

CRWP NO.11796 OF 2021

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

CRWP NO.11796 OF 2021(O&M)

Reserved on: 21-08-2023

Date of Decision: 31-08-2023

Rachna Rathee

... Petitioner(s)

Versus

State of Haryana & others

...Respondent (s)

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present:- Mr. Sachit Punia, Advocate
for the petitioner(s)

Mr. Manish Bansal, Sr. D.A.G., Haryana.

Mr. Ankit Chahal, Advocate
for respondent no.4.

ANOOP CHITKARA, J.

Vide this petition, which was filed on 13.12.2021, the petitioner had come up before this Court for issuance of a writ in the nature of *Habeas Corpus* to release her minor daughter from the custody of her husband and his family.

2. This petition was listed for the first time on 15.12.2021 before a coordinate Bench of this Court.

3. The writ petition refers to two orders Annexure P-4 passed by SDJM, Meham and Annexure P-5 passed by Additional Sessions Judge, Rohtak. A perusal of order Annexure P-4 reveals that the petitioner had filed an application under Section 97 CrPC to produce the minor child and hand over her custody to her, which was dismissed for the reasons that proceedings under Section 25 of the Guardian and Wards Act, 1890 had already been initiated and as such, the Court restrained itself from exercising its power under Section 97 CrPC. Challenging the same, the petitioner filed an appeal before the Sessions Court, however, vide order dated 30.11.2021 passed by Additional Sessions Judge, Rohtak, the same was withdrawn with liberty to seek appropriate remedy before appropriate Court. Subsequently, the petitioner filed the present writ petition.

4. Counsel for the respondent no.4 has handed over a copy of the order dated 19.4.2022 passed by the Family Court, Rohtak. A perusal of said order reveals that the petitioner had filed an application under Section 12 of the Guardian and Wards Act for granting interim custody. The said application was instituted on 9.9.2021 i.e. prior to the filing of the present writ petition, which was filed on 13.12.2021. However, the petitioner concealed the fact of pendency of said application before the Family Court under the Guardian and Wards Act from this Court.

5. Now, vide order dated 19.4.2022, the Family Court after interacting with the child, who is suffering from a serious ailment and is under treatment, did not find it appropriate to hand over her custody to the petitioner and in fact, gave convincing reasons as to why the child should stay with the father. Once an order under Section 12 of the Guardian and Wards Act has been passed, it was for the petitioner to challenge the same in accordance with law. As far as the present writ petition is concerned, it conceals filing of the application under Section 12 of the Guardian and Wards Act and even after the decision of the said application on 19.4.2022, the petitioner did not bring this fact to the notice of the Court when the matter was listed earlier on 22.4.2022.

6. Given above, the custody of the minor child cannot be treated as unlawful or illegal, necessitating issuance of a writ in the nature of *habeas corpus* for her release.

7. Accordingly, the present writ petition is dismissed. All pending applications, if any, shall stand disposed of.

(ANOOP CHITKARA)
JUDGE

August 31, 2023
AK

Whether speaking/reasoned	:	Yes
Whether reportable	:	No