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

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**CRWP-3412-2023
Date of Decision:- 30.10.2023**

Rajender Taneja

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ALOK JAIN

Present: Mr. G.B.S. Dhillon, Advocate for the petitioner.

Mr. Kamalpreet Bawa, AAG, Punjab.

Ms. Ritam Aggarwal, Advocate for respondent No. 4.

ALOK JAIN, J.

1. The present petition has been filed under Article 226/227 of the Constitution of India seeking issuance of writ in the nature of Habeas Corpus/roving in order to locate/set at liberty the alleged detainee-Nikhil Taneja, who is alleged to be illegally detained by respondent No.4.

2. Learned counsel for the petitioner has argued that the petitioner is the father of the detainee-Nikhil Taneja who is admittedly in coma, since, 2011. It is submitted that since 2011, the parents were looking after their son in Suratgarh, Rajasthan, however, on 26.09.2022, respondent

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No. 4, who is the wife of detainee-Nikhil Taneja and was not residing in the matrimonial house forcibly removed the detainee from the custody of the parents *qua* which FIR No. 509 dated 01.10.2022 under Sections 341, 323, 382 and 386 of IPC was lodged at Police Station Suratgarh, District Ganga Nagar, Rajasthan (Annexure P-4).

3. Learned counsel for the petitioner has further submitted that the custody of his son is not safe in the hands of respondent No.4 and to substantiate his argument, he relies upon an FIR No.67 dated 14.01.2023, registered at Police Station Karnal Civil Lines, District Karnal (Annexure P-3), lodged by respondent No. 4, in which she admits herself to be in an illicit relationship with a boy named Vikas and has demonstrated her intention to get married to the said accused in said FIR, which demonstrates that the respondent No.4-wife is not inclined to take care of her husband, *moreso*, she has admitted herself to be in an illicit relationship for the last more than two years with Vikas.

4. He further submits that the bone of contention is the MACT claim granted vide order dated 03.12.2018, to the son of the petitioner and further submits that, in fact, in those proceedings, respondent No. 4 herself executed an affidavit on 10.02.2016, whereby she waived off all her rights in favour of the present petitioner, who is none other than the father-in-law of respondent No.4.

5. Learned counsel for the petitioner has further submitted that, in fact, out of the MACT claim awarded amounting to approximate more than Rs. 3 crores, a sum of Rs. 72,00,000/- was released out of which he got executed FDRs of Rs. 15,00,000/- and Rs. 20,00,000/- in favour of his two

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grand-daughters and has also purchased a flat for an amount of Rs. 20,00,000/- in favour of respondent No. 4 to secure her life.

6. As regards the maintainability of the petition, learned counsel for the petitioner has relied upon Article 226 (2) of the Constitution of India and has submitted that since respondent No. 4 brought the detenue within the jurisdiction of this Court, therefore, this Court has ample power which may be exercised for release of the detenue. Learned counsel for the petitioner has also relied upon the judgment in case titled as “*Jasmine Kaur Manak Vs. Sarabjit Manak and another, 2013 (1) R.C.R. Criminal 56*”, wherein it has been held that the custody of a detenue-son, who is in coma, with the parents is not illegal and therefore, the detenue herein was legally staying and being taken care of by petitioner and his family members at Suratgarh, Rajasthan.

7. Be that as it may, it is submitted by the petitioner that the custody of his son is not safe with respondent No. 4 and there is every likelihood of a loss to him.

8. *Per contra*, learned counsel for respondent No. 4 has vehemently opposed the present petition and has submitted that the detenue is none other than the husband with whom she was married in the year 2002. It is submitted that respondent No. 4 has been taking care of the detenue right from 2011 till 26.09.2022, when they were, in fact, forcibly ousted from the matrimonial house by the petitioner and further submits that, in fact, it was the petitioner who facilitated their ouster as the car in which respondent No. 4 and detenue travelled, belonged to the petitioner himself.

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9. Learned counsel for respondent No.4 has argued that the ingredients required for invoking a writ in the nature of habeas corpus are not met for the reason that neither the detinue is in illegal custody nor was he removed from the custody of the petitioner with force, rather, it was by the facilitation of the petitioner himself that the detinue along with the answering respondent and the daughters had to forcibly leave the matrimonial home.

10. Learned counsel for respondent No. 4 further submits that there was no allegation on her character till the year 2020 and everything was going on smoothly, however, the problem arose when respondent No. 4 started asking from petitioner about the finances as to where they are being spent and raised her eyebrows when some amount was transferred to the daughter of the petitioner, out of the amount of the MACT claim. She further submits that the petitioner has been misusing the said amount by moving the application for pre-mature release on flimsy grounds and relied upon two such applications i.e. Annexure R4/3.

11. She further submits that respondent No. 4 is the best person to take care of the detinue and has been doing the same since 2011 and relies upon the judgment of Delhi High Court in case titled as ***Vandana Tyagi and another Vs. Government of National Capital Territory of Delhi (Gnctd) and others***, passed in W.P. (C) No.11003 of 2019, decided on 07.01.2020. The relevant extract is reproduced as under:

36. (iv) “Ordinarily only that person will be appointed as guardian who is a spouse or a progeny of the person lying in comatose. The person seeking appointment as a guardian in his petition to the Court will, however, disclose the particulars

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of all legal heirs of the person lying in comatose. In the event, the person lying in comatose has neither a spouse nor any children or even any legal heirs or if he/she has such persons in his life but stands abandoned by them subject to the permission of the Court his next friend who wishes to be appointed as a guardian can approach the Court with such a request. In the alternative, the Court could direct the Department of Social Welfare, GNCTD to appoint a public official such as a Social Welfare Officer or a person holding equivalent rank to act as the guardian of the person lying in comatose state”.

She further relies upon the judgment of Bombay High Court in case titled as ***Rajni Hariom Sharma Vs. Union of India and another, 2020 (5) ALL MR 517***. The relevant para is reproduced as under:

24. “In such circumstances, there can be no manner of doubt that conceptually the wife can be said to be best-suited to be the guardian of her husband who is under a state of incapacity or disability on account of being in a comatose condition or vegetative state”.

12. Learned counsel for respondent No. 4 submits that, in fact, the petitioner has frozen all her incomes and no amount has been released by the petitioner after 26.09.2022 but despite the same, she is taking care of the detainee-husband by utilizing the funds and by generation of source of income on her own.

13. Learned counsel for respondent No. 4 has further submitted that in fact, the high handedness of the petitioner becomes clear from the fact that they have filed the petition under Section 13 (1) and (2) of Hindu Marriage Act, 1955, on the behest of the detainee for seeking divorce and has also filed an application under Sections 25 and 12 of the Guardianship

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and Wards Act, whereby they are admitting the custody of the detainee with respondent No. 4.

14. She further submitted that in all circumstances, since respondent No. 4 has been taken care of the husband since 2011 till 26.09.2022 in the matrimonial home and thereafter at Dhakoli, Zirakpur, Punjab, therefore, by no stretch of imagination, the custody of the detainee can either be held to be illegal or unlawful.

15. In rebuttal, learned counsel for the petitioner has submitted that the judgments relied upon by the petitioner would not come into play due to the act and conduct of respondent No. 4 which is the sole ground for initiating all these proceedings against respondent No. 4 and more so, respondent No. 4 has already filed a civil suit at Suratgarh, Rajasthan *inter alia* praying for release of the interest amount being accrued on the award given by the MACT so that she can have enough funds for her maintenance and well-being of husband and children.

16. However, learned State counsel submits that there is no complaint lodged within the jurisdiction of Punjab except for the fact that respondent No. 4 is at present, residing in Zirakpur, SAS Nagar, Mohali, Punjab, and hence has no role to play at this stage.

17. Heard learned counsel for the parties at length.

18. It is a classic case where the detainee is a married man and is in state of coma for the last multiple years. Both the sides are fighting for his custody for the reasons best known to them. There is no straightjacket formula in such type of case whereby, on one hand, the parents of the detainee are willing to keep the custody of their son and, on the other hand,

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it is the wife who is taking care of her husband for the last many years but at the same time, has admittedly been entangled with another man in an intimate relationship. The contention of the parents seems to be a far stretch imagination that just because their daughter-in-law has crossed the line of matrimonial accord, it would disentitle her for custody of her husband but at the same time, it has to be examined in light of the fact that the respondent No.4-wife has taken care of the husband for the last almost more than 10 years.

19. Admittedly, everything was going fine and the entire family was together even at the hardest times when detainee-son of the petitioner, who is also the husband of respondent No.4, met with an accident and they have put in their best to keep him alive though he is in state of coma. The family was together and this continued for almost 11 years. Neither any report or complaint was there by the petitioner against her daughter-in-law nor any such issue was raised by the daughter-in-law against the petitioner who is her father-in-law as well as mother-in-law. Rather, a perusal of the record shows that the daughter-in-law expressed complete faith in her in-laws family and had executed all the documents.

20. Apparently, the dispute has arisen on account of the usage of money awarded by the MACT Tribunal towards the detainee on account of his accident which is being misused by the petitioner/father-in-law as alleged by the respondent No.4-wife of detainee. This Court does not find any lack of affection on part of both the parties towards the detainee and it seems that it is the money dispute which has caused this entire controversy.

In short, the respondent No.4-wife's only claim is that the money awarded

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by the MACT is for the welfare of the detainee and his family, and the same should be used and utilized only for the welfare of his family, which, rather, includes the petitioner also but petitioner is usurping the said amount by gifting it to his other son and daughter, which this Court primarily feels is unfair.

21. However, this Court cannot discard the conduct of the wife also who herself has lodged an FIR against one Vikas under Section 376 (2)(n) of IPC (Annexure P-3), admitting therein to be in an intimate relationship with him on the ground of which, the petitioner has already moved a divorce petition on behalf of the detainee.

22. A petition of habeas corpus is primarily meant to produce the corpus who is in illegal or unlawful detention. Illegal confinement is the pre-condition to issue a writ of habeas corpus. Though a writ of right, it is not a writ of course. It is an extra ordinary remedy and cannot be granted on mere asking. It cannot be resorted to be in a casual and routine manner.

23. The Hon'ble Supreme Court of India in the case of “***State Vs. H. Nilofer Nisha, 2020 14 SCC 161***” has considered the scope of the writ of habeas corpus and has held as under:

16. “A writ of habeas corpus can only be issued when the detention or confinement of a person is without the authority of law. Though the literal meaning of the Latin phrase habeas corpus is “to produce the body”, over a period of time production of the body is more often than not insisted upon but legally it is to be decided whether the body is under illegal detention or not”.

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A Division Bench of the Madras High Court in the case of *Selvaraj Vs. The State, Rep. by the Superintendent of Police, Nagapattinam District in 2018(3) MLJ (Cri.) 712*, observed as under:-

“The Constitutional Courts across the country predominantly held in catena of judgments that establishing a ground of “illegal detention” and a strong suspicion about any such “illegal detention” is a condition precedent for moving a Habeas Corpus petition and the Constitutional Courts shall be restrained in entertaining such Habeas Corpus petition, where there is no allegation of “illegal detention” of suspicion about any such “illegal detention”.

24. However, in this case, after going through the discussion and the ratio laid down by various Constitutional Courts as narrated above, the basic ingredients of habeas do not meet. The petitioner was well-aware *qua* the whereabouts of the detenue right from 26.09.2022, which the petitioner admits by his conduct by lodging an FIR No.509 dated 01.10.2022 (Annexure P-4), against respondent No.4. Once the petitioner was aware about the whereabouts of his son, the custody of the son with the estranged wife of detenue can neither held to be unlawful nor illegal. However, the concern of the parents *qua* the well-being of the alleged detenue cannot be disregarded in light of the act and conduct of respondent No. 4 as highlighted by them.

25. This Court refrains itself from passing any remark on the character of respondent No.4, however, at the same time, cannot deny the fact that respondent No.4 is taking care of the detenue-husband for the last more than 10 years and even now almost one year has passed, the detenue

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is in a legal and safe custody of respondent No.4. As regards, the money, which is apparently, the main cause of dispute, the parties have already initiated appropriate proceedings and it would not be in the interest of justice to comment on the same.

26. In light of the peculiar facts and circumstances of this case and the law as discussed above, applied to the facts of present case, ends of justice would be met if the present petition is disposed of with the following directions:

(i) The custody of the detainee-husband shall remain with respondent No. 4/wife, however, the petitioner shall be permitted to meet the detainee on monthly basis and at the same time, respondent No.4 is bound down to inform the well-being of the detainee to the parents of detainee on monthly basis.

(ii) As regards the MACT claim, the parties are directed to ensure that the said amount is utilized for the well-being and welfare of the detainee and his immediate family members only, which includes the parents of detainee also but the petitioner under the garb of this order is not permitted to spend the money of MACT claim on the other siblings i.e. to say the brother(s) and sister(s) of the alleged detainee.

27. As far as jurisdiction of this Court is concerned, the present petition is maintainable in this Court in light of the judgment relied upon by the petitioner.

28. With the above said direction, the present petition stands disposed of, without any expression of opinion on the merits of the case.

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29. It is made clear that the above-said directions are passed only to decide the present petition and the same shall not have any effect on the merits of the case or proceedings between the parties, if any.

(ALOK JAIN)
JUDGE

30.10.2023
Parul

Whether speaking/reasoned:-	Yes/No
Whether Reportable:-	Yes/No