

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CRWP-2028-2023 (O&M)
Date of decision : 20.03.2023

Kamal Ahluwalia

Petitioner

V/S

State of Haryana and others

Respondents

CORAM : HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: Ms. Devna Soni, Advocate with
Mr. R.D. Gupta, Advocate for the petitioner.

ASHOK KUMAR VERMA, J. (ORAL)

CRM-W-269-2023

For the reasons mentioned in the application, the same is allowed and the petitioner is exempted from filing certified copies of Annexures.

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The petitioner has filed the present petition under Article 226 of the Constitution of India for issuance of directions to official respondents to release of detainee Master Atharv Singh Ahluwalia, who is the son of the petitioner, from illegal custody of respondents No.2 to 4.

Learned counsel for the petitioner, *inter alia*, contends that the petitioner and daughter of respondents No.2 and 3 solemnized marriage on 10.02.2019 at Kurukshetra. Out of the wedlock, one boy was born on 23.04.2022. After marriage, it came to knowledge of the petitioner that his wife is suffering from chronic depression and on

account of the same, she was being medically treated by doctors/psychiatrists from Kurukshetra and Rohtak. On 05.09.2022 when the petitioner left for his workplace, the wife of the petitioner had tried to commit suicide by hanging herself. She was admitted to hospital where she remained admitted in ICU and on 10.09.2022, she was passed away. On the false allegations made by his in-laws, FIR No.318 dated 08.09.2022 under Section 304-B, 498-A, 511 and 34 of the IPC has been registered against the petitioner and his mother. When the petitioner and his mother were arrested in the case, he temporarily handed over the custody of his son to his cousin. On 10.09.2022 respondents No.2 to 4 insisted the petitioner's cousin to bring the child to the cremation ground for performing the last rites of his mother. However, when the child was brought to the cremation ground, respondents No.2 to 4 along with their family members forcibly took the custody of the minor child. Since that day the petitioner has been unable to meet his son. The petitioner and his mother have filed anticipatory bail before this Court and this Court vide order dated 11.11.2022 and 05.01.2023 granted interim protection to the petitioner's mother and the petitioner respectively. In compliance with the orders passed by this Court, the petitioner and his mother have joined the investigation. The minor son of the petitioner is illegally detained by respondents No.2 to 4 for past 05 months. The petitioner, being the biological father and natural guardian, is entitled to the custody of his minor son. In support of her contentions, learned counsel for the

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petitioner has relied upon judgment of Hon'ble Supreme Court passed in *Tejaswini Gaud and others Vs. Shekhar Jagdish Prasad Tewari and others : 2019 (7) SCC 42*.

I have heard learned counsel for the petitioner and gone through the record.

The instant petition has been filed by the petitioner seeking custody of his minor son on the ground that he, being biological father, is entitled for the custody of his minor son. Since the petitioner has efficacious and alternative remedy to approach the Guardian/Family Court under the Hindu Minority and Guardianship Act, 1956/the Guardians and Wards Act, 1890 for custody of his minor son, I do not deem it fit to exercise extra-ordinary writ jurisdiction under Article 226 of the Constitution of India.

In view of the above, the instant writ petition is dismissed. However, the petitioner would be at liberty to avail the aforesaid remedy for custody of his minor son before the Guardian/Family Court in accordance with law.

20.03.2023

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(ASHOK KUMAR VERMA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No