

CRWP-9277-2021 (O&M)

Through video conference
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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

CRWP-9277-2021 (O&M).
Decided on: October 28, 2021.

Ramandeep Kaur

.. Petitioner

VERSUS

State of Haryana and others

.. Respondents

*** * ***

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

*** * ***

**PRESENT Mr.Yashpal Thakur, Advocate,
for the petitioner.**

Mr.Ranvir Singh Arya, Addl. A.G. Haryana.

**Mr.R.S.Mamli, Advocate,
for respondent Nos.4 and 5.**

JASGURPREET SINGH PURI, J. (ORAL)

CRM-W-1297-2021

Prayer in the present application moved under Section
482 Cr.P.C. is for placing on record C.D. (Annexure P-4) and its transcript
dated 2.10.2021 (Annexure P-5).

For the reasons recorded in the application, the same is

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allowed. Accompanying Annexures P-4 and P-5 are permitted to be taken on record subject to all just exceptions.

Main Case

The present writ petition has been filed under Article 226 of the Constitution of India, seeking issuance of a writ in the nature of *habeas corpus* to release the alleged detainee i.e. minor daughters of the petitioner namely Tanish, aged 13 years and Haizal, aged 6 years, from the illegal custody of respondent Nos.4 and 5.

It has been submitted by the learned counsel for the petitioner that the petitioner got married to respondent No.4 namely Vikram Singh Panwar son of Darshan Lal on 29.4.2007, according to Sikh rites and rituals at village Talanina, District Faridabad and out of their wedlock two children namely Tanish, aged 13 years and Haizal, aged 6 years, were born and thereafter due to differences in temperaments and tastes of life, the relationship between petitioner and respondent No.4 became strained and they were residing separately since June 2018 and a number of litigations were filed by them against each other. However, in December 2020, both the parties agreed to part ways and therefore, on 10.2.2021, a petition under Section 13-B of the Hindu Marriage Act was filed for dissolution of marriage by way of mutual consent. Thereafter on 28.6.2021, the parties entered into a compromise to settle the terms and conditions for the custody and maintenance of the minor children and it was agreed between the parties that the custody of the minor daughters will remain with respondent No. 4 – father but the petitioner will always have visitation

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rights to meet her minor daughters whenever she desired and it was also agreed that in future if the daughters find any difficulty in living with their father, the petitioner will be allowed to take the daughters with her and thereafter, decree of divorce was passed on 9.8.2021 vide Annexure P-2. In this way, the custody of minor daughters remained with respondent No.4 – father in accordance with the terms and conditions of the agreement. He has submitted that respondent No.4 remarried and started maltreating the daughters and one day when the petitioner had gone to meet her daughters they were beaten up by respondent No.4 and therefore, the present petition has been filed seeking writ in the nature of *habeas corpus* for release of the minor daughters of the petitioner.

On 27.9.2021, this Court had issued notice to the respondents and directed the Superintendent of Police, District Ambala to forthwith depute a senior lady police officer who shall visit the house/place of respondent Nos.4 and 5 mentioned in the memo of parties and shall immediately ensure the safety of the minor daughters of the petitioner. It was further directed that the senior lady police officer shall also assess the threat perception and also get the requisite information from the minor girls as to whether the allegations/averments made by the petitioner are true or not. It was further directed that interaction with the minor daughters shall be in a very comfortable manner so that the truthful position may be ascertained.

Thereafter, status report/compliance report dated 1.10.2021, was filed by the Deputy Superintendent of Police, Brara, District

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Ambala.

Mr.Ranvir Singh Arya, learned Addl. A.G. Haryana, while referring to the status report/compliance report filed by the police has submitted that after the receipt of orders of this Court one Inspector namely Bimla Devi was deputed for immediate necessary compliance of the orders and one Ms.Jyoti Kaushal Advocate (legal-aid-counsel) DLSA was also called for recording of the statement of minor daughters and they visited the house of respondent Nos.4 and 5. Thereafter, both the minor daughters joined the enquiry and after due interaction with the minor daughters, the legal-aid-counsel recorded the statements of the minor daughters of the petitioner duly attested by Inspector Bimla Devi and during enquiry it has been stated by both the daughters of the petitioner that they are having no problems in their house and no one has harassed them. However, without their mother they do not feel comfortable and they want to live with their mother i.e. the petitioner. While referring to the affidavit filed by the DSP, it was submitted by the learned State counsel that local police verified the facts in respect of one occurrence dated 15.9.2021 mentioned in para 7 of the writ petition from independent witnesses and on 24.9.2021 the local police recorded the statement of one Poonam wife of Karnail Singh, resident of Dera Gulab Nagar, Tehsil Brara, District Ambala, in which she stated that respondent No.5 came to the spot and took the minor daughters with him and while taking minor daughters with him from the petitioner, daughter Tanish fell on the ground but no quarrel had taken place at that time as alleged by the petitioner. He has submitted that as per the statements of the

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minor daughters of the petitioner, they are living in the house of respondent No.4 peacefully and have no threat to their life and liberty but the minor daughters are not feeling comfortable without their mother and the minor daughters want to live with their mother.

Learned counsel for the petitioner has, however, submitted that as per Annexure P-4, and P-5, the recording of the conversation between the petitioner and her daughters would show that the minor daughters are not satisfied while living in the house of their father and they are also being beaten up.

I have heard the learned counsel for the parties.

In pursuance of the notice issued by this Court, a lady police official was deputed in this regard who was accompanied by one lady Advocate who is the legal aid counsel of DLSA and they visited the house of respondent no.4 and as per their report they interacted with the minor girls and came to the conclusion that they were not being harassed by anybody but they were willing to live with their mother only. However, on the other hand, learned counsel for the petitioner has submitted that minor girls are being beaten up by the father. These are all disputed questions of fact which cannot be gone into while exercising the powers under Article 226 of the Constitution of India. The present petition has been filed seeking writ in the nature of habeas corpus but as per the admitted position the custody of the daughters was handed over to respondent No.4 – father by way of a compromise between the petitioner and respondent No.4 and thereafter, a decree of divorce has also been passed under Section 13-B of

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the Hindu Marriage Act. Therefore, it cannot be said that minor girls are in illegal custody of respondent No.4. Therefore, the writ in the nature of habeas corpus would not be maintainable. However, the aspect of ensuring the protection of life and liberty of the minor girls is also significant. A notice was issued by this Court and a proper enquiry has been conducted in this regard and it was found that they are not having any threat from anybody. They have expressed their desire to live with their mother who is the petitioner in the present case. However, the petitioner herself has entered into an amicable settlement with respondent No.4 and handed over custody of the minor children to her husband – respondent No.4. Petitioner who is the mother also has visiting rights to meet her daughters. All these issues cannot be raised while invoking the jurisdiction under Article 226 of the Constitution of India, but the appropriate remedy would be to file appropriate applications before the appropriate Court in this regard under Special Legislation.

In view of the peculiar facts and circumstances of the present case, this Court do not deem it fit and appropriate to invoke extra ordinary jurisdiction under Article 226 of the Constitution of India and therefore, the present petition is hereby dismissed.

October 28, 2021.	(JASGURPREET SINGH PURI)
raj arora	JUDGE
Whether speaking / reasoned	Yes / No
Whether reportable	Yes / No