

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

CRWP NO.4181 OF 2023(O&M)

Date of order: 19.07.2023

Monika

... Petitioner(s)

Versus

State of Haryana & others

...Respondent (s)

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present:- Mr. Rohit Mittal, Advocate
for the petitioner(s).

Mr. Manish Bansal, Sr. DAG, Haryana.

Mr. Krishan Sharma, Advocate
for respondent no.4.

ANOOP CHITKARA, J.

1. Petitioner has filed the present petition, which is a writ in the nature of *Habeas Corpus*, to recover her minor son Haren from the illegal custody of respondent no.4, who is grandmother of the alleged detainee.

2. The petitioner was married with Satbir on 14.2.2016. On 28.2.2018, the couple had a male child namely Haren. Unfortunately, on 22.3.2019, Satbir expired in a road side accident. After that, in the month of January, 2020, the petitioner claims that she was thrown out of her matrimonial home without the child and since that day, she has not met her son even for once.

3. On the other hand, counsel appearing for the private respondent no.4 submits that the petitioner had remarried with one Ashok on 20.4.2023 and now, she is residing with him.

4. Mr. Manish Bansal, Sr. DAG, Haryana submits that the paramount consideration before this Court is the welfare of the child and it has to be assessed whether the child, who is now around 5 years, would be comfortable with the new husband of his mother or not. All these facts assessment can only be done by the statutory Court and not the writ Court.

5. Counsel for the private respondent no.4 submits that earlier, the petitioner had filed a petition for custody of the child under the Guardian and Wards Act, 1890 in 2020, and

she had withdrawn the said petition in 2021 and as such, she is not entitled for custody under the Guardian and Wards Act.

6. Be that as it may, since the petition filed on behalf of the petitioner under the Guardian and Wards Act stands withdrawn, in case the petitioner while availing statutory remedy again files a fresh petition under the Guardian and Wards Act, then the said Court shall take appropriate decision in accordance with law.

7. It is clarified that since the petitioner (mother) has not met her son for long, she is permitted to meet him between 10 A.M. to 4 P.M. on every Sunday or she can pick him at 10 A.M. and return at 4 P.M. to the place of respondent no.4. It is clarified that in case the petitioner does not return this child to respondent no.4 by 4 PM, it shall be considered as violation of order of this Court and it shall be permissible for respondent no.4 to seek police help, if required. This order shall eclipse after 100 days. In case the petitioner does not seek any remedy, then this arrangement shall also come to a halt.

8. It is further clarified that the concerned Court shall not dilute this order before expiry of 100 days.

9. The present petition is disposed of.

(ANOOP CHITKARA)
JUDGE

July 19, 2023
AK

Whether speaking/reasoned	:	Yes
Whether reportable	:	No