

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

112-B

CRWP-4260-2023

Date of Decision: 13.09.2023

Bhuran and another

.... Petitioner

Versus

State of Punjab and others

.... Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: - Mr. G.S. Verma, Advocate for the petitioners.

Ms. Kanica Sachdeva, AAG, Punjab.

Respondent No. 4-Ranjha and detenue-Neeja, are in person with Mr. Mohd. Salim, Advocate.

NIDHI GUPTA, J. (ORAL)

Prayer in this criminal writ petition filed under Article 226 of the Constitution of India, is for issuance of a writ in the nature of Habeas Corpus for appointing a warrant officer for the release, or produce, the detenue namely Neeja aged around 17½ who is daughter of petitioner No.1-Bhuran, in Court, who is stated to be in the illegal custody of respondent No. 4. Further direction is prayed for that the official respondents No. 1 to 3 herein be directed to produce the detenue before this Court.

Brief case of the petitioners is that the accused/respondent No. 4 had kidnapped the daughter of the petitioner No.1 on false pretext and had taken her away without her free consent and sweet will. It is stated that since the daughter of the petitioner no.1 was in the illegal custody of accused respondent no.4, she be produced or released. Upon

notice, short reply dated 30.05.2023 by way of affidavit of Sh.Balbir Singh, PPS, Deputy Superintendent of Police, Sub-Division Dasuya, District Hoshiarpur, has been filed on behalf respondents No.1 to 3.

It has been averred in the aforesaid short reply that the police of Police Station, Dasuya, had visited the matrimonial house of respondent No. 4 and the detainee in the month of May, 2023, where the detainee and respondent No. 4 were not found present. However, first wife, mother, two daughters and one son of respondent No. 4, were found present in the house. Though respondent No. 4 and the detainee were not present at that time, however, it was admitted by the family members of respondent No. 4 that he had gone on some outing on 26.04.2023, and they did not know his whereabouts. It has further been admitted in the reply, that the respondent No.4 and daughter of the petitioner No.1 had filed a petition bearing CRWP No.4236 of 2023 before this Court against the petitioners herein, seeking protection of their life and liberty.

Today, both respondent No. 4-Ranjha and detainee-Neeja, are present in Court and have stated that they have solemnized *Nikah* on 26.04.2023 and are living happily together as husband and wife. However, on a specific query to the detainee-Neeja, as to whether she wishes to go with the petitioners, she has informed this Court that she does not wish to accompany the petitioners.

The learned counsel for the petitioners does not dispute the aforesaid factual position.

It is an established position in law that illegal confinement is a precondition to the issuance of a writ in the nature of Habeus corpus. It is a writ of right, not of course. Hon'ble the Supreme Court in case of

Home Secretary (Prison) v. Nilofer Nisha (SC): Law Finder Doc ID#

1670144 has held as follows: –

“17. 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. Habeas corpus is often used as a remedy in cases of preventive detention because in such cases the validity of the order detaining the detenu is not subject to challenge in any other court and it is only writ jurisdiction which is available to the aggrieved party. The scope of the petition of habeas corpus has over a period of time been expanded and this writ is commonly used when a spouse claims that his/her spouse has been illegally detained by the parents. This writ is many times used even in cases of custody of children. Even though, the scope may have expanded, there are certain limitations to this writ and the most basic of such limitation is that the Court, before issuing any writ of habeas corpus must come to the conclusion that the detenu is under detention without any authority of law.”

In view of the above said admitted factual and legal position,
no further orders are warranted in the present matter.

The instant criminal writ petition stands disposed of.

13.09.2023

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**(NIDHI GUPTA)
JUDGE**

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No