

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

214

**CRWP-681-2023 (O&M)
Decided on : 21.02.2023**

Sumit

. . . Petitioner(s)

Versus

State of Haryana and others

. . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Krishan Singh, Advocate for the petitioner.

Mr. Pawan Kumar Jhanda, AAG, Haryana.

Mr. Lalit Kumar Narang, Advocate
for respondents No. 8 to 10.

SANJAY VASHISTH, J. (Oral)

Order dated 24.01.2023 passed by this Court says as under:

“Present petition has been filed for issuance of writ in the nature of habeas corpus for getting release of the detenue namely Isha wife of Sumit (petitioner herein), daughter of Manoj s/o Nathu Ram, Resident of Acharyan Mohalla, Kankhal, Haridwar (Uttarkhand).

*Considering the fact that private respondents No. 8 to 10 and alleged detenue-Isha are residents of State of Uttarkhand, this Court raised a question to the counsel for the petitioner as to how the jurisdiction of this Court is made out for issuing a writ in the nature of habeas corpus for getting release of the detenue who is detained in other State. Upon this, learned counsel for the petitioner relies upon judgment of Hon’ble Allahabad High Court in case **Smt. Musarrat Shaheen and***

another v. Mohd. Daud and another, ALR46 : 1999(1), 1991 (1) HLR 425, Law Finder Doc ID # 179925. He refers to paragraphs No. 12 and 16 of the said judgment.

Relevant paragraphs 12 and 16 are reproduced here below:-

“12. The Court which had first received the petition had raised that point and wanted a clarification from the learned counsel for Alimuddin. When the matter came up before the next Hon'ble Judge the matter was heard and after hearing the Court had directed production of the girl in Court. This suggests that the objection regarding jurisdiction was *prima facie* overruled Hom. O.P. Garg. J. as he had given a direction for production of the girl. This order was not challenged in any appellate forum and, as such, in my view this point may not be agitated again before this Court. This situation may be viewed from another angle. After production of the girl and after her examination she was given in the custody of her father and who had, upon some undertaking, accepted that custody without raising any voice that the Court had no jurisdiction to record any order touching the custody of the girl for lack of territorial jurisdiction. When the order was in his favour he did not raise any objection, but now when the girl has chosen to go with Alimuddin, this

objection is being pressed. Moreover, there is sufficient force in the argument of Sri Kazmi when he says that the wrongful detention really started from Siddhartha Nagar when the girl was removed from there upon a false pretext. If a practical view of the matter is not taken, then it will be very easy for wrong-doers to go on shifting the detainee from one place to another and, thereby, evading any probable direction for habeas corpus only on the ground of territorial jurisdiction. Point No. 1 is thus answered in the affirmative.

16. Case-laws relied upon by the father of Shaheen no doubt speak of jurisdiction of the Court in habeas corpus matter, but it has been found on facts that the illegal detention started from Siddhartha Nagar and, as such the case-laws may not be relevant on this question. It was further argued that in habeas corpus petition, the Court was to give proper regard to the legality or otherwise of the detention at the time of return and not with reference to the institution of the proceeding. It was argued that on the date of production she was not under any illegal detention and, as such, the writ of habeas corpus could not have been granted. The very fact that Musarrat Shaheen did not want to go with her parents with whom she was staying at the time of initiation of the

proceeding and on the date of her production in the Court, suggests that the Court has a jurisdiction to record an order even though she is at present living at a place according to her wishes without any force or coercion.”

He further refers to paragraphs No. 14 and 19 of the judgment passed by Division Bench of Hon’ble Andhra Pradesh High Court in case Alekhyia Yalamanchili v. State of A.P., through SHO, P.S., Jubilee Hills, Hyderabad and others., 2012 (40) R.C.R. (Civil) 409, Law Finder ID # 369053.

“14. The elements of cause of action are two; first breach of duty owing by one person to another and second damage resulting to other from the breach. Right to sue depends on cause of action, which an aggrieved person is able to show that he suffered legal injury. The cause of action for a writ petition may not be one instance or one important event from the commencement of fiduciary, jural or contractual relationship between the parties, till there is violation or breach of obligations essential to such relation. For a writ petition, it means the sum of total facts and circumstances the petitioner would have to prove if traversed.

19. Indisputably, the battle scene between the petitioner and the third respondent shifted to India in 2010. They reside separately. The third respondent instituted original petition for

permanent custody. Within a year thereafter, he shifted to Bali and then withdrew his petition for permanent custody. Relocation at Bali was done without information to the petitioner and she came to know about this through the management of the school where the baby was attending. After filing O.P.No.1148 of 2011, the petitioner then moved this habeas corpus petition. In this mostly admitted background, this Court cannot throw out the petition saying the detenu is outside its jurisdiction. We have a lurking suspicion that the third respondent seems to be bent upon depriving the petitioner of her right of parenting her only child. The third respondent very cleverly, of course, ill-advisedly moved to Bali; From the record it is reasonable to infer that he comes from a rich family. Indeed, in his petition for permanent custody, he gave an exemplary career resume highlighting the fact of founding of M/s.Latitudes Health Private Limited; the largest Day Spa business in India that uplifted him to the position of a prominent businessman in that market segment. The career pursuit is a guarantee basic right. Nobody finds fault with the third respondent moving to Bali for better green pastures. While doing so, he also taken Sruthi when her custody dispute is between the petitioner and her former

husband is in the Court. In this background, we are not able to countenance the submission of the senior counsel for the third respondent that the absence of detenu in Andhra Pradesh ousts the jurisdiction of this Court.”

Notice of motion.

On asking of the Court, Mr. Vikas Bhardwaj, AAG, Haryana, accepts notice on behalf of respondents No. 1 to 7 (State). He seeks time to argue on the said law points.

Meanwhile, learned counsel for the petitioner would also search out some judgment(s) of Hon’ble Apex Court/Punjab & Haryana High Court, Chandigarh.

Mr. C. S. Bakshi, Advocate, P-855-2000, who is already present in Court, is appointed as Amicus Curiae, to assist this Court on behalf of the appellants.

Registry is directed to supply him complete set of paper book of the petition.

Adjourned to 04.02.2023.”

Thereafter, detenue filed her affidavit which was reproduced in the order dated 06.02.2023.

Said order dated 06.02.2023 says as under:

“Mr. Lalit Kumar Narang, Advocate, puts in appearance on behalf of respondents No.8 to 10 and files his Vakalatnama, in Court today, which is taken on record, subject to all just exceptions. Detenue-Isha is also present in Court in-person along with learned State counsel, who has been produced by

ASI Rishipal. Detenue- Isha submits her affidavit dated 06.02.2023, in Court today, which is taken on record. Office to tag the same at appropriate place.

Para Nos.1 to 7 of the said affidavit says as under:

- “1. That the present petitioner had filed writ nature of Habeas Corpus in which petitioner seeking direction to get release the detenue namely Isha who is illegal custody of her parents and brother i.e. respondents No.8 to 10 in present writ petition.*
- 2. That now deponent namely Isha D/o Majoj is filed present affidavit before this Hon’ble Court, same may kindly be taken on record.*
- 3. That deponent is educated girl and she is pursuing B.Com 2nd year from SMJN PG College Haridwar, Uttrakhand.*
- 4. That it is pertinent to mention here that at this stage stand of present deponent is intend to reside with her parents at Uttrakhand.*
- 5. That on dated 21.01.2023 statement of deponent was recorded by the officials at Police Station Kankhal, Haridwar in which she specific stated that I want to live with my parents and I am happy with my parents. I do not want to live with the petitioner.*
- 6. That the Aadhar Card of Petitioner is attached.*
- 7. That the deponent has not filed any such or similar affidavit either in this Hon’ble Court or in the Hon’ble Supreme Court of India.”*

Counsel for the petitioner prays for some time to get necessary instructions from his client.

Adjourned to 14.02.2023.”

In this view of the situation and especially the factum of filing of affidavit by detenue, learned counsel for the petitioner seeks withdrawal of the present petition.

Dismissed as withdrawn.

(SANJAY VASHISTH)
JUDGE

21.02.2023

Riya

<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
<i>Whether Reportable:</i>	<i>Yes/No</i>