

CRWP-10576-2020 (O&M)

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

**CRWP-10576-2020 (O&M).
Decided on: February 08, 2021.**

Amitjeet Singh Sidhu

.. Petitioner

VERSUS

State of Punjab and others

.. Respondents

*** * ***

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

*** * ***

**PRESENT Mr.Amit Sharma, Advocate,
for the petitioner.**

Mr.M.S.Nagra, AAG, Punjab.

**Mr.Yashpal Sharma, Advocate,
for respondent No.3.**

JASGURPREET SINGH PURI, J. (ORAL)

Through video conference

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 for the release of alleged detainee namely Nirviah Singh Sidhu aged 11 years from the alleged illegal captivity of respondent Nos.3 and 4.

Learned counsel for the petitioner has submitted that the

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petitioner is husband of respondent No.3 and they are living separately since 16.6.2018 and respondent No.3 wife is living in her parents home. He has further submitted that respondent No.3 started living with her boyfriend – respondent No.4 and on 13.12.2020, she forcibly took away the alleged detenue with the help of respondent No.4 and therefore, the present petition has been filed seeking custody of the child.

Notice of the present petition was issued on 17.12.2020 and status report was called for.

It has been stated in the status report filed on behalf of respondent Nos.1 and 2, by the Assistant Commissioner of Police, Central, Jalandhar on 6.1.2021, that the respondent No.3 was got married with the petitioner in the year 2007 and from their wedlock two children namely Nirviah and Paramveer, aged 11 years and 5 years respectively were born and respondent No.3 was living at her matrimonial home. Further, it has transpired that 2½ years back since the petitioner was maltreating respondent No.3, she was taken to her parental home by her brother and she was living in severe depression without her children and as such, she had gone to her matrimonial home on 13.12.2020 and she brought her minor child Nirviah with her in the presence of her mother-in-law namely Balwant Kaur, brother-in-law namely Atuljit and sister-in-law namely Aman whereas other minor child namely Paramveer was living with petitioner. It is further stated that the petitioner has levelled false allegations that minor child Nirviah was abducted by respondent No.3 and moreover, respondent No.3 is the mother of minor child and she has brought minor child along with her in

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the presence of mother, brother and sister of the petitioner as such, it cannot be said that the minor child was illegally abducted. It has been further stated in the affidavit that it cannot be said that minor child has been illegally abducted by respondent No.3. Furthermore, it has been found that so far as respondent No.4 namely Charanjit Singh is concerned, he was not found present at the given address and respondent No.3 has also stated that no such person is living there and she does not know about any such person.

Reply has also been filed by respondent No.3 taking preliminary objections that respondent no.3 is the mother of the child and it cannot be said that the child is in illegal custody of his mother. Furthermore, an objection has been taken that present petition is not maintainable in view of the fact that remedy lies under the Guardian and Wards Act in order to get the custody of minor child in accordance with law. Furthermore, said child was never abducted by respondent no.3 but was taken by her in presence of mother, brother and sister of the petitioner as such, it cannot be said that it was an abduction.

I have heard the learned counsel for the parties.

Admittedly, the alleged detainee namely Nirviah aged 11 years is the son of the petitioner as well as respondent No.3. As per the reply filed by the State the couple has two children and respondent No.3 who is the mother of the child has taken away the child in the presence of mother, brother and sister of the petitioner and another child namely Paramveer is still with the petitioner. There is nothing on the record to show that there is any abduction particularly in view of the fact that respondent

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No.3 is mother of the child. Furthermore, there is merit in the preliminary objection taken by respondent No.3 that petitioner can always seek custody of the child in accordance with law by filing appropriate application before the competent Court.

In view of above, the present petition is devoid of any merits and the same is hereby dismissed.

February 08, 2021.
raj arora

JASGURPREET SINGH PURI)
JUDGE

Whether speaking / reasoned	Yes / No
Whether reportable	Yes / No