

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRWP-10130-2020

Damyanti Shastri

....Petitioner

Versus

State of Punjab and others

.....Respondents

CRWP-10996-2020

Damyanti

....Petitioner

Versus

State of Punjab and others

.....Respondents

Date of Decision: 07.01.2021

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present : Ms. Jasneet Mehra, Advocate,
for the petitioner.

Mr. Luvinder Sofat, Assistant Advocate General, Punjab.

Mr. Amit Chaudhary, Advocate,
for respondent No.5. (in CRWP-10130-2020)

Mr. Arun Singla, Advocate,
for respondent No.6. (in CRWP-10130-2020)

Through Video Conferencing

JASGURPREET SINGH PURI, J. (Oral)

These two petitions are being taken up together as the subject matter involved in these two petitions is inter connected with each other.

CRWP-10130-2020 is a criminal writ petition seeking writ in the nature of Habeas Corpus for releasing the detenue, namely, Divyansh Shashtri and CRWP-10996-2020 is a criminal writ petition filed by the same

petitioner seeking protection of life and liberty of the petitioner and her child at the hands of private respondent No.4, who is husband of the petitioner.

CRWP-10130-2020

The present petition has been filed under Article 226 of the Constitution of India, seeking writ in the nature of Habeas Corpus with a prayer that the son of the petitioner, namely, Divyansh Shashtri be released from the custody of respondent 7 and for directing respondent Nos.2 and 3 to produce the detainee, who is the son of the petitioner aged 13 years of age. Respondent No.5 is the husband of the petitioner whereas, respondent No.7 is the Incharge, Child Protection Home, Patiala, District Patiala.

The learned counsel for the petitioner has submitted that in the present case, the petitioner, who is the mother of the alleged detainee, who is of the age of 13 years, is in illegal custody of respondent No.7, who is the Incharge, Child Protection Home, Patiala, District Patiala, and therefore, he may be released from the custody of the aforesaid respondent. She has further submitted that this is because of the matrimonial discord between the husband and wife and because of various other reasons where the petitioner was blackmailed and tortured by respondent No.5 (husband) and that the child has now gone in the custody of the Incharge, Child Protection Home, Patiala, District Patiala, and therefore, the petitioner has been deprived of her lawful rights of keeping the custody of the detainee, who has stayed with her right from the childhood. She has further submitted that the petitioner has rights to have the custody of the detainee being mother of detainee.

Notice of motion was issued by this Court on 03.12.2020 and a

reply has been filed by the State of Punjab by way of affidavit. The learned counsel for the State, while referring to the reply, which has been filed by the State, has submitted that it has been stated in the aforesaid affidavit that the petitioner has not approached this Court with clean hands and has concealed the true and material facts. On 04.12.2020, the District Child Protection Officer, Patiala, gave an information to the Senior Superintendent of Police, Patiala, that Child Welfare Committee, Patiala, vide a letter dated 04.12.2020, informed that on 01.12.2020, Divyansh Shastri (alleged detainee), son of the petitioner, after running away from his house was going to commit suicide and after rescuing the aforesaid boy, he was kept safe in Child Care Institution. Thereafter, on the basis of the statement made by the minor to the Child Welfare Committee, the minor has disclosed that his mother (petitioner) was residing with the minor and some person (Rajesh Kaushik) is committing wrong with her and wrong is also being committed with her sister (Ridhi), aged about 05 years. Thereafter, in order to rescue the sister of the detainee, who is residing with her mother (petitioner), a raid was conducted at her house after constituting a team of officials of District Child Protection Office, Patiala, and Police Station Urban Estate, Patiala, under the supervision of Sub-Divisional Magistrate, Patiala, but none was present in the house at that time. The District Child Protection Officer, Patiala, further requested to the Senior Superintendent of Police, Patiala, to issue directions to the concerned officials to take action under the POCSO Act. It has been further submitted in the affidavit that the aforesaid minor-Divyansh Shastri (alleged detainee) was produced before the Court of the learned Ilaqa Magistrate, Patiala, who recorded the statement of the minor

under Section 164 Cr.P.C on 07.12.2020, vide Annexure R-2. Thereafter, vide order dated 11.12.2020 passed by the Court of learned Principal Judge, Family Court, Patiala, an interim custody of the minor-Divyansh Shastri (alleged detainee) has been given to respondent No.5, vide Annexure R-3. It is further stated in the affidavit that an FIR No.210 dated 06.12.2020 under Sections 10 and 12 of the POCSO Act has been registered against Rajesh Kaushik @ Gaggi at Police Station Urban Estate, Patiala, on the basis of letter dated 04.12.2020 sent by Harpreet Kaur Sandhu, District Child Protection Officer, Patiala, and the investigation in the aforesaid case is in progress and furthermore efforts are being made to trace the minor daughter, namely, Ridhi.

The learned counsel for the State has further submitted that since vide Annexure R-3, an interim custody of the minor-Divyansh Shastri (alleged detainee) has already been granted by the learned Principal Judge, Family Court, Patiala, the present petition for Habeas Corpus does not survive and there is no question of illegal custody at all and therefore, the present petition is liable to be dismissed.

Mr. Amit Chaudhary, Advocate, who has caused appearance on behalf of respondent No.5 has also submitted that interim custody of the child is with him by virtue of the order passed by the learned Principal Judge, Family court, Patiala, and therefore, the present petition of Habeas Corpus is liable to be dismissed as such.

I have heard the learned counsel for the parties.

The present petition has been filed seeking a writ in the nature of Habeas Corpus on the allegation that the alleged detainee is in illegal

custody of respondent No.4 i.e., Incharge, Child Protection Home, Patiala, whereas in the reply by way of affidavit, which has been filed by the State, it has come on record vide para No.4 of the said affidavit that vide Annexure R-3, an interim custody of the child has been given to respondent No.5 by way of an order passed by the learned Principal Judge, Family Court, Patiala. Therefore, no further proceedings are required to be called in the present case in view of the fact that the said custody cannot be termed as an illegal custody.

Consequently, the present petition is hereby dismissed.

CRWP-10996-2020

This petition has been filed under Article 226 of the Constitution of India, seeking protection of life and liberty of the petitioner and her child at the hands of private respondent No.4, who is husband of the petitioner.

The learned counsel for the petitioner has submitted that there had been a matrimonial dispute between the petitioner and her husband (respondent No.4) right from the beginning and the husband of the petitioner had been constantly blackmailing and torturing the petitioner and let her to prostitution and that she has a strong apprehension that she will be killed by her husband. She has further referred to para 9 of the petition wherein it has been stated that husband had called many persons at his home and threatened the petitioner for her life and the life of her son to make physical relations with all these persons together at one room and even the videography was made in this regard. Various other allegations of such kind have been stated in the petition against the husband of the petitioner. The

learned counsel for the petitioner has further submitted that she had given a detailed representation to the Senior Superintendent of Police (City), Patiala, in this regard but no action has been taken so far.

On the other hand, the learned State counsel has submitted that in the present case, no orders for granting protection of life and liberty be passed in favour of the petitioner in view of the conduct of the petitioner. Respondent No.4, who is husband of the petitioner, has also taken up the same stand that no protection should be granted to the petitioner with regard to the her life and liberty in view of her conduct.

I have heard the learned counsel for the parties.

In the present case, the only prayer which has been made by the petitioner is with regard to the protection of life and liberty. The dispute between the petitioner and her husband (respondent No.4) is not in dispute. There is no adjudication of rights between the parties by any order as of now. The petitioner has made detailed allegations in the petition as well as in the representation given to the Senior Superintendent of Police, Patiala, and therefore, it will be the interest of justice that so far as the threat of life of the petitioner is concerned and the same deserves to be assessed by the police of Patiala. It is, therefore, directed that the Senior Superintendent of Police, Patiala, shall assess the threat perception qua the petitioner within a period of two weeks from the date of receipt of certified copy of this order and thereafter, in case so required, he may take requisite steps in accordance with law. It is made clear that the directions issued pertain only to a limited extent of protection of life and does not in any way whatsoever reflect any observation with regard to inter se dispute between the petitioner and

respondent No.4 or any other rights between the parties. It is further made clear that this order of grant of protection of life would not be an embargo upon the police to take any other action against any of the parties or any other person whatsoever in accordance with law, if so required.

Disposed of, accordingly.

07.01.2021
adhikari

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking/non-speaking	:	Yes/No
Whether reportable	:	Yes/No