

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

CRWP-2659-2022

Date of decision : 23.03.2022

Raja Kumar

...Petitioner

Vs.

State of Punjab and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Vaibhav Sehgal, Advocate for the petitioner.

MANOJ BAJAJ, J.

Petitioner has preferred this petition under Article 226 Constitution of India for issuance of writ in the nature of habeas corpus for release of detainee, namely, Rehan Kumar @ Prinice (04 years old son of the petitioner), who is residing with the mother (respondent No.5) and respondent No.4.

Learned counsel for the petitioner has argued that respondent No.5 was married to petitioner on 13.04.2015 and out of this wedlock, a child was born on 29.10.2018, who is now four years old. He submits that his wife entered into an affair with respondent No.4 and eloped with him on 01.03.2022 and also took away the minor child, namely, Rehan Kumar @ Prince. According to him, when the petitioner came to learn about the place of residence at Village Siyal Kalan, Tehsil Samana, District Patiala, he visited them on 04.03.2022 and noticed that minor son was begging in streets and on seeing the

father, the child requested him to take him to Ludhiana. He has argued that when the father picked up the child, respondent No.4 came there and upon questioning that why the child is begging, he abused the petitioner. Learned counsel has further argued that father was prevented to take the custody of the child, when other persons had also gathered there along with respondent No.5, therefore, he has approached this Court for release of the child as the representation dated 04.03.2022 (Annexure P-4) is not being looked into. Learned counsel has vehemently argued that the child is not sent to school and is being forced to beg, therefore, the custody of the child deserves to be handed over to the petitioner. He prays for appointment of warrant officer for release of the child from the custody of private respondents.

During the course of hearing, learned counsel is unable to reveal the name of the school, where the child was going and when confronted with the maintainability of the petition, he has placed reliance upon the judgment of Hon'ble the Supreme Court of India, titled as “*Yashita Sahu Vs. State of Rajasthan and others*” 2020 (3) SCC 67 and submits that writ petition for custody of the child is maintainable.

After hearing learned counsel for the petitioner and considering the above background, this Court finds that the grounds raised in the petition are not supported with any convincing material to suggest that the child is not being brought up properly by the mother.

Admittedly, husband and wife separated recently and the petitioner visited the house of his wife on 04.03.2022 and prior to that, there is no complaint or dispute between them much less regarding the welfare of the child. A perusal of the representation makes it absolutely clear that though the petitioner has mentioned that the child is totally unsafe in the custody of the private respondents and is not going to school, but strangely has not requested for handing over the custody of the child to the father, but contains the prayer for providing protection to the petitioner and also for taking action against the parents of his wife. No doubt, as per the decision of Hon'ble the Supreme Court in Yashita's case (supra) writ petition in the nature of habeas corpus is maintainable, but for invoking the extra ordinary writ jurisdiction, the petitioner must raise extra ordinary convincing grounds to seek custody of the child, particularly when the child is below five years and is residing with the mother. In the case before Hon'ble the Supreme Court, mother brought minor child in India in violation of the orders of the Court in United States, therefore, custody of the child with the mother could not be said to be strictly illegal. In the present case, admittedly, there is no litigation and all these allegations have been levelled just three days after the separation of the couple.

Resultantly, this Court is not inclined to invoke the extra ordinary writ jurisdiction.

However, it shall be open for the petitioner to avail the

alternative remedy in accordance with law.

Dismissed.

(MANOJ BAJAJ)
JUDGE

23.03.2022

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Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No