Court views the rival claims, if any, to such custody.

59. The Court may also direct repatriation of the minor child to the country from where he/she may have been removed by a parent or other person; as was directed by this Court in Ravi Chandran and Shilpa Aggarwal cases or refuse to do so as was the position in Sarita Sharma case. What is important is that so long as the alleged detenu is within the jurisdiction of the High Court no question of its competence to pass appropriate orders arises. The writ court's jurisdiction to make appropriate orders regarding custody arises no sooner it is found that the alleged detenu is within its territorial jurisdiction."

Kiaan is presently in Sonapat (Haryana) in the custody of respondents 5 and 6. In view thereof this Court undoubtedly has jurisdiction to entertain this petition.

(ii) Considerations of best interest of the child

It has been held that such matters have to be decided on consideration of what is in the best interest of the child.

This question was considered in detail in **Cr.W.P.**

No.3440 of 2020 titled **Kiran Vs. Bhaskar** decided on **31.08.2020**.

The relevant observations are as under:

“Not the legal rights of the parties but the best of the interest and welfare of the child are the paramount consideration

16. *Exercise of extra ordinary writ jurisdiction to issue writ of habeas corpus in such cases is not solely dependent on and does not necessarily follow merely determination of illegality of detention and is based on the paramount consideration of welfare of the minor child irrespective of legal rights of the parents. In **Howarth Vs. Northcott : 152 Conn 460 : 208 A 2nd 540 : 17 ALR 3rd 758** it was observed that in habeas corpus proceedings to determine child custody, the jurisdiction exercised by the Court rests in such cases on its inherent equitable powers and exerts the force of the State, as parens patriae, for the protection of its infant ward, and the very nature and scope of the inquiry and the result sought to be accomplished call for the exercise of the jurisdiction of a court of equity. It was further observed that the employment of the forms of habeas corpus in a child custody case is not for the purpose of testing the legality of a confinement or restraint as contemplated by the ancient common law writ, or by statute, but the primary purpose is to furnish a means by which the court, in the exercise of its judicial discretion, may determine what is best for the welfare of the child, and the decision is reached by a consideration of the equities involved in the welfare of the child, against which the legal rights of no one, including the parents, are allowed to militate. It was also indicated that ordinarily, the basis for issuance of a writ of habeas corpus is an illegal detention; but in the case of such a writ sued out for the detention of a child, the law is concerned not so much with the illegality of the detention as with the welfare of the child. In **Gaurav Nagpal Vs. Sumedha Nagpal : 2008(4) R.C.R.(Civil) 928** Hon'ble Supreme Court referred to these observations*

made in **Howarth Vs. Northcott : 152 Conn 460 : 208 A 2nd 540 : 17 ALR 3rd 758** and held that the legal position in India follows the above doctrine.

17. Whenever a question arises pertaining to the custody of a minor child whether before Family Court/Guardian Judge on a petition for custody of the minor child under the Guardians and Wards Act, 1890, Hindu Minority and Guardianship Act, 1956 etc. or before High Court or Supreme Court on a habeas corpus petition, the matter is to be decided not on considerations of the legal rights of parties but on the sole and predominant criterion of what would best serve the interest and welfare of the minor. (See **Elizabeth Dinshaw Vs. Arvand M. Dinshaw & Ors.(1987) 1 SCC 42** and **Syed Saleemuddin Vs. Dr. Rukhsana : 2001(2) R.C.R.(Criminal) 591**).

Determination of best of interest and welfare of child

18. The welfare of the child is not to be measured by money only nor merely physical comfort. The word 'welfare' must be taken in its widest sense. The moral or religious welfare of the child must be considered as well as its physical wellbeing. Nor can the tie of affection be disregarded. (Per Lindley, L.J. in **McGrath, (1893) 1 Ch 143**). Welfare is an all-encompassing word. It includes material welfare, both in the sense of adequacy of resources to provide a pleasant home and a comfortable standard of living and in the sense of an adequacy of care to ensure that good health and due personal pride are maintained. However, while material considerations have their place they are secondary matters. More important are the stability and the security, the loving and understanding care and guidance, the warm and compassionate relationships, that are essential for the full development of the child's own character, personality and talents. (Per

Hardy Boys, J. in Walker Vs. Walker & Harrison (1981) New Zealand Recent Law 257.)

19. *In Gaurav Nagpal Vs. Sumedha Nagpal : 2008(4) R.C.R.(Civil) 928 Hon'ble Supreme Court observed as under:-*

“42.The Court has not only to look at the issue on legalistic basis, in such matters human angles are relevant for deciding those issues. The court then does not give emphasis on what the parties say, it has to exercise a jurisdiction which is aimed at the welfare of the minor. As observed recently in Mousami Moitra Ganguli's case (supra), the Court has to due weightage to the child's ordinary contentment, health, education, intellectual development and favourable surroundings but over and above physical comforts, the moral and ethical values have also to be noted. They are equal if not more important than the others.

43. The word 'welfare' used in Section 13 of the Act has to be construed literally and must be taken in its widest sense. The moral and ethical welfare of the child must also weigh with the Court as well as its physical well being. Though the provisions of the special statutes which govern the rights of the parents or guardians may be taken into consideration, there is nothing which can stand in the way of the Court exercising its parens patriae jurisdiction arising in such cases.”

20. *Hon'ble Supreme Court in Nil Ratan Kundu Vs. Abhijit Kundu : 2008(3) RCR (Civil) 936 set out the principles governing the custody of minor children in paragraph 52 as follows:-*

“Principles governing custody of minor children 56. *In our judgment, the law relating to custody of a child is fairly well settled and it is this: in deciding a difficult and complex question as to the custody of a minor, a court of law should keep in mind the relevant statutes and the rights flowing therefrom. But such cases cannot be decided solely by interpreting legal provisions. It is a human problem and is required to be solved with human touch. A court while dealing with custody cases, is neither bound by statutes nor by strict rules of evidence or procedure nor by precedents. In selecting proper guardian of a minor, the paramount consideration should be the welfare and wellbeing of*

the child. In selecting a guardian, the court is exercising parens patriae jurisdiction and is expected, nay bound, to give due weight to a child's ordinary comfort, contentment, health, education, intellectual development and favourable surroundings. But over and above physical comforts, moral and ethical values cannot be ignored. They are equally, or we may say, even more important, essential and indispensable considerations. If the minor is old enough to form an intelligent preference or judgment, the court must consider such preference as well, though the final decision should rest with the court as to what is conducive to the welfare of the minor."

21. In ***Lahari Sakhamuri Vs. Sobhan Kadali*** : **2019(7) SCC 311** Hon'ble Supreme Court observed as under:-

"43. The expression "best interest of child" which is always kept to be of paramount consideration is indeed wide in its connotation and it cannot remain the love and care of the primary care giver, i.e., the mother in case of the infant or the child who is only a few years old. The definition of "best interest of the child" is envisaged in Section 2(9) of the Juvenile Justice (Care & Protection) Act, 2015, as to mean "the basis for any decision taken regarding the child, to ensure fulfilment of his basic rights and needs, identify, social well-being and physical, emotional and intellectual development".

49. The crucial factors which have to be kept in mind by the Courts for gauging the welfare of the children equally for the parent's can be inter alia, delineated, such as (1) maturity and judgment; (2) mental stability; (3) ability to provide access to schools; (4) moral character; (5) ability to provide continuing involvement in the community; (6) financial sufficiency and last but not the least the factors involving relationship with the child, as opposed to characteristics of the parent as an individual."

22. In ***Civil Appeal No.3559 of 2020 titled as Smriti Madan Kansagra Vs. Perry Kansagra*** decided on **28.10.2020** Hon'ble Supreme Court observed as under:-

"11.3. To decide the issue of the best interest of the child, the Court would take into consideration various factors, such as the age of the child; nationality of the child; whether the child is of an intelligible age and capable of making an intelligent

preference; the environment and living conditions available for the holistic growth and development of the child; financial resources of either of the parents which would also be a relevant criterion, although not the sole determinative factor; and future prospects of the child.”

(iii) Order of a foreign Court not determinative. It is only one factor to be taken into consideration

As regards a previous order of a foreign court, it has been held that the order of a foreign court is only one factor to be taken into consideration. It cannot be determinative and must yield in favour of considerations of welfare of the child .

In **Nithya Anand Raghavan v. State (NCT of Delhi)**, (2017) 8 SCC 454 Hon'ble Supreme considered this question as under:

“45. In a petition for issuance of a writ of habeas corpus in relation to the custody of a minor child, this Court in Sayed Saleemuddin v. Rukhsana, has held that the principal duty of the court is to ascertain whether the custody of child is unlawful or illegal and whether the welfare of the child requires that his present custody should be changed and the child be handed over to the care and custody of any other person. While doing so, the paramount consideration must be about the welfare of the child. In Elizabeth, it is held that in such cases the matter must be decided not by reference to the legal rights of the parties but on the sole and predominant criterion of what would best serve the interests and welfare of the minor. The role of the High Court in examining the cases of custody of a minor is on the touchstone of principle of parens patriae jurisdiction, as the minor is within the jurisdiction of the Court [see Paul Mohinder Gahun v. State (NCT of Delhi) relied

upon by the appellant]. It is not necessary to multiply the authorities on this proposition.

46. The High Court while dealing with the petition for issuance of a writ of habeas corpus concerning a minor child, in a given case, may direct return of the child or decline to change the custody of the child keeping in mind all the attending facts and circumstances including the settled legal position referred to above. Once again, we may hasten to add that the decision of the court, in each case, must depend on the totality of the facts and circumstances of the case brought before it whilst considering the welfare of the child which is of paramount consideration. The order of the foreign court must yield to the welfare of the child. Further, the remedy of writ of habeas corpus cannot be used for mere enforcement of the directions given by the foreign court against a person within its jurisdiction and convert that jurisdiction into that of an executing court. Indubitably, the writ petitioner can take recourse to such other remedy as may be permissible in law for enforcement of the order passed by the foreign court or to resort to any other proceedings as may be permissible in law before the Indian Court for the custody of the child, if so advised.

xxx xxx xxx

51. For considering the factum of interests of the child, the court must take into account all the attending circumstances and totality of the situation. That will have to be decided on case to case basis.....

xxx xxx xxx

69. We once again reiterate that the exposition in Dhanwanti Joshi is a good law and has been quoted with approval by a three-Judge Bench of this Court in V. Ravi Chandran (2). We approve the view taken in Dhanwanti

Joshi, inter alia, in para 33 that so far as non-Convention countries are concerned, the law is that the court in the country to which the child is removed while considering the question must bear in mind the welfare of the child as of paramount importance and consider the order of the foreign court as only a factor to be taken into consideration. The summary jurisdiction to return the child be exercised in cases where the child had been removed from its native land and removed to another country where, may be, his native language is not spoken, or the child gets divorced from the social customs and contacts to which he has been accustomed, or if its education in his native land is interrupted and the child is being subjected to a foreign system of education, for these are all acts which could psychologically disturb the child. Again the summary jurisdiction be exercised only if the court to which the child has been removed is moved promptly and quickly. The overriding consideration must be the interests and welfare of the child.”

The same view was reiterated in **Lahari Sakhamuri v. Sobhan Kodali, (2019) 7 SCC 311** :

“49. The crucial factors which have to be kept in mind by the courts for gauging the welfare of the children equally for the parent’s can be inter alia, delineated, such as (1) maturity and judgment; (2) mental stability; (3) ability to provide access to schools; (4) moral character; (5) ability to provide continuing involvement in the community; (6) financial sufficiency and last but not the least the factors involving relationship with the child, as opposed to characteristics of the parent as an individual.

50. While dealing with the younger tender year doctrine, Janusz Korczak a famous Polish-Jewish educator & children's author observed:

“children cannot wait too long and they are not people of tomorrow, but are people of today. They have a right to be taken seriously, and to be treated with tenderness and respect. They should be allowed to grow into whoever they are meant to be — the unknown person inside each of them is our hope for the future.”

Child rights may be limited but they should not be ignored or eliminated since children are in fact persons wherein all fundamental rights are guaranteed to them keeping in mind the best interest of the child and the various other factors which play a pivotal role in taking decision to which reference has been made taking note of the parental autonomy which courts do not easily discard.

51. The doctrines of comity of courts, intimate connect, orders passed by foreign courts having jurisdiction in the matter regarding custody of the minor child, citizenship of the parents and the child, etc., cannot override the consideration of the best interest and the welfare of the child and that the direction to return the child to the foreign jurisdiction must not result in any physical, mental, psychological, or other harm to the child. Taking a holistic consideration of the entire case, we are satisfied that all the criteria such as comity of courts, orders of foreign court having jurisdiction over the matter regarding custody of the children, citizenship of the spouse and the children, intimate connect, and above all, welfare and best interest of the minor children weigh in favour of the respondent (Sobhan Kodali) and that has been looked into by the High Court in the

impugned judgment in detail. That needs no interference under Article 136 of the Constitution of India.”

The material facts in the present case :

The marriage of the petitioner with respondent No.4 was solemnized on 29.11.2010. Prior to the marriage, the petitioner was already working in Singapore. After marriage, the couple stayed at Singapore upto June 2011. Petitioner shifted to U.K. in June 2011. Daughter Nitya was born on 03.09.2011. Respondent No.4 along with Nitya went to U.K in March 2012. The petitioner obtained British P.R in 2016 and British Citizenship in December 2017. Respondent No.4 and Nitya got Indefinite Leave to Remain (ILR) in UK in November 2017. Kiaan (the son) was born on 15.2.2019. The petitioner and respondent No.4 along with children came to India on 29.6.2019. The claim of the petitioner is that it was a joint decision to settle in India whereas respondent No.4 contests this and states that they had come on a vacation as is evidenced by the fact that they had booked return tickets for 10.09.2019. Petitioner further states that they had got shipped their entire belongings to India which would not have been done if it was only a short duration visit. Once in India daughter Nitya was got admitted in a school in Noida and petitioner had also taken on rent a flat in Noida where the family started residing as respondent No. 4 was not agreeable to staying in the matrimonial home at Jind. The petitioner went to U.K on 22.7.2019. He came back in the last week of September 2019. On 13.10.2019 he again went back to U.K. From there he went to USA in second week

of November 2019. In March 2020, when the petitioner was not in the country respondent No. 4, without his consent, left the house at Noida along with the children and started living at her parental house in Sonapat. Respondent No.4 got registered FIR No.0667 dated 25.09.2020 under Sections 323, 380, 392 and 498-A IPC against the mother and sister of the petitioner at City Police Station, Sonapat. The petitioner returned to India in October 2020. He visited the parental house of respondent No.4 with a view to take her back to Jind. On the last date of his stay at Sonapat i.e 22.10.2020, the petitioner celebrated the birthday of respondent No.4. Soon after the celebration, respondent No.4 and her family called the police. The petitioner was arrested. On 31.10.2020, a compromise/settlement was arrived at between the petitioner and respondent No.4. Respondent No.4 agreed to withdraw the case. Thereafter the FIR was cancelled by the police on 28.11.2020. Respondent No.4 disputes this. It is her case that no cancellation report has been accepted in this case.

After going to U.K with her daughter Nitya, Respondent No.4 filed a police complaint on 19.5.2021 at London. She also filed a petition on 7.6.2021 regarding non-molestation and occupation order in the Family Court. Respondent No.4 also filed a divorce petition dated 14.8.2021 at U.K in which the petitioner has been served with notice.

On 13.7.2021 the petitioner filed an online application in the High Court Justice, Family Division, London for an inherent jurisdiction order in relation to the minor children, Nitya Chugh and

Kiaan Chugh. He sought the relief of summary return of children to India, for their location and passport order and for a range of prohibited step orders. Vide interim order the passport and travel documents of respondent No. 4 were ordered to be seized. A direction was issued requiring her not to move the children outside of England and Wales. Vide order dated 26.7.2021 (as modified vide order dated 6th October, 2021) the High Court Justice, Family Division, London passed an order that respondent No.4 shall make the children available to spend time with the petitioner (father) by way of video and/or telephone calls every Monday, Wednesday and Friday at 18.00 GMT.

After initiating proceedings before the High Court Justice Family Division, London the petitioner moved the present habeas corpus petition. Kiaan Chugh has been found to be residing with respondent No.5 and 6 at Sonapat. The petitioner along with some family members went to Sonapat to find out the whereabouts of Kiaan. An altercation took place between him and respondents No.5 and 6. The petitioner sustained injuries. He remained hospitalized for two days. Cross FIRs have been registered by both the parties regarding this incident. Respondent No.4 has explained that she had to go to U.K to protect her and Nitya's P.R. status. Kiaan could not be taken along as his passport could not be got prepared as all the documents had been taken by the petitioner. Respondent No.4 intends to come to India and take Kiaan to UK but is unable to do so as the Court in UK on the application of the petitioner has ordered

seizure of her passport etc.

The position thus is that the petitioner and respondent No.4 along with their children Nitya and Kiaan lived as family in U.K. They came to India on 29.06.2019. Kiaan was about four months old then. Except for about one month in September-October, 2019 the petitioner remained out of the country from 22.07.2019 to October 2020. Respondent No.4 along with the children moved to her parents house in Sonapat when the petitioner was abroad. The petitioner has had no contact with the children since his return in October 2020 except for the few days that he stayed at Sonapat in the parental house of respondent No. 4 where he was arrested on 22.10.2020. Thereafter vide order dated 26.7.2021 the High Court Justice, Family Division, London had directed that respondent No.4 to make Nitya and Kiaan available to spend time with the petitioner by way of video and/or telephone calls every Monday, Wednesday and Friday at 18.00 GMT. This arrangement has continued since then.

On the other hand respondent No.4 had been with the children Nitya and Kiaan till the time she left for U.K. On 08.05.2021 with Nitya leaving Kiaan in the care and custody of her parents. Now she is in U.K. and unable to return as her passport and travel documents have been seized. As to when she would be able to return is not clear at present. Respondent No.4 has filed a divorce petition in U.K. There is an interim direction of the British Court to issue Emergency Travel Documents to Kiaan to enable him to travel to

U.K.

The situation is far from ideal both as far as the petitioner and respondent No.4 are concerned, least of all their minor children.

Determination :

Petitioner is the natural guardian of his minor child. But for some bald allegations made against him, there is no reason to believe that he would not conduct himself as a good and caring father. Kiaan is presently with his maternal grandparents. The mother is in U.K. Her return to India is uncertain in view of her passport and travel documents having been being seized because of the pending proceedings in the Court in U.K. As per her stand in the written statement respondent No. 4 intends to return to India, when she can, but only to take Kiaan to U.K. to reside with her and her daughter there.

Taking into consideration the totality of the circumstances, in my view:

- (i) it would not be in the interest of Kiaan to be permitted to travel to U.K. pending a determination of the various disputes between the parties in the Courts in U.K. In U.K. respondent No.4 would have to single handedly care for Kiaan and her daughter Nitya, which may be difficult in view of the demands of her career. In India, apart from his father - the petitioner, Kiaan can enjoy the care, love and affection of his grandparents and other members of the family both on the paternal and maternal side. Though born in U.K. Kiaan has been in India

since 29.06.2019 (He was a little over four months then. He is now about two years eight months. His date of birth being 15.02.2019);

(ii) pending a final determination of the issues of custody between the petitioner and respondent No.4 in a properly instituted proceeding, the best interest of Kiaan would be served if his custody is handed over to the petitioner. Petitioner's mother (paternal grandmother of Kiaan) resides with the petitioner and would be available to care for him.

Respondents No.4 to 6 are directed to hand over Kiaan to the petitioner on 6th December, 2021. Respondents No.5 and 6 would take Kiaan to the Court of Chief Judicial Magistrate, Sonapat on 6th December, 2021 at 10.00 AM where petitioner along with his mother would be present. Kiaan would be handed over to the petitioner in the presence of CJM Sonapat. Respondents No.5 and 6 would not directly or indirectly hinder or obstruct the petitioner from leaving the place with Kiaan.

Once the custody of Kiaan is handed over to him, the petitioner would make available Kiann to spend time with respondent No.4 (mother) by way of video and/or telephonic calls every day.

Considering that Kiaan has been living with respondents No.5 and 6 for the last over one year when respondent No.4 started residing there along the children (Nitya and Kiaan) petitioner would also facilitate telephone/ video contact between Kiaan and his maternal grandparents at least thrice a week.

As Kiaan would take some time to settle in the new place and would initially need greater care and affection to make him comfortable, the petitioner would not travel abroad for six months from the date the custody of Kiaan is handed over to him.

Having determined as above, I can do no better than to end with the observations of the Supreme Court in ***Lahari Sakhamuri v. Sobhan Kodali, (2019) 7 SCC 311*** :

“52. Before we conclude, we would like to observe that it is much required to express our deep concern on the issue. Divorce and custody battles can become a quagmire and it is heart wrenching to see that the innocent child is the ultimate sufferer who gets caught up in the legal and psychological battle between the parents. The eventful agreement about custody may often be a reflection of the parents’ interests, rather than the child’s. The issue in a child custody dispute is what will become of the child, but ordinarily the child is not a true participant in the process. While the best-interests principle requires that the primary focus be on the interests of the child, the child ordinarily does not define those interests himself nor does he have representation in the ordinary sense.

53. The child’s psychological balance is deeply affected through the marital disruption and adjustment for changes is affected by the way parents continue positive relationships with their children. To focus on the child rights in case of parental conflict is a proactive step towards looking into this special situation demanding a specific articulation of child rights.

54. The judicial resolution of a custody dispute may permanently affect or even end the parties’ legal

relationship but the social and psychological relationship will usually continue and it seems appropriate that a negotiated resolution between the parents is preferable from the child's perspective for several reasons. A child's future relationship with each of his parents may be better maintained and his existing relationship is less damaged by a negotiated settlement than by one imposed by a court after adversarial proceedings.

55. In the present case, there is every possibility that the parties may reconcile and start over their relationship afresh, at least for the sake of happiness of their own offspring if for no other reason. The parties are indeed mature and sensible enough to understand that the ordinary wear and tear of married life has to be put up in within the larger interests of their own happiness and of the healthy, normal growth and development of their offspring, whom destiny has entrusted to their joint parental care. Spouses must come over the temperamental disharmony which usually exists in every marriage, rather than magnifying it with impulsive desires and passions. Parents are not only caretakers, but they are instrumental in the development of their child's social, emotional, cognitive and physical well-being and work harmoniously to give their children a happy home to which they are justly entitled to. We hope and trust that the parties will forget and forgive their differences and join hands together in providing the congenial atmosphere which may be good not for themselves but also for the development of their minor children.”

Hope the parties ponder over and heed this sage counsel.

Disposed of.

CRWP-8954-2021(O&M)

(40)

November 16, 2021

(HARINDER SINGH SIDHU)
JUDGE

gian

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No