

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH
(Heard through VC)**

CRWP No. 9996 of 2020 (O&M)

Date of Decision: March 2, 2021

Ramita Rani

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Divjyot Singh Sandhu, Advocate,
for the petitioner.

Ms. Samina Dhir, DAG, Punjab, for respondents No. 1 to 4.

Mr. GPS Bal, Advocate, for respondent No. 5.

JAISHREE THAKUR, J.

1. The petitioner herein prays for the issuance of a writ order or direction especially in the nature of Habeas Corpus for seeking custody of the minor son Armaandeeep Singh, aged about 4 years, from the custody of respondent No. 5.

2. In brief, the facts as stated are that the petitioner and respondent No. 5 solemnized a marriage on 11.03.2007 out of which wedlock a daughter was born to them on 4.01.2008. The petitioner was allegedly harassed in her matrimonial home by respondent No.5 and she was subjected to physical abuse as well. On account of ill-treatment, the petitioner came back to her paternal home along with her minor daughter on

8.1.2009 and pursued higher studies. Her father-in-law died on 1.9.2015 and then the petitioner, along with her parents, went to her matrimonial home to pay condolences, where she was persuaded to stay back and join the company of her husband by the relatives who had gathered there. Respondent No. 5 also promised to mend his ways and keep her properly without beating, humiliating or harassing her in any manner. A baby boy named Armaandeep Singh, the detinue, was born to the couple on 21.11.2016. However, respondent No. 5 did not stop his harassment or physical abuse with the result that the petitioner came back to her paternal home on 25.06.2020 along with the children and she informed her husband that she would not be returning to the matrimonial home. On 3.7.2020, respondent No. 5 came to the residence of her parents and forcibly tried to take the minor son. However, the brother of the petitioner saw the incident and managed to rescue the child. The petitioner accordingly made a complaint to the police on 3.7.2020 and on the intervention of the police, a compromise was arrived at between the parties. It was agreed that no action would be taken against respondent No. 5 and that respondent No. 5 would only meet the children after having obtained visitation rights from the court. Consequently, the complaint was ordered to be filed on 17.07.2020. On 11.09.2020, the minor child was playing on the street when he was taken away by some unknown persons on a scooter. The petitioner and family members lodged a complaint with the police station and when despite several raids at the house of respondent No. 5 and other suspected places, the minor child was not traceable, an FIR was registered regarding the

kidnapping of the minor child. Respondent No.5 filed application for grant of anticipatory bail before the Additional Sessions Judge where the matter was referred to the Mediation and Conciliation Centre of the Court and respondent No.5 was asked to join investigation. While confirming the bail, the court observed that the petitioner can get the custody by resorting to due course of law. Hence, this writ for habeas corpus.

3. Mr. Divjyot Singh Sandhu, learned advocate appearing on behalf of the petitioner, would contend that respondent No. 5 has kidnapped the detainee and he is in his illegal custody. It is argued that as per Section 6 of the Hindu Minority and Guardianship Act, custody of a minor less than 5 years shall remain with the mother, apart from arguing that respondent No.5 has clearly violated the settlement arrived at between the parties on 17.7.2020 wherein it had been agreed that respondent No. 5, the father, could meet the children only after getting orders from the court. It is further submitted that the minor needs tender affection, caring and company of a natural mother, and such needs of a minor child of tender age cannot be met by the father.

4. Mr. Gagan Pradeep Singh Bal, learned advocate appearing on behalf of respondent No. 5, submits that the respondent No.5 herein is the natural guardian being the father and has every right to the custody of the minor child. It is categorically denied that the respondent had on an earlier occasion tried to remove the minor from the custody of the mother and in fact it was the uncle who had taken the child from him. It is also submitted that the petitioner herein has concealed the fact that she had earlier

approached this Court by way of filing **Crl. Misc. M 30867 of 2020 titled Ramita Rani Versus State of Punjab and others**, which was dismissed as withdrawn and, therefore, she has not approached this court with clean hands. It is also submitted that the compromise arrived at between the parties is not a genuine compromise, as the line incorporated that he would seek custody only through the court is interpolated. Lastly, it is argued that a writ in the nature of habeas corpus would not be maintainable in the light of judgement rendered in **Amandeep Bains vs State of Punjab CRWP 540 of 2018 decided on 24.9.2018**, wherein this Court had allowed interim custody of a minor child with his father and opined that it would be open to the mother to approach the Guardian Judge to decide the question of custody of the minor child.

5. Replication has been filed by the petitioner controverting the stand taken by respondent No. 5 and submitting that there is no concealment of fact.

6. I have heard the counsel for the parties and with their assistance have gone through the pleadings of the case of the judgements relied upon.

7. The age of the detinue is not in dispute, he is a minor of tender age having born on 21.11.2016. It is also not in dispute that a complaint was filed on 3.7.2020 by the petitioner against respondent No. 5 on the allegation that he had made an attempt to run away with the child (who was aged 3 on the date of the incident), consequent to which a compromise was arrived at before the police. It was agreed between the parties “...Now, *neither her husband Sukhpal Singh will visit Khanna to meet them nor he*

will try to meet his children. In case of any complaint of any party with regard to each other, then they would be visiting the learned Court for getting initiated proceedings. This decision has been taken with the mutual consent of both the parties without any coercion therein and both the parties have given consent to this.” A further reading of the said compromise would reflect that there is an additional line *“In future, Sukhpal will never attempt to meet his children without the permission of the court”* (as per translation of the vernacular of Annexure P/4), written under the signatures of respondent No.5 and countersigned by the petitioner. However, there is no signature of respondent No. 5 under the said additional line.

8. In a recent judgement rendered by this Court in **Mandeep Kaur Versus State of Punjab 2021 (1) RCR (Civil) 152**, it has been held that a writ of habeas corpus would be maintainable even if the custody of a child is with the father, which custody cannot be termed to be illegal. This judgment has taken note of several judgments rendered by the Supreme Court as well as other various High Courts. In **Mandeep Kaur's case (supra)**, a mother had approached this Court seeking restoration of custody of her minor child. The petitioner had been thrown out of her matrimonial home and even had an FIR been registered against her on the allegations of committing theft. The petitioner was even arrested and had to apply for bail. On being released on bail, she approached her husband and family members for custody of the minor daughter which was refused to her and thereafter she filed a writ in the nature of habeas corpus seeking restoration of the

minor child into her custody. The matter was contested and argued on the question, whether a writ of habeas corpus would be maintainable, in view of the fact that custody of a minor with the father could not be held to be illegal. This Court, as already noticed, on consideration of several judgements of the this Court as well as the Supreme Court held that a writ of habeas corpus can be issued for restoration of custody of a minor. It was further held that a habeas corpus petition is not liable to be dismissed on the ground that the custody of the minor daughter could not be held to be illegal, if the custody is with one of the natural parents/guardians.

9. In view of the authoritative pronouncements of various judgments rendered by the Supreme Court and our own High Court, it is held that the writ of habeas corpus would be maintainable to seek the custody of the minor child who is at the tender age of about 4 years. The writ of Habeas corpus would be an efficacious remedy, keeping in mind the reality of the delay that would occur, while alternate remedy of filing application under the Guardian and Wards Act or Hindu Minority and Guardianship Act is being availed of. Section 6 (a) of the Hindu Minority and Guardianship Act provides that custody of a minor who has not completed the age of five years shall ordinarily be with the mother. While appointing a natural guardian, the '*Welfare of the Child*' is of paramount importance for the court. The term '*Welfare of the Child*' has a wide connotation and cannot be limited to fulfilling the financial needs only. A minor child not only needs a roof over his head and food on his table, but requires emotional sustenance as well. A safe environment, full of love and

nurturing care is always conducive to the overall development of a tender mind and that is why the legislature in its wisdom provided for custody of a minor under the age of 5 to be ordinarily with his/her mother. In **Mausami Moitra Ganguli v. Jayant Ganguli reported in (2008) 7 SCC 673**, the Supreme Court, in paragraphs 19 to 22 has held as follows:

"19. The principles of law in relation to the custody of a minor child are well settled. It is trite that while determining the question as to which parent the care and control of a child should be committed, the first and the paramount consideration is the welfare and interest of the child and not the rights of the parents under a statute. Indubitably, the provisions of law pertaining to the custody of a child contained in either the Guardians and Wards Act, 1890 (Section 17) or the Hindu Minority and Guardianship Act, 1956 (Section 13) also hold out the welfare of the child as a predominant consideration. In fact, no statute, on the subject, can ignore, eschew or obliterate the vital factor of the welfare of the minor.

20. The question of welfare of the minor child has again to be considered in the back ground of the relevant facts and circumstances. Each case has to be decided on its own facts and other decided cases can hardly serve as binding precedents insofar as the factual aspects of the case are concerned. It is, no doubt, true that father is presumed by the statutes to be better suited to look after the welfare of the child, being normally the working member and head of the family, yet in each case the court has to see primarily to the welfare of the child in determining the question of his or her custody. Better financial resources of either of the parents or their love for the child may be one of the relevant considerations but cannot be

the sole determining factor for the custody of the child. It is here that a heavy duty is cast on the court to exercise its judicial discretion judiciously in the background of all the relevant facts and circumstances, bearing in mind the welfare of the child as the paramount consideration.

21. In Rosy Jacob v. Jacob A. Chakramakkal a three-Judge Bench of this Court in a rather curt language had observed that: (SCC p.855, para 15)

15. ... The children are not mere chattels: nor are they mere playthings for their parents. Absolute right of parents over the destinies and the lives of their children has, in the modern changed social conditions, yielded to the considerations of their welfare as human beings so that they may grow up in a normal balanced manner to be useful members of the society and the guardian court in case of a dispute between the mother and the father, is expected to strike a just and proper balance between the requirements of welfare of the minor children and the rights of their respective parents over them."

10. In the case in hand, the petitioner, a mother, being a natural guardian would be entitled to maintain the writ of habeas corpus. The detinue being a minor and under the age of 5 years should ordinarily be in the custody of the mother as stipulated under Section 6 (a) of the Hindu Minority and Guardianship Act, unless the respondent is able to establish that she is unfit to do so, which is not so in the instant case. Admittedly, there is a compromise in effect between the parties which stipulates that the respondent will not try to meet the children. Even though there is a line added in the compromise that the respondent would not try to meet his children without orders of the Court (which is disputed), it would have no

bearing at the present moment since in the main body of the compromise there is a specific averment that “*Now, neither her husband Sukhpal Singh (respondent No. 5 herein) will visit Khanna to meet them nor he will try to meet his children.*” The custody of the minor was with the petitioner till the time the minor was removed by respondent No. 5. On an earlier occasion, respondent No. 5 had made an attempt to forcibly take the minor out of the custody of the petitioner, which led to the registration of a complaint and in those proceedings the police effected a compromise between the parties, referred to above.

11. The judgement as cited by learned counsel for respondent No. 5 is distinguishable and would not be relevant in the facts and circumstances of the present case, as each case has to be decided on its own merits. It would also be worthwhile to note, that the judgement cited in **Amandeep Bains (supra)** pertained to a child who was 6-1/2 years old, whereas the detinue in the present case is a minor child born on 21.11.2016 which would make him all of 4 years old when the instant petition was filed. Section 6 (a) of the Hindu Minority and Guardianship Act was not in consideration in the judgement referred to.

12. Consequently, this court deems it appropriate to allow the writ of habeas corpus and direct respondent No.5 to hand over custody of the minor—Armaandeeep Singh, to the petitioner forthwith. Respondent No.5 shall hand over the minor child directly to the petitioner between 4 PM to 5 PM on the 5.3.2021 at the residence where the petitioner is residing. Needless to say, respondent No.5 is at liberty to approach the Guardian

Court/Civil Judge for custody of the minor in accordance with law; until such time an application for interim custody of the child is decided, the custody will remain with the petitioner herein. In case, respondent No.5 does not hand over the minor to the petitioner as stipulated above, the petitioner shall be at liberty to approach the Station House Officer, Police Station before which the earlier complaint was made, to seek help, if needed for restoration of the custody of the minor child.

13. While allowing this petition for habeas corpus, it is made clear that any observations made herein under are entirely for the purposes of deciding this petition.

March 2, 2021	(JAISHREE THAKUR)
prem	JUDGE
Whether speaking/reasoned	Yes
Whether reportable	No