

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CRWP No. 3758 of 2022 (O&M)

DECIDED ON:25<sup>th</sup> April, 2022

Mohan Singh

.....PETITIONER

VERSUS

State of Punjab and others

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN.

Present: Mr. Preeti Manderna, Advocate for petitioner.

Mr. Sandeep Kumar, DAG Punjab.

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**AVNEESH JHINGAN, J (ORAL)**

This petition in the nature of Habeas Corpus is filed for production and handing over custody of minor children namely Gurtoj Singh and Anandveer Kaur.

The facts as pleaded are that marriage of daughter of the petitioner was solemnised in 2009 with respondent No.4. The couple was blessed with two children. On 8.4.2022 daughter of the petitioner died due to burn injury. FIR No. 16 dated 27.2.2022 was registered at Police Station Khanauri, District Sangrur. FIR was cancelled as in one of the statement the deceased stated that the incident took place due to leakage of gas pipe.

As per the pleadings in the writ petition, the minor children are in illegal custody of respondents No. 4, 5, and 6 i.e. their father and grandparents.

Learned counsel for the petitioner on pointed query from the Court as to how the custody of the minor children with their father and grandparents can be termed as illegal custody, submits that initially FIR was registered though it was cancelled later, the welfare of the children can only

be look afterward by the petitioner.

Before proceeding further, it would be relevant at this stage to quote Sections 4(b), 6 and 13 of the Hindu Minority and Guardianship Act, 1956 (for short, 'the 1956 Act') and Section 7 of the Guardians and Wards Act, 1890 (for short, 'the 1890 Act'):

**“Sections 4(b) and 6 of the 1956 Act 4.**

**Definitions.-** In this Act,--

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(b) “guardian” means a person having the care of the person of a minor or of his property or of both his person and property, and includes--

(i) a natural guardian,

(ii) a guardian appointed by the Will of the minor's father or mother,

(iii) a guardian appointed or declared by a court, and

(iv) a person empowered to act as such by or under any enactment relating to any court of wards;

**6. Natural Guardians of a Hindu minor:-**

The natural guardians of a Hindu minor, in respect of the minor's person as well as in respect of the minor's property (excluding his or her undivided interest in joint family property,) are:—

(a) in the case of a boy or an unmarried girl—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 ;

(b) in the case of an illegitimate boy or an illegitimate unmarried girl—the mother, and after her, the father ;

(c) in the case of a married girl.— the husband :

Provided that no person shall be entitled to act as the natural guardian of a minor under the provisions of this section:—

(a) if he has ceased to be a Hindu, or

(b) if he has completely and finally renounced the world by

becoming a hermit (Vanaprastha) or an ascetic (Yati or Sanyasi).

Explanation :—In this section, the expressions ‘father’ and ‘mother’ do not include a step-father and a step-mother.

**13. Welfare of minor to be paramount consideration.—**

(1) In the appointment of declaration of any person as guardian of a Hindu minor by a court, the welfare of the minor shall be the paramount consideration.

(2) No person shall be entitled to the guardianship by virtue of the provisions of this Act or of any law relating to guardianship in marriage among Hindus, if the court is of opinion that his or her guardianship will not be for the welfare of the minor.

**Section 7 of the Guardians and Wards Act, 1890:- Power of the Court to make orders as to guardianship.-**

(1) Where the Court is satisfied that it is for the welfare of a minor that an order should be made-

(a) Appointing a guardian of his person or property or both,

(b) declaring a person to be such a guardian the Court may make an order accordingly.

(2) An order under this section shall imply the removal of any guardian who has not been appointed by will or other instrument or appointed or declared by the Court.

(3) Where a guardian has been appointed by will or other instrument or appointed or declared by the Court, an order under this section appointing or declaring another person to be guardian in his stead shall not be made until the powers of the guardian appointed or declared as aforesaid have ceased under the provision of this Act.

As per Section 4(b) of the 1956 Act, the guardian includes, natural guardian, appointed by the 'Will' of the minor's father or mother, appointed or declared by a court or the person empowered to act under an enactment relating to any court of wards.

Section 6 of the 1956 Act provides that natural guardian in case of a boy or an unmarried girl is the father and after him the mother; in case of an illegitimate boy or an illegitimate unmarried girl, it is the mother and after her the father. In case of a married girl, her husband.

Section 13 states that while appointing guardian, welfare of minor is of utmost importance.

Section 7 of the 1890 Act empowers the Court to appoint a guardian on being satisfied for welfare of the minor.

The undisputed fact is that FIR No. 16 was cancelled, as on date no criminal proceedings are pending against respondents and the children are with natural guardian i.e. Father.

Petitioner has efficacious remedy under The Guardians and Wards Act, 1890, no circumstance has been pointed out for not availing the alternative remedy.

This Court in writ jurisdiction in absence of any evidence cannot hold that the custody of the children with their father is an illegal detention.

No case is made out for interference in writ jurisdiction.

Dismissed.

However, it is clarified that the petitioner would be at liberty to avail remedy in accordance with law.

25<sup>th</sup> April, 2022

*reema*

(AVNEESH JHINGAN)  
JUDGE

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| <i>Whether speaking/reasoned</i> | <i>Yes</i> |
| <i>Whether reportable</i>        | <i>No</i>  |