

2023:PHHC:157577

CRWP-10026-2023

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

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Date of Decision:-08.12.2023

Gurvinder Kaur

.....Petitioner

Versus

State of Punjab and Ors.

.....Respondents

CORAM: HON'BLE MR. JUSTICE ALOK JAIN

Present: Mr. Gaurav Kalsi, Advocate for the petitioner.

Mr. Kamalpreet Bawa, AAG, Punjab.

ALOK JAIN, J. (Oral)

1 The present petition has been filed *inter alia* praying for writ in the nature of habeas corpus for immediate release of the detenue namely Agampreet Singh, who is now about 1 year and 6 months old.

2 The brief facts of the matter are that the petitioner was married to respondent No.4 on 18.08.2019 and out of the said wedlock, a child was born on 18.05.2022 and as per the allegation of the petitioner, she was turned out of the house. On 18.07.2023, she lodged a police complaint qua the same but she does not have any proof regarding that. Subsequent thereto, repeated efforts were being made to reconcile the matter but she did not approach any authority.

3 Learned counsel for the petitioner relies upon the judgment reported as 'Smt Meenakshi and Anr. Vs. State of U.P. and Ors., 2021(2) All.

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LJ 329, to submit that a petition of Habeas Corpus should be maintainable and therefore, prays for the custody of the child.

4 Per contra, learned counsel for the respondent has argued that the entire averments made in the petition are false and frivolous. The correct position is that the petitioner left the matrimonial home on her own accord in February, 2023 and the petitioner along with her brothers and other persons forcibly came to the house of respondent No. 4 and stole away gold and also gave injuries to the mother of respondent No.4 qua which an MLR was also recorded. Subsequent thereto, the respondent No.4 filed an application under Section 9 of Hindu Marriage Act, for restitution of his conjugal rights. However, no date is forthcoming as to when the same was filed. After filing of the present petition, the respondent No. 4 has also filed a petition under Section 7 of the Hindu Minority and Guardianship Act, 1956 (for short 'the Act') for appointing the respondent No. 4 as natural guardian and the said matter is fixed for 12.12.2023. In addition to the above, the mother of respondent No.4 has also lodged a criminal complaint invoking provisions of Section 156 Cr. P.C. against the petitioner and her family members for the injuries suffered by her which is also pending adjudication before the Competent Court. The said petition was also filed after the present petition.

5 Learned counsel for the respondent has relied upon the judgment passed this Court 'Poonam Kalsi Vs. State of Punjab and Ors.' to submit that the Habeas corpus petition is not maintainable against the father who is natural guardian as the same cannot be said to be illegal or unlawful. He also relies upon an order passed by the Division Bench of this Court in case of 'Reetu Verma Vs. State of Haryana and Ors.' to substantiate his

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arguments.

6 Heard learned counsel for the parties at length.

7 To the utter shock and surprise, none of the parties has made an endeavour to demonstrate their ability and capability of giving a better environment to the child. The Courts have repeatedly held that the welfare of the child is of paramount consideration. Considering the same, the judgments relied upon by the petitioner as well as respondents do not come to their rescue.

8 There is no denial of the preposition of law that the father is equally entitled to a child's custody and his presence in the family home is necessary for the over all growth of the child as is the presence of the mother. However, it is also settled principle of law and the provisions of Section 6 of Guardianship and Wards Act very clearly state that the child below the age of 5 years should be in the custody of the mother for his conducive growth. The parents were interacted with and efforts have been made to resolve the matter for which it was referred to the mediation also but the same has failed.

9 Considering the fact that the child (detenue) is only 1 year and 6 months old, I deem it appropriate to direct the respondent No.4 to hand over the child today itself from the Court premises to the petitioner.

10. However, the petitioner is bound down that she will hand over the custody of the child to the father on every friday between 4 p.m. to 5 p.m. and the father is further directed to hand over back the child to the mother on Sunday before 5 p.m.

11 Both the parties are directed to maintain such arrangement in place till decision by the Court of competent jurisdiction under Guardians

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and Wards Act, where petition is pending, for better growth for the child and the Court expects that better sense shall prevail on the parents who are fighting with their egos and not considering the future and welfare of the child.

12 This order should not be construed as any expression or opinion while deciding the petition under Section 7 of the Act, which should be decided expeditiously and preferably within 1 year from today, so that before the child enters the school, it would be clear as to under whose custody the child stays or in case of joint custody what is the arrangement being made.

13 All the other issues raised by the parties are kept open and the petitioner is directed to put in appearance before the family Court on 12.12.2023.

14 In case, petitioner fails to put an appearance on 12.12.2023 before the Family Court, the Court shall proceed in accordance with law.

15 With the above observation, petition stands disposed of.

08.12.2023
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(ALOK JAIN)
JUDGE

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