

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRWP No. 9837 of 2022

Date of Decision: 17th October, 2022

Arsh Kumar

Petitioner

Versus

State of Haryana and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. J. S. Thakur, Advocate for the petitioner.
Ms. Geeta Sharma, DAG, Haryana

AVNEESH JHINGAN, J (Oral):

This petition in the nature of Habeas Corpus is filed seeking directions to the respondents to produce the minor (name withheld) (hereinafter described as 'detenue').

From the pleadings, it is forthcoming that the petitioner started living with Vaishali Sharma (not impleaded as party in the petition). A petition was filed by the petitioner along with Vaishali Sharma seeking protection of life and liberty, which was dismissed as withdrawn. It is alleged that during their live-in relationship, Vaishali Sharma conceived and gave birth to the detenue on 4.6.2018 and thereafter Vaishali Sharma started living in her parental home. She left for Canada in October, 2021. The petition is filed on the basis that the detenue is not available at the house of the private respondents i.e. relatives of Vaishali Sharma.

Heard learned counsel for the petitioner and perused the paper book.

It is a case of seeking custody of a minor in a writ petition. It is not the case of the petitioner that the minor is born out of the wedlock. It is claimed that during relationship of the petitioner with Vaishali Sharma, the detenue was born.

It would not be out of place to mention that Vaishali Sharma has not been impleaded as party though custody of her child is sought.

The facts necessary for adjudication of the issues raised are disputed questions of facts. There is nothing on record even to prima facie prove that petitioner is father of the detenue. Apart from this, welfare of the minor is of paramount importance. This court in the writ jurisdiction in the absence of even prima facie evidence cannot determine the welfare of detenue.

Considering that the petition involves disputed questions of facts, no case is made out for interference in writ jurisdiction.

The petition is dismissed.

[AVNEESH JHINGAN]
JUDGE

17th October, 2022
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| 1. Whether speaking/ reasoned | : | Yes / No |
| 2. Whether reportable | : | Yes / No |