

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

CRWP No.11360 of 2021 (O&M)

Date of Decision: February 28, 2022

Sahil and another

...Petitioners

Versus

State of Haryana and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Neeraj Chandel, Advocate
for the petitioners.

Mr. Gurmeet Singh, AAG Haryana.

Mr. Rahul Bhargava, Advocate, Amicus Curiae.

JAISHREE THAKUR, J. (Oral)

This is a criminal writ petition that has been filed under Article 226 of the Constitution of India by petitioner No.1-Sahil and petitioner No.2-Muskan Sherpa seeking protection of their life and liberty at the hands of respondents No.6 and 7, who are stated to be the maternal aunt of petitioner No.2 and her husband.

In brief, a few facts needs to be noted that Muskan Sherpa (petitioner No.2) was being brought up by her maternal grand-mother after death of her mother, as her father Urgyan Sherpa solemnized a marriage with Nimdiki Sherpa. Petitioner No.2 continued to reside with her maternal aunt Nisha Thakur, after the death of her grand-mother, who thereafter, expressed her inability to look after her, therefore, respondent No.7 took

over the responsibility to look after Muskan Sherpa. It appears that respondent No.7 wanted to solemnize her marriage with one boy named Dinesh, which led to Muskan Sherpa leaving her home and contacting her friend Sahil, petitioner No.1. Petitioner No.1 asked petitioner No.2 to come to Chandigarh, where petitioner No.1 reached with his parents and took her to Tohana, District Fatehabad.

During the course of proceedings before this Court, this Court interacted with Muskan Sherpa and parents of Sahil, who kindly offered to take over the custody of the minor girl and to bring her up as their own. The due diligence was taken regarding background of the parents of petitioner No.1 and both were genuine in their offer regarding Muskan Sherpa. However, this court deemed it appropriate to send petitioner No.2 to reside in a place nominated by District Child Welfare Committee, Fatehabad. Mr. Rahul Bhargava, Advocate was appointed as Amicus Curiae to assist this court. Muskan Sherpa, petitioner No.2 was then lodged at Child Care Unit, Jind where her education was also taken. She was permitted to interact with parents of Sahil and Sahil, as per her desire as well as her maternal aunt, who had expressed her inability to look after her.

During the pendency of the proceedings, Muskan Sherpa, who was residing in Child Care Unit, Jind, has expressed her desire to return to her maternal aunt, as her maternal aunt had given consent to take over her custody. By an order dated 17.02.2022, Mr. Baldev Singh, ASI, Police Station Balh, District Mandi (Himachal Pradesh) had been asked to look into the antecedents of the maternal aunt, so that this court can be satisfied qua the safety of the minor child. That order had been passed keeping into

consideration that despite all efforts being made to serve the father of Muskan, who was not coming forth. This court is informed that in fact, he has now renounced the world as has taken up residing in a monastery. As per the verification report of Superintendent of Police, Mandi, District Mandi, dated 27.02.2022, antecedents of Nisha Devi have been verified and her statement has been recorded to the effect that she would look after the welfare of Muskan Sherpa and bring her up and educate her.

The report of the Child Welfare Committee, Fatehabad, dated 28.02.2022 is also taken on record. In the report, it is opined that it would be in the interest of the minor, in case, her custody is handed over to her aunt Nisha Thakur, with an opinion that after the custody is handed over, the follow up plan can be put in place.

Having perused the said documents and taking into consideration the wish of the minor girl that now she would like to reside with her material aunt, who for all purposes is her next kin, this court deems it appropriate to direct the Child Welfare Committee, Fatehabad to hand over the custody of Muskan Sherpa, who is residing at Child Care Unit, Jind, to Nisha Thakur (maternal aunt) through the Chairperson, Child Welfare Committee, Mandi namely Ms. Rekha Sharma. Both the committees are directed to cooperate with each other and to take all the necessary steps for transferring the custody of the child to Nisha Thakur within a week, on receipt of a copy of this order.

Needless to say, this court would expect that Chairperson, Child Welfare Committee, Mandi or any other person authorized by her, to do a fortnight check up on the welfare of the minor child, till

such time as she attains the majority. This court also appreciates the help offered by the parents of petitioner No.1.

The instant criminal writ petition stands disposed of with the aforesaid directions.

February 28, 2022
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No