

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

**CRWP-467-2019
Date of Decision : 25.08.2022**

Amandeep Kaur Purba

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present : Mr. Chanakya Batta, Advocate
for the petitioner.

Mr. Shiva Khurmi, AAG, Punjab
for respondents No.1 to 3.

Mr. Anantdeep Sandhu, Advocate
for respondent No.5.

JASGURPREET SINGH PURI, J(ORAL)

The present petition has been filed under Article 226/227 of the Constitution of India for issuance of a writ in the nature of Habeas Corpus for the release of one Ishika Purba, who is of the age of about 13 years and her date of birth is 26.10.2009.

This petition has been filed by the mother of the aforesaid girl on the ground that respondent No.5, who is the paternal grand father of the girl has kept her in his unlawful custody and, therefore, the custody be restored to the petitioner, who is the mother of the girl.

The facts of the case are that the petitioner namely Amandeep Kaur Purba got married to Manpreet Singh Purba on 08.06.2008 at Jagraon. Thereafter, they shifted to England. The girl was born on 26.10.2009 in England and thereafter the petitioner came back to India and started living with her in-laws' family including

respondent No.5. Thereafter, some disputes arose between the petitioner and her in-laws and also with her husband and as per the contention raised by the learned counsel for the petitioner, the petitioner was also physically assaulted many times. As per the learned counsel for the petitioner, the petitioner was thrown out from her matrimonial home in January, 2016 and her in-laws did not allow the petitioner to take her daughter with her. The girl was thereafter sent to Orissa at the house of her aunt i.e. sister of her father where she stayed for sometime but now she is back to Amritsar and is now staying with respondent No.5 where her uncle (Taya Ji) is also staying. The girl is now studying in Ryan International School at Amritsar.

Learned counsel appearing on behalf of the petitioner has submitted that the father of the girl, who is the husband of the petitioner, left India and went to England alongwith her and thereafter the petitioner was sent back to India to take care of the family of her husband and now the whereabouts of her husband are not known and it is not clear as to whether he has shifted permanently to England or he is residing in India. He further submitted that the petitioner is now taking up a private job and getting a monthly salary of Rs.15,000/-. Learned counsel for the petitioner has also submitted that the affidavit of the petitioner has also been filed today in pursuance of the order passed by this Court on 17.08.2022. The same is hereby taken on record. Learned counsel for the petitioner has submitted that the petitioner also filed a petition under Section 125 of the Code of Criminal Procedure for grant of maintenance but no maintenance was granted by her husband because his whereabouts are not known. Even execution proceedings were also filed against him in which an appeal was also filed by respondent No.5 where learned counsel for respondent No.4-husband also appeared through counsel. He further submitted that in the absence of the father of the girl, the mother is the natural guardian and the mother can only take care of the welfare of the child and since now she is of the age

of 13 years and considering her future, the custody of the child be handed over to the petitioner.

On the other hand, learned counsel appearing on behalf of respondent No.5, who is the grand father of the girl, has submitted that there is no dispute with regard to the proposition that in normal circumstances in the absence of the father, the custody should be given to the mother but in the present case, the circumstances are totally different. He submitted that it is a case where the petitioner had rather abandoned the girl in the year 2016 itself and went away to her parents' house and started living with them and thereafter she did not even care to contact either respondent No.5 or any of the family members or even the girl and in this way, the welfare of the child would be only in the hands of respondent No.5, even though, he is of the age of 76 years. He submitted that it is a settled law that welfare of the child is of paramount consideration. He has further submitted that notwithstanding the relationship between the parties, the welfare of the child will have supermacy over all the other factors. He has also submitted that the girl is happily residing at Amritsar with respondent No.5 and the elder son of respondent No.5 is also residing in the same house and the girl is being provided with suitable and happy atmosphere apart from her good education. The girl is now studying in class 7th at Ryan International School at Amritsar. Apart from the same, respondent No.5 has retired from Food Corporation of India and is now running his private shop at Amritsar and is earning fairly well.

I have heard learned counsel for the parties.

In the present case, the petitioner is the mother of the girl and the girl is of the age of 13 years. The present petition was filed in the year 2019 and on 22.07.2019, a Co-ordinate Bench of this Court had interacted with the girl when she

the course of interaction with the Coordinate Judge of this Court (since demitted office) she had stated that she is happily residing with her Bua at Raurkela, Orissa. Thereafter, when the matter came up for hearing before this Court on 17.08.2022, this Court was of the view that since more than three years have elapsed wherein the wish of the child was considered and, therefore, it was necessary to again interact with the child and in this regard learned counsel for respondent No.5 had stated that on the next date of hearing he will bring the child to this Court. The petitioner was also directed to file a specific affidavit on the issues with regard to her income and also whether she has remarried or not and whether she was living with anybody else or not.

As per the affidavit filed by the petitioner today in the Court, she is having an income of Rs.15,000/- per month and she has not remarried.

Today, the girl child is now 13 years old and has also been brought by respondent No.5 before this Court. This Court, therefore, had an opportunity to interact with the child in the Chamber alongwith a lady Advocate, member of this Bar.

The law with regard to grant and restoration of custody especially while invoking the remedy under Article 226 of the Constitution of India for issuing a writ in the nature of Habeas Corpus is no longer res-integra. In **Tejaswini Gaud and Ors. Versus Shekhar Jagdish Prasad Tewari and others 2019 (7) SCC 42** Hon'ble Supreme Court observed as under:-

“Para 13

Writ of habeas corpus is a prerogative process for securing the liberty of the subject by affording an effective means of 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. 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 jurisdiction.”

Thereafter, the Hon'ble Supreme Court in **Nil Ratan Kundu and another vs. Abhijit Kundu 2008 (9) SCC 413** also observed as under:-

“Para 56

In our judgment, the law relating to custody of a child is fairly well settled and it is this. In deciding a difficult and complex question as to custody of minor, a Court of law should keep in mind relevant statutes and the rights flowing therefrom. But such cases cannot be decided solely by interpreting legal provisions. It is a humane problem and is required to be solved with human touch. A Court while dealing with custody cases, is neither bound by statutes nor by strict rules of evidence or procedure nor by precedents. In selecting proper guardian of a minor, the paramount consideration should be the welfare and well-being of the child. In selecting a guardian, the Court is exercising parens patriae jurisdiction and is expected, nay bound, to give due weight to a child's ordinary comfort, contentment, health, education, intellectual development and favourable surroundings. But over and above physical comforts, moral and ethical values cannot be ignored. They are equally, or we may say, even more important, essential and indispensable considerations. If the minor is old enough to form an intelligent preference or judgment, the Court must consider such preference as well, though the final decision should rest with the Court as to what is conducive to the welfare of the minor.”

In the present case, the mother, who is the petitioner, is undoubtedly earning Rs.15,000/- per month as per the affidavit filed by her in the Court today and she has also filed petition against the husband for grant of maintenance which is subjudice. The whereabouts of the husband of the petitioner are not known. As per learned counsel for respondent No.5, respondent No.5 is having sufficient source of

International School at Amritsar. In this way, there is no embargo against any of the parties.

In view of the aforesaid circumstances, now the intention and willingness of the girl child will have preference over all the other facts. The girl while interacting in the Chamber alongwith a lady Advocate of the Bar had stated categorically and specifically and with full confidence that the petitioner, who is the mother of the girl, after the year 2016 has not cared to talk to her at all and has never tried to meet her. Some kind of psychological counselling was also given to the girl so that she can respond by considering all the factors and it could be seen that the girl was not only confident but also spontaneous and mature enough to answer the questions. She at any point of time did not have double mind with regard to her willingness to stay and she has specifically and repeatedly stated that she wants to stay with respondent no.5 only and not with her mother especially in view of the fact that her mother has abandoned her and not even cared to talk to her for the last number of years. Therefore, applying the law laid down by the Supreme Court in Nil Ratan Kundu's case (supra) aforesaid judgment, it is the willingness of a child who is infact mature enough to convey her willingness has to be given priority. Therefore, in view of the aforesaid facts and circumstances, this Court is of the view that the present petition is devoid of any merit. Consequently, the same is hereby dismissed.

However, this order will not preclude the petitioner from invoking any other remedy available to her under any special law for the time being in force and in accordance with law.

(JASGURPREET SINGH PURI)
JUDGE

25.08.2022
mamta

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