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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRWP-9428-2021

Date of Decision: 01.10.2021

Manpreet Singh

.. Petitioner

Vs.

State of Punjab and others

..Respondents

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Chandeeep Singh, Advocate for the petitioner.

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Manoj Bajaj, J. (Oral)

This petition has been filed under Article 226 Constitution of India for issuance of a writ in the nature of Habeas Corpus to release detenues (Sukhmeen Kaur and Samreen Kaur), who are daughters of petitioner, from the illegal custody of respondent No.4

Learned counsel has argued that the petitioner is a responsible person, who is employed as a Software Engineer with a leading Software company in IT Sector, Chandigarh. He further submits that the petitioner and respondent No.4 were having an affair for a long time and finally, they got married on 24.01.2007 and out of this wedlock, two daughters, namely, Sukhmeen Kaur and Samreen Kaur were born on 05.11.2009 and 22.12.2016 respectively and are presently residing with their mother. According to him, the petitioner is in a better position to take care of his daughters, therefore, he has invoked the extraordinary jurisdiction of this Court to seek custody of his daughters from their mother.

In support of his arguments, learned counsel has relied upon the

decision of Hon'ble Supreme Court in **Yashita Sahu Vs. State of Rajasthan**

& Ors, 2020(3) SCC 67 and of this Court in Mandeep Kaur Vs. State of Punjab, 2021(1) R.C.R. (Civil) 152 and submits that the petition seeking custody of the children by one of the parents is maintainable.

During the course of hearing, it is not disputed by learned counsel that the parties are living separately since 18.06.2020 and there is no other litigation pending between them. It is the case of the learned counsel that after their separation, the petitioner made attempts to bring back his wife and a legal notice dated 27.08.2020 (Annexure P-1) was also served upon her, but all his efforts went in vain, therefore, he has filed this petition to seek intervention of this Court.

After hearing the learned counsel for the petitioner and considering the nature of dispute, this Court is of the opinion that the petition is founded on disputed facts, as the custody of the children is being sought by father on the ground that he is in better financial condition to meet the needs of his children. It is pleaded in the petition itself that respondent No.4 is also employed and has an independent source of income. The elder daughter is a student in school, whereas the younger one is less than 5 years, therefore, the custody of the children with their mother cannot be construed as an illegal detention, particularly when there is nothing on record to indicate that the mother is neglecting her children or is not upbringing them properly. It has been specifically pleaded by the petitioner that till the time, the children remained with him, he fulfilled all his responsibilities towards his daughters and this part of the pleading clearly means that after separation of the wife and children from him, he has stopped to discharge his responsibilities not only towards his wife, but towards his daughters as well. There is nothing on record to show that the

father is contributing towards the maintenance of his daughters. Notably, the legal notice was replied by respondent No.4, wherein she took a candid stand that after the birth of the second daughter, the behaviour of her husband and in-laws changed and she was maltreated.

No doubt as per the judgments relied upon by the learned counsel, the petition by petitioner to seek custody of children is maintainable by way of a writ in the nature of habeas corpus, but it being an extraordinary remedy cannot be invoked in a routine manner, as the alternative remedies are also available. Each case has to be considered on the basis of the facts, and the decision in Yashita Sahu's case (supra) is not applicable in the present facts, as the custody of the children in the cited case was obtained by the parent by violating the court orders. In the present case, no extraordinary ground exists to immediately remove the daughters from the custody of their mother.

Apart from it, this Court is not oblivious of the fact that just before the separation of the parties, the pandemic COVID-19 broke out in this country and during this tough time, the mother single-handedly has taken care of her daughters, therefore, in these peculiar facts and circumstances of this case, this court is not inclined to entertain this petition, as the petitioner can avail the alternative remedy to seek redressal of his grievances.

Dismissed.

01.10.2021

Jasmine Kaur

(MANOJ BAJAJ)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes No
Yes No