

**In The High Court for the States of Punjab and Haryana
At Chandigarh**

CRWP-3406-2023 (O&M)
Date of Decision:- 12.04.2023

Balwinder Kaur	... Petitioner
Versus	
State of U.T. Chandigarh and others	... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Sunil K. Chaudhary, Advocate, for the petitioner.

GURVINDER SINGH GILL, J. (Oral)

1. The petitioner has approached this Court seeking issuance of a writ in the nature of Habeas Corpus so as to direct respondent No.2-Senior Superintendent of Police, Chandigarh and respondent No.3-Station House Officer, Police Station Maloya, Chandigarh, to produce Seerat Kumari daughter of the petitioner who is said to be illegally detained by some unknown persons at some unknown place by respondent No.4.
2. Notice of motion.
3. At this stage, Mr. Shashank Bhandari, Addl. P.P. U.T. Chandigarh has put in appearance on behalf of respondents No.1 to 3 and accepts notice.

4. It is not in dispute that respondent No.4 is none else, but the former husband of the petitioner. It is also borne out that when the marriage of the petitioner with respondent No.4 was dissolved by a decree of divorce by mutual consent, it had been agreed amongst the parties that the custody of the minor child shall remain with respondent No.4.
5. It is further admitted that the petitioner has already filed a petition under Gurdian and Wards Act, which is still pending. Para No.4 and 6 of the instant petition are reproduced herein under:

“4. That before the decree of divorce on mutual consent (Ann. P-1), it was settled between the petitioner and respondent no.4 that minor female child will remain in custody of respondent no.4 who himself took proper care for the welfare of child.

6. That in the year 2022, the petitioner came to know that respondent is neither taking proper care nor bother about the minor child, then petitioner filed his petition under Guardian and Wards Act vide GW/17/2022 at Chandigarh for the custody of minor and during the pendency of Guardian Application, the respondent no.4 handover custody of minor child to other unknown parents or persons who took way the child some unknown place.”

6. Para No.2 of judgment dated 04.03.2021 (Annexure P-1) passed by learned Additional District Judge, Chandigarh is also reproduced herein under:

“2. In their joint statement of first motion, petitioners stated that they got married on 20.07.2016 at Chandigarh. One daughter namely Seerat Kumari was

born out of their wed-lock. On account of temperamental differences, it was not possible for them to live together and they have been living separately since 28.04.2018. It was stated that the custody of minor daughter shall remain with petitioner No. 2 (father). It was also stated that both the petitioners shall neither file any kind of litigation against each other relating to this marriage nor shall claim any right in the property which shall be acquired by them in any manner including inheritance. Both the petitioners shall not interfere in whatsoever manner in the personal life of each other. It was further stated that they have compromised the matter out of their free Will, without any coercion or pressure and shall abide by their joint statement. They prayed for decree of divorce by mutual consent.”

7. The aforesaid extracts clearly show that the petitioner is none else, but the former wife of respondent No.4 and that the petitioner and her husband had agreed that the minor daughter shall remain with respondent No.4 and they had made a statement to this effect, when petition under Section 13-B of Hindu Marriage Act was decided. In any case, it will still be a moot point as to whether a father would be entitled to custody of a minor daughter in case the mother of such minor daughter stakes her claim for the same, even having consented previously for handing over such custody. The petitioner has already approached the Family Court and moved an application under Guardian and Wards Act. As such, this Court finds that the appropriate remedy in such a case would be a petition under Guardian and Wards Act which has already been filed by the petitioner.

8. No such direction as prayed for is required to be issued at this stage, particularly when even the particulars of the unknown persons who are stated to have kept the minor daughter of the petitioner are not forthcoming. The petition, as such, is dismissed. However, in case any application is filed by the petitioner before the Court where petition under Guardian and Wards Act is pending, for seeking visitation rights or for seeking the interim custody of the minor daughter, the Court concerned shall dispose of the same expeditiously.

12.04.2023
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(GURVINDER SINGH GILL)
JUDGE

Whether speaking /reasoned	Yes / No
Whether Reportable	Yes / No