

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRWP-1068-2022 (O&M)
Date of Decision: 16.05.2022

Gautam Khanna

....Petitioner(s)

Versus

State of Punjab and others

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Vinod Ghai, Senior Advocate with
Mr. Edward George Masih, Advocate and
Mr. J.S. Mehndiratta, Advocate, for the petitioner.

Mr. Randhir Singh Thind, Deputy Advocate General, Punjab.

Mr. A.P.S. Doel, Senior Advocate with
Mr. Himmat Deol, Advocate and
Mr. Vishal Rattan Lamba, Advocate,
for respondent Nos. 4 and 5.

JASGURPREET SINGH PURI, J.(Oral)

CRM-W-574-2022

The present application has been filed for placing on record the affidavits of the petitioner and his parents as Annexure P-11 to P-13.

For the reasons mentioned in the application, the same is allowed and Annexure P-11 to P-13 are taken on record subject to just exceptions.

Main case

The present petition has been filed under Article 226 of the Constitution of India seeking a writ in the nature of Habeas Corpus to produce minor children of the petitioner i.e. Neil Khanna who is about 5½ years old and Nivaan Khanna who is about 3½ years old. The date of birth

of Neil Khanna is 24.08.2016 and that of Nivaan Khanna is 27.07.2018. The present petition has been filed by the father of the aforesaid two minor children on the ground that the children are in the custody of their maternal grand-parents who are respondents No.4 and 5 in the present petition.

Mr. Vinod Ghai, learned Senior Advocate with Mr. J.S. Mehndiratta, Advocate while giving the factual background of the case has submitted that the petitioner got married to Anshika on 30.11.2012 and it was a love marriage. The petitioner did B.Com from Panjab University, Chandigarh and thereafter did his MBA from San Diego University, USA. They resided happily with each other but thereafter the relations turned sour due to their matrimonial non-compatibility. After the birth of both the sons and after about 8 years of marriage, the wife of the petitioner lodged an FIR dated 20.09.2020, under Sections 498A, 323, 341 and 506 IPC by alleging that the petitioner had treated her with cruelty and some allegations regarding demand of dowry were also made. Thereafter, the matter was sorted out between them for some time and the petitioner and his wife continued to live together despite lodging of the FIR. In the aforesaid FIR challan was presented and the same is still pending before the Court of learned JMFC, SAS Nagar, Mohali.

In the last week of October, the wife of the petitioner fell ill and the petitioner took her to Indus Hospital, SAS Nagar, Mohali 3-4 times and initially, she was suffering from influenza for 4 days with shivering and was advised Intravenous Fluid alongwith some other medicines and after the Haematology Examination she was diagnosed as Dengue positive provisionally and thereafter, the doctor recommended ELISA Test for confirmation of Dengue. All the other tests were also conducted including

the Liver Function Test etc. and the documents pertaining to the same have been attached with the present petition as Annexure P-1. As per the report of the doctors, the wife of the petitioner was having platelet count of 98000 which was not stated to be alarming despite her being diagnosed as Dengue positive and, therefore, she was sent back home for further care and observation. However, on 03.11.2021 unfortunately she passed away. Learned Senior Counsel submitted that the petitioner had attended to her wife and took her to the hospital 3-4 times and she was given proper treatment by a well reputed hospital namely Indus Hospital at Mohali and she passed away on 03.11.2021. Thereafter, on 04.11.2021 the father of his wife who is respondent No.4 got a DDR registered against the petitioner by alleging that the wife of the petitioner was being harassed for demand of dowry. Thereafter, the present DDR was converted into an FIR and the FIR was registered under Section 304 IPC which is still pending for investigation. The said FIR has been attached by the respondent Nos. 4 and 5 in their reply as Annexure R-8. He further submitted that during investigation of the aforesaid FIR, it has come in the investigation that as per the statement of the doctor of the Indus Hospital, the wife of the petitioner was brought to the hospital by the petitioner on 02.11.2021 at 9.39 P.M. where her blood samples were taken and medicines were given according to the need. At that time Anshika was sent home after giving medicines on the asking of the petitioner and thereafter on the intervening night of 2nd and 3rd November, 2021 at 1.15 A.M. she was taken to hospital again and at that time the health of the Anshika had deteriorated and that time also the blood samples of Anshika were received, whereby Dengue was found to be positive and platelets were found to be only 98000. A drip was also started

as per the requirement and it was advised that she should be admitted to the hospital but the petitioner refused to admit and got her discharged after about one hour and took her home. After this on 03.11.2021 again at about 8.45 A.M. the petitioner and his father alongwith 2-3 persons took Anshika to Indus Hospital where the doctor checked her and declared her dead. As per the further investigation report there was negligence and carelessness on the part of the petitioner in this regard.

Learned Senior Counsel submitted that the wife of the petitioner was having platelet count of 98000 as per the investigation itself and since it was not alarming, it was rather advised not only by the hospital doctor but also by respondent No.4 who is father of Anshika and is a doctor himself that she should be taken back to home and taken care. Whatever has come in the investigation of the FIR are mere allegations against the petitioner whereas in fact the petitioner never acted against the advise of the doctor of the hospital. He further submitted that the petitioner had rather himself got her admitted to the hospital but in order to avoid infection in the hospital, she was taken back home after consultation with respondent No.4 who is father of deceased Anshika.

Learned Senior Counsel while referring to Annexure P-4 has submitted that on the day of cremation respondent Nos. 4 and 5 who are parents of Anshika had taken away both the children alongwith them to Agra where they are residing so as to make a change of place and atmosphere for the children who are of tender age and as per Annexure P-4 they had rather given an undertaking that they are taking their grand children to Agra for change of place and atmosphere with the consent of their father i.e. the petitioner and the grand-parents. It has been further stated

in the undertaking that their father Gautam Khanna-petitioner can bring them back from Agra after 15 days i.e. on 20.11.2021 and they will have no objection to the same. The factum of said undertaking Annexure P-4 has not been denied by respondent Nos. 4 and 5 and the same is reproduced as under:-

UNDERTAKING

It is stated that I Dr. Roshan Lal s/o Hund Raj r/o SW-65, Swami Bagh, Agra, U.P. am maternal grandfather (Nana) of Neil Khanna (aged 5 years) and Nivaan Khanna (aged 3 years). My daughter Anshika Khanna (aged 33 years) has passed away suddenly and her cremation has been performed today i.e. on 05.11.2021 at Mohali. I am taking both my grand-children alongwith me to Agra for change of place and atmosphere with consent of their father Gautam Khanna and grandparents. Their father gautam Khanna can bring them back from Agra after 15 days i.e. on 20.11.2021. I will have no objection to the same.

Learned Senior Counsel submitted that the children were admittedly residing with the petitioner alongwith his wife and they were taken away by respondent Nos. 4 and 5 only for a period of 15 days as per Annexure P-4 as reproduced above with the objective that there will be a change of place and atmosphere for the children with a further undertaking that the petitioner can bring them back after 15 days. He further submitted that thereafter when the maternal uncle of the petitioner who is the resident of Agra went to meet the children and at that point of time respondent Nos. 4 and 5 did not allow the maternal uncle of the petitioner to meet them and rather got a case registered against him under Sections 323 and 506 IPC. Thereafter, the petitioner repeatedly requested respondent Nos. 4 and 5 for getting his children back but respondent Nos. 4 and 5 refused for the

same and did not permit the petitioner to come to Agra and take away the children. Learned Senior Counsel further submitted that respondent Nos. 4 and 5 have not only illegally detained the children who are of tender age but have also violated their own undertaking given vide Annexure P-4.

Learned Senior Counsel further submitted that for the purpose of determining the custody of a child especially who is of a tender and nascent age, the welfare of a child is of paramount consideration. He further submitted that the petitioner is the father of the children and is a natural guardian. The children were studying in a highly reputed school of Mohali i.e. Vivek High School and has also attached Certificates as Annexure P-8 and P-9 in that regard and now once they are shifted to Agra by respondent Nos. 4 and 5, not only the academic activity of the children is disturbed but they are also deprived of one of the best schools of Mohali/Chandigarh. He further submitted that now in case the children are brought back to him, then they will be admitted to main school of Vivek High School which is in Sector-38, Chandigarh as the younger child was already in Vivek High School, Sector-38, Chandigarh. He further submitted that so far as the financial status of the petitioner is concerned, he has filed an affidavit of the petitioner and while referring to the same, he submitted that the petitioner is the only son of the parents and there are four properties in the name of the parents which have been described in the affidavit and the petitioner is getting rent of those properties to the extent of about Rs. 1,00,000/- which are although in the name of the parents but they have authorised him to collect the same. Further referring to para No.7 of the affidavit he submitted that there is a balance of approximately Rs. 40,00,000/- in 5 different accounts of the petitioner and he himself is in

the business of real estate in the name of Khanna Realtors and Builders having its office at SCF 56, Second Floor, Sector 82, JLPL, Airport Road, Mohali which is registered with Real Estate Regulatory Authority, Punjab. The immovable properties and the bank balance as referred to para No. 4 to 7 are reproduced as under:-

"4. That the following immovable properties are owned by the parents of the deponent:

<i>S.No.</i>	<i>Particulars</i>	<i>Name of Owner</i>	<i>Relation with the deponent</i>
<i>1.</i>	<i>Apartment No.301, Tower 4, Block-A, Floor-2, Type-III, Purav Premium Apartments-I, Sector 88, SAS Nagar.</i>	<i>Smt. Raman Khanna</i>	<i>Mother</i>
<i>2.</i>	<i>Flat No.1022, Dyal Bagh Society, Sector 51-B, Chandigarh</i>	<i>Gur Raj Kumar Khanna</i>	<i>Father</i>
<i>3.</i>	<i>House No.82, Phase-7, SAS Nagar (Mohali) double storeyed house constructed on a plot measuring 400 sq. yards</i>	<i>Gur Raj Kumar Khanna</i>	<i>Father</i>
<i>4.</i>	<i>SCO No.270, Sector 32 C&D, Chandigarh measuring 126 sq. yards.</i>	<i>Gur Raj Kumar Khanna</i>	<i>Father</i>

5. That in so far as Flat situated in Sector 88, SAS Nagar is concerned, the same has been rented out to Sh. Ajay Bansal son of Sh. Sanjay Bansal at monthly rent of Rs. 23,000/- per month. The said rent is credited to savings bank account of the deponent bearing A/c No.13791930004989 with HDFC Bank. Mother of the deponent has authorised him collect rent in respect of the said flat.

5. That in so far as Flat in Sector 51-B is concerned, it has been rented out to Sh. Krish Doomra s/o Sh. Ranjeev Doomra. The monthly rent of the flat is Rs. 31,000/- and is being received in the savings back of the deponent bearing A/c No.13791930004989 with HDFC Bank. Father of the deponent has authorised him to collect rent in respect of the said flat.

6. That in so far as the Second Floor of SCO No.270, Sector 32-C&D, Chandigarh is concerned, the same has been rented out to Sh. Arvind Tulli @ Rs. 49,900/- per month. rent in respect of the said premises is credit to Savings Bank A/c No.13791000059455 with HDFC Bank belonging to the deponent. Father of the deponent has authorised him to collect rent in respect of the said premises as well.

7. That the deponent has following bank accounts-

S.No.	Account Number	Balance as on 13/5/2022
	A/c No.13791000059455 with HDFC Bank, Sector 32-D, Chandigarh	Rs.36,76,226.00
2.	A/c No.13791930004989 with HDFC Bank, Sector 32-D, Chandigarh	Rs.. 21,934.00
3.	A/c No.620210100015130 with Bank of India, Sector 32, Chandigarh	Rs. 90,541.00
4.	A/c No.921010038563240 with Axis bank, Phase-VII, Mohali	Rs. 1,52,774.00
5.	A/c No.07581000100809 with Punjab and Sind Bank, Sector 32-D, Chandigarh	Rs. 2,60,375.00

It has been further stated in the affidavit filed by the petitioner that he had been regularly transferring money in the account of his wife which also reflects in the bank statement of the petitioner.

The learned Senior Counsel submitted that alongwith the affidavit of the petitioner, separate affidavits have been filed by the parents as well wherein they have authorised their son to collect rent in respect of the properties and they have specifically stated in the affidavit that they are ready and willing to support their son in any manner to take care of the minor grand children. He further submitted that so far as the financial position of the petitioner is concerned, the same is very sound and the

children are also to be educated in well reputed school in Chandigarh as compared to any other school in Agra and, therefore, for the future care and development of children, better education is to be provided to the children and providing education to the children at reputed school of Chandigarh as compared to any school in Agra would certainly be one of the factors to ascertain the welfare of children.

Learned Senior Counsel has further submitted that so far as the two FIRs registered against the petitioner are concerned, the first one was of the year 2020, under Section 498A, 323, 341 and 506 IPC but thereafter the petitioner and his wife have been residing together despite the continuation of the FIR and the proceedings before the Court since the differences were resolved and so far as the FIR after the death of the wife of the petitioner is concerned, the same was registered under Section 304 IPC vide Annexure R-8 and the mere pendency of the FIRs would not mean that the petitioner will not be able to take care of the children and even otherwise also the dispute if any was with the wife of the petitioner who unfortunately passed away and there is nothing on record to show that the petitioner will not be able to take care of the children. He further submitted that the aforesaid FIR Annexure R-8 dated 28.02.2022 was lodged by daughter of respondent No.4 and no inference can be drawn that the petitioner is not a person of good character and mere allegation cannot deprive the petitioner of his lawful rights not only as a natural guardian but also for the overall welfare and development of the children.

Learned Senior Counsel has also relied upon the judgments of the Hon'ble Supreme Court in ***Yashita Sahu Versus State of Rajasthan and others [2020(3) SCC 67]*** to content that firstly, the present petition

seeking a writ in the nature of Habeas Corpus is maintainable on behalf of the petitioner who is the father of the children and secondly, it has been held that in such like matters, welfare of a child is of primary and paramount consideration. It has also been held by the Hon'ble Supreme Court that if a welfare of the child so demands, then technical objections cannot come in the way. While deciding the welfare of a child, it is not the view of one spouse alone which has to be taken into consideration and the Courts should decide the issue of custody only on the basis of what is in the best interest of the child. The Hon'ble Supreme Court further observed that the child is the victim in custody battles and in this fight of egos and increasing acrimonious battles and litigation between two spouses, experience shows that more often than not, the parents who otherwise love their child, present a picture as if the other spouse is a villain and he or she alone is entitled to the custody of the child and, therefore, the Court must be wary of what is said by each of the spouses. It was further observed that a child of tender years requires the love, affection, company, protection of both the parents. This is not only the requirement of a child but is his/her basic human right. Just because the parents are at war with each other, does not mean that the child should be denied the care, affection, love or protection of any one of the two parents because the child is not an inanimate object which can be tossed from one parent to the other.

The learned Senior Counsel further relied upon a judgment of the Hon'ble Supreme Court in *Tejaswini Gaud and others versus Shekhar Jagdish Prasad Tewari and others* [2019 (7) SCC 42] in which it was observed that a writ of Habeas Corpus is a prerogative process for securing the liberty of the subject by affording an effective means for

immediate release from an illegal or improper detention. The writ also extends its influence to restore the custody of a minor to his guardian when wrongfully deprived of it. The detention of a minor by a person who is not entitled to his legal custody is treated as equivalent to illegal detention for the purpose of granting writ, directing custody of the minor child and for restoration of the custody of a minor from a person who according to the personal law, is not his legal or natural guardian, in appropriate cases, the writ Court has got jurisdiction. It was further observed that Habeas Corpus proceeding is not to justify or examine the legality of the custody rather Habeas Corpus proceeding is a medium through which the custody of the child is addressed to the discretion of the Court and is a prerogative writ which is an extraordinary remedy. It was further observed that in the case in hand the father is the only natural guardian alive and has neither abandoned nor neglected the child and only due to the peculiar circumstances of the case, the child was taken care of by the appellants of that case. The welfare of the child has to be determined owing to the facts and circumstances of each case and the Court cannot take a pedantic approach especially when the child has not been abandoned by the petitioner of that case. Learned Senior Counsel submitted that in view of the aforesaid circumstances the custody of two minor sons of the petitioner of the age of 3 ½ years and 5 ½ be handed over back to the petitioner because same would be for the welfare of the children.

On the other hand, Mr. A.P.S. Deol, learned Senior Advocate with Mr. Vishal Rattan Lamba, Advocate appearing on behalf of respondent Nos. 4 and 5 who are the maternal grand-parents of the children has submitted that he does not have any objection with regard to the

maintainability of the petition since the law in this regard has already been settled by the Hon'ble Supreme Court in a number of cases and is no longer *res integra*. He has however argued on the merits by submitting that considering the totality of the circumstances of the present case, respondent Nos. 4 and 5 who are the maternal grand-parents of the children are entitled to the custody of the children with whom they are residing as of now. He submitted that the petitioner and his wife got married in the year 2012 and thereafter their relation became strained and the petitioner also treated his wife with cruelty and asked for dowry apart from giving beatings to her and that was the reason as to why an FIR under Sections 498A, 323, 341 and 506 IPC was lodged. He further submitted that it is correct that despite the lodging of the FIR both the parties stayed together but their relationship was never cordial. The learned Senior Counsel further submitted that soon after the marriage the petitioner had given beatings to his wife and had also demanded dowry from her and her parents and the petitioner had also apologised by stating that he will not give beatings in future. He further submitted that the petitioner did not provide treatment to his wife when she fell ill on 01.11.2021. Although she was taken to the Indus Hospital but as per investigation of the police she was taken back home against the advise of the doctor. He further submitted that as per the Post Mortem Report, the body became bluish and froth was coming from the nose and mouth of Anshika and there is every likelihood that the petitioner might have given poison to her with a result that she died. He further submitted that the FIR with regard to the same is still pending and it is only after the investigation of the case and during the trial it will be established with regard to the offence committed by the petitioner and final report of Board

of Doctors is still awaited regarding cause of death. Learned Senior Counsel further submitted that respondent Nos.4 and 5 who are the maternal grand-parents of the children are well educated persons. Respondent No.4 is MBBS and M.S and is practicing at Agra and is having good financial status and is able to take care of the children in all aspects and considering the aforesaid facts where the petitioner has treated his wife with cruelty and carelessness, the petitioner does not deserve the custody of the children. He has also referred to the WhatsApp chats between the petitioner and his wife to show that they have been fighting with each other constantly and ignoring the minor children and from the WhatsApp conversation it can be seen that the petitioner had been asking money from respondent Nos. 4 and 5. The aforesaid WhatsApp chats are also part of the record as Annexure R-13.

The learned Senior Counsel further relied upon the judgment of the Hon'ble Supreme Court in ***Nil Rattan Kundu and another Versus Abhijit Kundu [2008(9) SCC 413]*** and has submitted that in a similar situation the custody was given to the maternal grand-parents and uncle of the children and not to the father because the father was facing prosecution under Sections 498A and 304 IPC. He further referred to a judgment of the Hon'ble Supreme Court in ***Kirikumar Maheshankar Joshi Versus Pradipkumar Karunashanker Joshi [1992(3) SCC 573]*** wherein the custody was not given to the father since the mother had died due to unnatural death. He also referred to another judgment of Hon'ble Supreme Court in ***Lakhwinder Kaur Versus Roshan Singh and others, 2012 (1) RCR (Criminal) 506*** and has submitted that custody given to maternal parents is justified if it is in the interest of the children. Learned Senior

Counsel further submitted that respondent Nos. 4 and 5 have also filed a petition under the Hindu Minority and Guardianship Act, 1956 at Family Court, Agra seeking the custody of the children and the same is also pending. The said petition has been annexed with the present petition as Annexure P-7. He further submitted that once a petition is pending before the learned Family Court at Agra filed by respondent Nos. 4 and 5, the custody cannot be shifted to the petitioner during the pendency of the same since the same is to be adjudicated on the basis of adducing evidence by the parties.

Replying to the contention raised by Mr. A.P.S. Deol, learned Senior Counsel for respondent Nos. 4 and 5, it has been submitted by Mr. Vinod Ghai, learned Senior Counsel for the petitioner that the chemical examination report was received and according to the same no poison was detected.

I have heard the learned counsel for the parties.

So far as the maintainability of the present petition seeking a writ in the nature of Habeas Corpus is concerned, the learned Senior Counsel for respondent Nos. 4 and 5 has not disputed the same and, therefore, this Court would proceed on the merits of the case. The background of the case has been stated by the learned Senior Counsel for both the parties and this Court would delve into the only litmus test which is required to be undertaken for the purpose of deciding custody i.e. "Welfare of a child is of paramount consideration".

The measuring rod for determining the custody of a child especially of a nascent age has various parameters including the relationship of the child with the person seeking custody, the financial status of the party

and the overall circumstances as to who should be considered best in the interest of the child for taking custody. As per Section 6 of the Hindu Minority and Guardianship Act, 1956, the natural guardian of a Hindu minor in respect of the minor's person as well as in respect of the minor's property in the case of a boy or an unmarried girl is the father and after him the mother. Provided that, the custody of a minor who has not completed the age of five years shall ordinarily be with the mother. The proviso to Section 6 provides that in certain circumstances the aforesaid persons would not be natural guardians. However, in the present case, the case of the petitioner does not fall in the aforesaid exception. Section 13 of the aforesaid Act provides that welfare of a minor to be of paramount consideration. In other words, the only test for the purpose of determining the custody is the welfare of the child which is the dominant factor and all the other technicalities or provisions would be subservient to the aforesaid dominant factor.

The exercise of *parens patriae* jurisdiction by the Constitutional Courts also requires due weightage and consideration while considering the issue of custody of children. This doctrine of *parens patriae* was originated in the United Kingdom way back in the 13th Century and it implies that the King is the guardian of the nation and was under a duty to look after the interests of its subjects who are in fact not able to look after themselves. This doctrine was discussed in detail by the Hon'ble Supreme Court in ***Charan Lal Sahu Versus Union of India [1990(1) SCC 613]***. Therefore, it becomes the duty of a Constitutional Court to adhere to the aforesaid principle and to ascertain as to who will be the best person to whom the custody should be given notwithstanding any other factor including the

relationship between the parties since dominant factor is ultimately the welfare of a child and not any other technicality.

In the present case before proceeding further, the judgments relied upon by the learned Senior Counsel for both the parties are required to be considered. Learned Senior Counsel for the petitioner has relied upon two judgments i.e. ***Yashita Sahu Versus State of Rajasthan and others (Supra)*** and ***Tejaswnmi Gaud and others versus Shekhar Jagdish Prasad Tewari and others (Supra)***. A perusal of both the judgments would show that it has been observed repeatedly that the welfare of the child is to be seen according to the facts and circumstances of each and every case. In other words, there can be no straight jacket formula for determining the same and every case is dependent upon the facts and circumstances of its own. So far as the judgments relied upon by the learned Senior Counsel for respondent Nos. 4 and 5 are concerned, he relied upon ***Nil Rattan Kundu and another Versus Abhijit Kundu (Supra)***. In that case the custody was given by the High Court to the father. However, as per the facts of that case, the wife was brutally assaulted and she was declared dead when brought to the hospital and thereafter, the FIR was lodged under Sections 498A and 304 IPC. In ***Kirikumar Maheshankar Joshi Versus Pradipkumar Karunashanker Joshi (Supra)*** the wife had died due to unnatural death. In ***Lakhwinder Kaur versus Roshan Singh and others (Supra)*** the High Court had directed the custody to maternal grand-parents subject to the outcome of proceedings under Guardian and Wards Act. The facts and circumstances of the aforesaid three judgments relied upon by the learned Senior Counsel for respondent Nos. 4 and 5 are distinguishable from the present case. In the present case although the FIR under Section 498A IPC was already in

existence but both husband and wife stayed together at one place despite the pendency of the FIR and judicial proceedings before the learned JMIC. So far as the death of the wife of the petitioner is concerned, as per the medical record she was suffering from Dengue and as per the medical record and the investigation, her platelet count was 98000 which as per the medical science is not considered to be alarming. However, the investigating agency has stated in the report that the wife of the petitioner was taken back home against the advise of the doctor but the same has been vehemently disputed by the learned Senior Counsel for the petitioner by submitting that the position was rather otherwise because she was taken back home on the advise of hospital doctor and respondent No.4 who himself is a doctor. The criminal proceedings are no doubt pending and it is not a case where the allegation is pertaining to death based upon beatings or torture but it is a case of illness due to Dengue and thereafter, the FIR was lodged on the ground of carelessness of the husband. Such a factual position is based upon some allegations which are yet to be ascertained at the time of the trial.

Therefore, the question would be as to in the aforesaid circumstances what will be the best for welfare of the children. The financial status of the petitioner has been stated in the affidavit filed by the petitioner and his parents. The petitioner who is the only son is getting rent from the properties belonging to his parents to the tune of Rs. 1,00,000/- per month and he has about Rs. 40,00,000/- in his different accounts. The children were studying in Vivek High School which is a good school in Chandigarh and Mohali. On the other hand, the respondent No.4 is a doctor and is the maternal grand-father. The children were taken away by respondent Nos. 4

and 5 on the date of cremation for a period of 15 days but thereafter the children did not return and according to the learned Senior Counsel for the petitioner, they refused to restore back the custody of the children to the petitioner.

This Court is of the view that the circumstances of the present case are not such that it can be said that the character or ability of the petitioner is not upto mark. It is not the case of either of the parties that the petitioner has abandoned the children but the objection raised by the learned Senior Counsel for respondent Nos. 4 and 5 is that at times he had beaten up the children as well. Admittedly, there had been a matrimonial dispute between the parents but actually the children have now become the victim of the dispute. Now it is the future of the children which is to be seen by this Court as to at what place the children can get a better education and can prosper. There is nothing on record to show that there is a lack of love and affection on the part of the father except for some allegations made by respondent No.4 that at times beatings were given to the children. The love and affection of the grand-parents are also of much importance. It cannot be said that the 'maternal grand-parents' cannot shower love and affection to the grand-children but at the same time a pragmatic approach has to be adopted to see as to what would be in the best interest of the children and where they will have good education and they can be well protected for their overall growth and development. While staying with father, the children will also have love and affection of their 'paternal grand-parents'. Furthermore, there is no proper justification coming forward as to why after giving an undertaking by respondent No.4 to restore the custody of children after 15 days but the same was not done. So far as the

allegation pertaining to causing death of the wife of the petitioner by the petitioner is concerned, it has been submitted by the learned Senior Counsel for the petitioner that now a chemical examination report has come and according to the same no poison was detected.

Therefore, considering the totality of aforesaid facts and circumstances of the present case, this Court is of the view that the welfare of these two minor children of the age of 3 ½ years and 5 ½ years will be best in the hands of their father who is the petitioner.

Consequently, it is directed that the custody of the children who are with respondent Nos. 4 and 5 shall be handed over to the petitioner by respondent Nos. 4 and 5 on 10.06.2022 at 2.00 P.M. Furthermore, respondent No.4 and 5 shall also have visiting rights in case they so desire and for the next one year they shall have a right to visit the house where the children reside i.e. their father's house for a period of 8 hours at least once a month. The petitioner shall ensure cooperation and comfort of respondents No.4 and 5 during the time they stay with the children. In case any modification in the visiting rights is required, then parties shall be at liberty to file appropriate application before this Court.

The present petition stands allowed.

However, it is made clear that any observation made herein shall have no effect on the merits of the petition which is pending under Hindu Minority and Guardianship Act, 1956 at Family Court, Agra.

16.05.2022

rakesh

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking	:	Yes/No
Whether reportable	:	Yes/No