

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

CRWP-8230-2022

Reserved on 02.09.2022

Pronounced on 07.09.2022

Anita Dangi

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM:-HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: Mr.Mandeep Kalra and
Ms.Kanak Malik, Advocates for the petitioner

Mr.Himmat Singh, DAG, Haryana with
Mr.Tanuj Sharma, AAG, Haryana
for respondents no.1 to 3

None for respondent no.4

Mr.Pankaj Gupta, Advocate
for respondents no.5 to 9

...

ASHOK KUMAR VERMA, J.

1. Petitioner-Anita Dangi, who is maternal grand-mother of detenue-Lavyansh Dhankhar aged about 6 years (hereinafter referred to as the “minor child”) has approached this Court by filing this *habeas corpus* petition under Article 226 of the Constitution of India, for releasing the aforesaid minor child from the illegal custody of respondents No.4-Manoj Dhankhar (father of the minor child), respondent No.5- Rekha Malik (sister of respondent No.4), respondent No.6-Yogesh Malik (husband of respondent No.5), respondent No.7-

Mukesh Dhankhar (brother of respondent No.4), respondent No.8-Manju (sister-in-law of respondent No.4) and respondent No.9 Sumitra (mother of respondent No.4).

2. The brief facts as culled out from the paper-book are that the daughter of the petitioner namely, Niharika Dangi was married to Manoj Dhankhar, respondent No.4 and out of this wedlock, one son who is the detinue in the present case, was born on 18.01.2016. The marriage ran into rough weather resulting into grappling with multiplicity of litigations between the parties. Respondent No.4 filed Petition under the provisions of Hindu Minority and Guardianship Act, 1956 and Guardian and Wards Act, 1890 before the Family Court, Rohtak seeking custody of the minor child which is pending adjudication before the Family Court, Rohtak for 7.9.2022. During the pendency of the aforesaid petition, mother of the child moved an application for seeking necessary permission from the Family Court to take the minor child abroad which has been dismissed by the Family Court vide its order dated 3.2.2022. The father of the minor child also moved an application for modification of visiting rights which has been allowed by the Family Court vide its order dated 3.2.2022. Thereafter, mother of the minor child filed CR Nos.646 and 647 of 2022 before this Court challenging the aforesaid two orders of the Family Court which have been dismissed by this Court vide its order dated 25.4.2022. It is the case of the petitioner that during the pendency of the aforesaid petition, respondents No.4 and 5 have kidnapped the minor child from his school at Rohtak on 25.08.2022, which resulted into registration of FIR No.335 dated 25.08.2022 under Sections 323, 341, 365 and 506 IPC at Police Station Urban Estate Rohtak by the husband of the petitioner against

respondent No.4 and 5. It is alleged that respondents No.4 and 5 in connivance with respondents No.6 to 9 kidnapped the minor child when the daughter of the petitioner was abroad in Ireland. The petitioner finding no other such effective and efficacious remedy, has approached this Court by filing this *habeas corpus* petition.

3. When this matter came up for hearing before this Court on 26.08.2022, notice of motion was issued only to respondents No.1 to 3, at that stage. Vide order dated 30.08.2022 passed by this Court, notices were also issued to respondents no.4 to 9 and the Police was directed to produce the minor child before this Court on or before 02.09.2022. As per office report, notices could not be issued to respondents no.4 to 9 for 2.9.2022 as the petitioner did not file process fee.

4. Pursuant thereto, the matter has been finally heard on 2.9.2022. State of Haryana filed status report by way of affidavit of Udai Singh Meena, IPS, Superintendent of Police, Rohtak-respondent No.2 and none appeared on behalf of respondent no.4 whereas Mr.Pankaj Gupta, Advocate appeared on behalf of respondents No.5 to 9. Mr.Pankaj Gupta filed written submissions and compilation of documents under his signatures on behalf of respondents no. 5 to 9, though no written statement and affidavit(s) duly authenticated by respondents No.5 to 9 have been filed.

5. Learned counsel for the petitioner, *inter alia*, contends that respondents no.4 and 5 in connivance with respondents no.6 to 9 have kidnapped the minor child. He submits that the petitioner has a legitimate fear that respondent no.4 may flee away to abroad alongwith the detinue and may also cause him harm. Learned counsel further submits that the life and liberty of the minor child is in danger at the

hands of respondents no.4 to 9. Learned counsel lays emphasis that writ petition at the instance of the petitioner is maintainable and necessary relief may be granted to the petitioner in these proceedings. In support of his contentions, learned counsel for the petitioner has relied on the judgments of the Supreme Court in the case of **Yashita Sahu Versus State of Rajasthan and Others, 2020 SCC OnLine SC 50.**

6. *Per contra*, learned State Counsel for the State by referring to the aforesaid status report submits that this *habeas corpus* petition is not maintainable as the matter with regard to custody of the child is pending adjudication before the Family Court at Rohtak. Mother of the minor child has filed two revision petitions before this Court challenging the orders of the Family Court, Rohtak with regard to granting of visitation rights in favour of the father of the child and dismissing the grant of permission by the mother to take the child abroad and this Court has upheld the said orders of the Family Court and dismissed the Civil Revision Petitions vide its order dated 25.04.2022. Learned State counsel further submits that husband of the petitioner has got registered the aforesaid FIR No.335 dated 25.8.2022. The Police is trying its level best to lay hands on the minor at the earliest. On 31.08.2022, respondent No.7-Mukesh, respondent No.5-Rekha and one Deepak have been arrested. On interrogation, the aforesaid Deepak disclosed that on 25.08.2022, he had taken the minor child and his father to Pahar Ganj, Delhi. Footages of Pahar Ganj, Delhi are being studied by Cyber Cell and dump data are being analyzed. Raids are being conducted to nab the other accused persons. In such situation the present *habeas corpus* petition deserves to be dismissed as not maintainable. In support of his above said submissions, learned

counsel relies on the judgment of the Supreme Court in *Rajeswari Chandrasekhar Ganesh vs. The State of Tamil Nadu and others (Writ Petition (Criminal) No.402 of 2021 decided on 14.7.2022, para 54)* and the judgment of this Court in *Amit Gulrajani vs. The State of Haryana and others (CRWP-881-2019 decided on 2.3.2020)*.

7. Learned counsel for respondents No.5 to 9 pithily argues that this *habeas corpus* petition is not maintainable as litigation is pending between the parties before the Family Court, Rohtak. Learned counsel further submits that vide order dated 03.02.2022 passed by the Family Court, which has been upheld by this Court in revision petition, the father of the minor child has been granted interim custody by the Family Court for a period of two days every week and for a period of one week during summer and winter vacations. It is also not disputed by the learned counsel that FIR has been registered for kidnapping the minor child. Learned counsel further submits that this *hebeas corpus* petition is not maintainable since it involves custody of minor child. The only remedy lies under the Hindu Minority and Guardianship Act, 1956 or Guardian and Wards Act, 1890. In support of his submissions, learned counsel for respondents no.5 to 9 relied on number of judgments in cases of *Chandrakala Menon (Mrs.) & Anr. Vs. Vipin Menon (Capt.) & Anr. (1993) 2 SCC 6*, *Dharminder Singh vs. State of Punjab & Others, 2011 SCC Online P&H 16552*, *Sumedha Nagpal vs. State of Delhi & Ors., (2000) 9 SCC 745*, *Syed Saleemuddin vs. Dr.Rukhsana & Ors, (2001) 5 SCC 247*, *Nithya Anand Raghavan vs. State (NCT of Delhi) & Anr.,(2017) 8 SCC 454*, *Tejaswini Gaud and others vs. Shekhar Jagdish Prasad Tewari and others, (2019) 7 SCC 42*, *Smali Bagga vs. State of Punjab & Ors., 1996 SCC Online P&H 364*,

Sheela vs. State of NCT of Delhi & Anr., 2008 (102) DRJ 652 (DB), Sharda Kannaujia (minor) and another vs. State of U.P. and 5 others (Habeas Corpus Writ Petition No.716-2020 decided 21.1.2022), Priyanshu (Minor) vs.State of U.P. & 5 Ors. (Habeas Corpus Writ Petition No.429/2021).

8. I have given my thoughtful consideration to the submissions of the learned counsel for the parties.

9. It is axiomatic that the matter with regard to custody of the child is pending adjudication before the Family Court at Rohtak which is now fixed for hearing on 7.9.2022. From the documents placed on record, it reveals that while deciding the application for modification of visiting rights moved by the father of the minor child, the Family Court, Rohtak passed the order dated 3.2.2022 by observing as under:-

“8. The applicant is the natural guardian of the child. At this stage there is nothing which may even prima facie show that respondent is addicted to bad vices or is in any manner not a fit person to take care of the minor child particularly during the absence of respondent. When the child is in tender year of age, he may not be knowing the difference between parents and grand-parents. Earlier at the time of recording of first motion joint statement in petition under Section 13-B of the Hindu Marriage Act, the respondent agreed to hand over the custody of the child to the applicant. The respondent has also placed on record some photographs showing the child to be very happy in his lap and company. Even his birthday is being celebrated by the respondent regularly after obtaining permission from the Court. As already observed, there can be no substitute for parents of the minor child. The applicant being father is entitled to have adequate rights of access and visitation. A balance has to be drawn so as to ensure that in a situation where the parents are in a conflict, the child has a sense of security. The interest of the child is best subserved by ensuring that both the parents have presence for his

upbringing. The delay in granting the interim custody of the child to the applicant-father would only create a distance in the relationship between the father and the child. At the same time, the feelings of the maternal grand-parents also cannot be ignored. Admittedly, both the applicant and the grand-parents of the respondent are permanently residing at Rohtak. The child is also permanently residing at Rohtak. In these circumstances there may not be any difficulty in meeting of the child with the applicant at Rohtak.

9. In order to facilitate the grant of access and visitation rights to the applicant, the following arrangement shall hold the field till the final disposal of the present petition under the Guardian & Ward Act, of course, subject to any modification in future in case of any change in the circumstances.

- a) The grand-parents of the child (parents of the respondent) or the respondent during her stay in India, as the case may be, would hand over the custody of the child to the applicant-father on the morning of every Saturday. The applicant may keep the child with him over night on Saturday and hand over the custody of the child to his grand-parents or the respondent on the evening of every Sunday before 6.00 pm.*
- b) The applicant shall not take the child out of Rohtak without permission of the Court.*
- c) The applicant shall ensure that studies of the child are not affected in any manner whatsoever.*
- d) During summer and winter vacations, the custody of the child be given to the applicant-father for a period of one week. The grand-parents or the mother of the minor shall inform the applicant one week before the start of the vacations, the schedule of vacations and the date of handing over the custody.*
- e) The applicant would also be allowed to celebrate the birthday of the child and meet the child on major Indian festivals like Holi, Dusshera, Diwali etc.*
- f) It will be the duty and responsibility of the applicant himself to take the child from the house of the grand-parents and after*

interim custody every time leave the child back at the grand-parents (sic.. parents') house."

10. Feeling aggrieved with the aforesaid order dated 3.2.2022 passed by the Family Court, Rohtak, Neeharika i.e. mother of the minor child filed two revision petitions before this Court. In the first Revision Petition i.e. C.R. 646 of 2022, the mother of the minor child sought setting aside the impugned order of the Family Court thereby granting visitation rights in favour of the father of the minor child and in the second petition i.e. CR 647 of 2022, the mother of the minor child challenged the order declining the permission for her to take the minor child Lavyansh Dhankar abroad. While dismissing both the revision petitions vide order dated 25.4.2022, this Court has observed that "... *Since the battle for the custody of the minor child is still going on being hotly effected before a Court at Rohtak, so it would not be appropriate for this Court to pass any order over the custody of the child and leave it to the jurisdiction and domain of the trial court which would be adjudicating on this aspect of the matter after the parties lead their evidence*". On the second issue which is the visitation rights of the father, this Court observed that "*The plea of visitation rights has been well considered at length by the Court below and after having made great efforts during the course of proceedings has correctly appreciated the position of the child and the parents and has come to a justifiable conclusion and the custody orders have come about as to the manner of access and visitation rights of the father and mother to the child.*" Ultimately, vide order dated 25.4.2022, this Court dismissed both the revision petitions filed by the mother of the minor child.

11. While dealing with similar type of controversy, Hon'ble Supreme Court in **Tejaswini Gaud** (*supra*) made following observations:-

“18. Habeas corpus proceedings is not to justify or examine the legality of the custody. Habeas Corpus proceedings is a medium through which the custody of the child is addressed to the discretion of the court. Habeas corpus is a prerogative writ which is an extraordinary remedy and the writ is issued where in the circumstances of the particular case, ordinary remedy provided by the law is either not available or is ineffective; otherwise a writ will not be issued. In child custody matters, the power of the High Court in granting the writ is qualified only in cases where the detention of a minor by a person who is not entitled to his legal custody. In view of the pronouncement on the issue in question by the Supreme Court and the High Courts, in our view, in child custody matters, the writ of habeas corpus is maintainable where it is proved that the detention of a minor child by a parent or others was illegal and without any authority of law.

19. In child custody matters, the ordinary remedy lies only under the Hindu Minority and Guardianship Act or the Guardians and Wards Act as the case may be. In cases arising out of the proceedings under the Guardians and Wards Act, the jurisdiction of the court is determined by whether the minor ordinarily resides within the area on which the court exercises such jurisdiction. There are significant differences between the enquiry under the Guardians and Wards Act and the exercise of powers by a writ court which is of summary in nature. What is important is the welfare of the child. In the writ court, rights are determined only on the basis of affidavits. Where the court is of the view that a detailed enquiry is required, the court may decline to exercise the extraordinary

jurisdiction and direct the parties to approach the civil court. It is only in exceptional cases, the rights of the parties to the custody of the minor will be determined in exercise of extraordinary jurisdiction on a petition for habeas corpus.”

12. Keeping in view the peculiar facts and circumstances of the present case, Family Court, Rohtak is directed to decide the said matter expeditiously and conclude the same within a period of six months from the date of communication of this order.
13. With the above observations and directions, this petition stands dismissed.

(ASHOK KUMAR VERMA)
JUDGE

07.9.2022
MFK

Whether speaking/reasoned	Yes
Whether Reportable	Yes