

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

115+229

CRM-W-1726-2022 in/and
CRWP-3093-2022

Date of Decision: 06.01.2023

Sonia

.... Petitioner

Versus

State of U.T. Chandigarh and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: - Petitioner-Sonia in person with
Mr. Amrit Kashyap and Mr. Pankaj Bains, Advocates.

Ms. Vasundhra Dalal Anand, APP for U.T. Chandigarh
for respondents No. 1 and 2.

Respondent No. 3-Raj Sharma in person with his two minor
daughters, namely, Manvi Sharma aged about 07 years and
Chancy Sharma aged about 04 years with
Mr. Anuj Thakur, Advocate.

ASHOK KUMAR VERMA, J. (ORAL)

CRM-W-1726-2022

Prayer in this application filed under Section 482 Cr.P.C. is
for placing on record coloured copies of FDRs of Rs.1,00,000/- each in
the names of minor daughters, namely, Manvi Sharma and Chancy
Sharma, as Annexures R-3/5 and R-3/6.

Application is allowed as prayed for. Coloured copies of
both the FDRs are taken on record as Annexures R-3/5 and R-3/6, subject
to all just exceptions.

CRWP-3093-2022

Prayer in this criminal writ petition filed under Articles

226/227 of the Constitution of India, is for issuance of a writ in the nature of habeas corpus directing respondent No. 1 to get released the minor daughters (detenues) of the petitioner, namely, Chancy Sharma, aged around 04 years and Manvi Sharma, aged around 07 years from the illegal custody of respondent No. 3-Raj Sharma.

Learned counsel for the petitioner, *inter alia*, contends that petitioner-Sonia is the wife of respondent No. 3-Raj Sharma. Marriage of the petitioner with respondent No. 3 was solemnized on 23.01.2013 and two children, namely, Manvi Sharma and Chancy Sharma, were born out of the said wedlock. The petitioner along with minor daughter-Chancy Sharma was thrown out of the matrimonial home by respondent No. 3 and, thereafter, she is residing with her parents at Khuda Ali Shar (U.T., Chandigarh). It is alleged that on 21.03.2022, respondent No. 3 forcibly took Chancy Sharma along without her consent. Since then the petitioner is not permitted to meet her minor daughters. Petitioner is working as data entry operator in some private company and is earning around Rs.15,000/- per month. He further submits that both the detenues are minor aged around 07 and 04 years, therefore, the petitioner being biological mother is entitled to their custody.

Learned counsel for respondent No. 3 taking through the contents of reply filed on his behalf submits that if, the petitioner is aggrieved of having the custody of detenues, namely, Manvi Sharma and Chancy Sharma, then she can avail appropriate remedy available to her under the law and filing of the present petition is nothing but an abuse of the process of law. The petitioner has equally efficacious remedy of

filing petition under the Guardians and Wards Act, 1890, for custody of the minor children. Therefore, the present habeas corpus petition is not maintainable. Respondent No. 3 is well off economically as he is owner of Dairy Farm, shops and is also running a Dhaba/hotel at his native place. He has sufficient sources to maintain the children and is not involved in any criminal activity. In support of her contentions, learned counsel for respondent No. 3 has relied upon judgment in ***(i) Sumedha Nagpal vs. State of Delhi and others, 2000 (9) SCC 745; Dr. Mrs. Veena Kapoor vs. Varinder Kumar Kapoor; 1981(3) SCC 92; Vishwanath vs. The State of U.P., 1960 AIR (Supreme Court) 67; CRWP-7913-2020, Poonam Kalsi vs. State of Punjab and others, decided on 20.04.2022; Ruby Devi vs. State of Bihar, 2020(2) PLJR 529; Rashmi Sharma vs. State of Rajasthan and others, 2021(2) RLW 1447; Sufla Zameer vs. The State of Jharkhand and others; 2021(4) J.C.R. 305; Dr. Sabyasachi Dutt vs. State of Maghalaya and others; 2015(43) RCR (Criminal) 375; Jyoti Khajuria vs. State and others, 2018 (2) RCR (Criminal) 991 and Smali Bagga vs. State of Punjab and others 1996(2) R.R.R. 202.***

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

Admittedly, the parties are husband and wife, having two minor daughters, namely, Manvi Sharma and Chancy Sharma, aged around 07 and 04 years, respectively. There is matrimonial discord between the parties and the minor children are in the custody of respondent No. 3-father. The instant petition has been filed by the

petitioner-wife seeking custody of minor children on the ground that she being their biological mother is entitled to their custody. Vide order dated 16.05.2022, the matter was referred to Mediation and Conciliation Centre of this Court in order to explore the chances of an amicable settlement to secure the interest of minor children so that they are not deprived of either love of father or the mother, but the mediation has failed as the parties could not arrive at an amicable settlement.

Pursuant to the order dated 18.11.2022, in order to show his *bona fides*, respondent No. 3 has deposited an amount of Rs.1,00,000/- each in the name of his minor daughters, namely, Manvi Sharma and Chancy Sharma, aged around 07 and 04 years respectively, in the shape of FDR in Punjab National Bank, Branch Nangran, District Una. Coloured copies of the FDRs are placed on record as Annexures R-3/5 and R-3/6.

Today, both the minor girls, namely, Manvi Sharma, aged 07 years and Chancy Sharma, aged 04 years are present in Court with their father. Manvi Sharma, states that she is 07 years of age and is studying in Third class. She along with her sister-Chancy Sharma, is happily residing with her father. She states that her mother is residing at Chandigarh. They do not want to go with her mother-petitioner as her behaviour is not good towards them and she used to give beatings to them. From the above, it seems that both the minor daughters are residing happily with their father and there is no pressure upon them.

The Hon'ble Apex Court in *Sumedha Nagpal's case (supra)* in para 5 of the judgment held as under:-

“5. In deciding such a question, what we have to bear in mind is the welfare of the minor child and not decide such a question merely based upon the rights of the parties under the law. In the pleadings and the material placed before us, we cannot say that there is any, much less clinching, material to show that the welfare of the minor child is at peril and calls for an interference. The trauma that the child is likely to experience in the event of change of such custody, pending proceedings before a court of competent jurisdiction, will have to be borne in mind. We are conscious of the emphasis laid by the learned Counsel for the Petitioner that the lap of a mother is the natural cradle where the safety and welfare of the child can be assured and there is no substitute for the same, but still we feel that at this stage of the proceedings it would not be appropriate for us to interfere in the matter and leave all matters arising in the case to be decided by an appropriate forum irrespective of whatever, we have stated in the course of this order. Even though we have dealt with the contentions raised by Shri D.D. Thakur as to grant of interim custody to the Petitioner, we should not be understood as having held a petition would lie under Article 32 for grant of custody minor child, we refrain from examining or deciding the same.”

Taking into consideration the provisions of law and the factual matrix which is disputed, I am of the considered opinion that custody of the father as a natural guardian cannot be said to be illegal or unlawful and therefore, it would not be appropriate to issue a writ of habeas corpus in favour of the petitioner. In the case of disputed questions of facts, it is a matter of evidence to be led by both the parties as to which party will be in a better position to take care of the minor

In view of the observations made above, this Court finds that minor daughters, namely, Manvi Sharma and Chancy Sharma, have not been kept in illegal custody of respondent No. 3. Finding no merit in the instant petition, the same is dismissed with liberty to the petitioner to approach an appropriate Court under relevant provision of law seeking the relief claimed in the petition.

Nothing in this order shall be treated an expression of any opinion on merits of the case so as to bind or influence appropriate court under relevant provisions of law seeking the relief claimed in this petition, if any so filed by any of the parties.

(ASHOK KUMAR VERMA)
JUDGE

Whether Reportable	Yes/No
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