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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-6434-2022 (O&M)
Date of Decision: 05.04.2022

Rakesh Kumar

....Petitioner(s)

Versus

State of Punjab and others

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Amit Kashyap, Advocate, for the petitioner.

JASGURPREET SINGH PURI, J. (Oral)

CRM-M-10124-2022

The present application has been filed for placing on record additional affidavit of petitioner.

For the reasons mentioned in the application, the same is allowed and additional affidavit of the petitioner is taken on record subject to just exceptions.

Main case

The present petition has been under Section 482 of the Code of Criminal Procedure for seeking a direction to respondent Nos. 2 and 4 who are the Police Commissioner, Amritsar and SHO, Police Station D-Division Lahori Gate, Amritsar to arrest the respondent Nos. 4 to 10 and further prayer has been made seeking passing of appropriate orders to take strict legal action by way of registration of FIR and also to produce the minor daughter of the petitioner namely Sanjh Mehta before the petitioner.

Learned counsel for the petitioner has submitted that the petitioner was married with one Aarti d/o Dev Raj who is respondent No.5 in the present case in the year 2004 and out of the wedlock one daughter namely Sanjh Mehta was born on 11.02.2005 and as of today her age is about 17 years and 2 months. The marriage between the petitioner and his wife was dissolved by a decree of divorce and thereafter the wife of the petitioner married somebody else but the petitioner is still unmarried. He further submitted that the daughter of the petitioner is residing with the private respondents who are the parents of his wife and the daughter is not living with his wife and, therefore, the present petition has been filed with a prayer to arrest the private respondents and to procure the child.

I have heard the learned counsel for the petitioner.

The present petition has not been filed seeking any relief of Habeas Corpus. However, the petitioner seeks to invoke the extra ordinary jurisdiction of this Court under Section 482 of the Code of Criminal Procedure seeking arrest of the private respondents. The petitioner has filed an additional affidavit whereby in para 4 it has been stated that the petitioner has filed a petition under Section 25 of the Guardians and Wards Act before the Civil Judge on 15.02.2021 and the matter is pending before the Guardians Court. It is not the case that the daughter is an infant but daughter of the petitioner is above 17 years of age although minor. A question as to whether the daughter of the petitioner is living with the private respondents who are the parents of his wife and the daughter is not living with his wife is also disputed question of fact. The consent of the girl and what was the arrangement made with regard to the custody of the minor at the time of divorce is also not on record. The petitioner has already

preferred a petition seeking custody before the Guardians Court which is pending and, therefore, the present petition seeking arrest of the private respondents and to seeking the procurement of the girl is misconceived. The petition for habeas corpus even at the cost of invoking a parallel jurisdiction is certainly permissible but in extreme and special circumstances and not in ordinary course. Once the petition of the petitioner for custody of the girl is already pending before the Guardians Court, the present petition is not maintainable. Apart from the same, the vague prayer made by the petitioner seeking arrest of the private respondents is also not permissible.

In view of the above, finding no merit in the present petition, the same is hereby dismissed.

05.04.2022

rakesh

Whether speaking
Whether reportable

(JASGURPREET SINGH PURI)**JUDGE**

: Yes/No
: Yes/No