

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRWP No.544 of 2024 (O&M)

Date of Decision:18.01.2024

Suresh Yadav

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM : HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Kuldeep Singh Ahluwalia, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Article 226 of the Constitution of India read with Section 482 Cr.P.C. for issuance of writ in the nature of habeas corpus directing official respondents No.1 to 3 to get released the detenues namely Muskan, Khusi and Sachin, daughters and son of petitioner respectively from the illegal custody of respondents No.6 to 9.

2. In brief, facts are that petitioner is the father of aforementioned detenues. His marriage was solemnized 13-14 years ago with Chandni daughter of Maharaj, resident of Dadumajra, Chandigarh. On 18.06.2018, petitioner went to attend marriage of his friend's son at Mayapuri, Delhi and when he came back, he found that his wife and children were not present at home. He asked about their whereabouts from the neighbours, who told that at about 7 PM, his wife along with children had left the house. Thereafter, the petitioner asked from his relatives and in-laws but he could not get any clue. In this regard, petitioner had also lodged FIR No.74 dated 25.06.2018 under Section 346 IPC at Police Station Rewari Sadan. The petitioner started search of his family with the help of local police and he came to know that respondent No.6, who is a person of notorious

nature, allured his wife with an ulterior motive. It also transpired in the police investigation that from the mobile numbers of private respondents, continuous calls were made on mobile number of wife of the petitioner, details of which were given to the police but despite that local police could not locate and arrest respondent No.6 and his associates. Thereafter, petitioner along with his relatives approached respondents No.6 to 9 and requested them to release the detenues but they did not disclose anything about the whereabouts of his family, rather respondent No.8 threatened him of dire consequences. When the petitioner did not get any clue of detenues, he filed criminal writ petition bearing CRWP No.586 of 2018 before this Court along with his mother-in-law in which wife of the petitioner appeared and the matter was compromised with the intervention of the Court. On the same day, petitioner along with his wife had left for bus stand in a three wheeler and when they reached near Matka Chowk, his wife left his company. Thereafter, in the year 2020, his wife filed a petition under Section 125 Cr.P.C., which was later on withdrawn and the divorce petition filed by her under Section 13 of the Hindu Marriage Act was dismissed as withdrawn. Since then the petitioner does not have any clue about whereabouts of detenues and therefore, being a father, he approached this Court by way of instant petition seeking direction to official respondents No.1 to 3 to release detenues from the illegal custody of respondent No.6.

3. Having heard learned counsel for the petitioner and after perusing the paper book, it transpires that the present petition is an abuse of the process of the Court. Admittedly, the petitioner had approached respondents No.6 to 9 along with their relatives but they did not find the detenues in their illegal custody. For the said purpose, he has taken the help of local police as well. It seems a matrimonial discord, which is evident from the fact that wife of the

petitioner filed a petition for maintenance under Section 125 Cr.P.C. as well as a divorce petition under Section 13 of the Hindu Marriage Act, 1955 against him. Further, a perusal of the order dated 03.03.2020 passed by this Court in habeas corpus petition in CRWP No.586 of 2018 titled as *Suresh Yadav and another Vs. State of Haryana and others* seeking similar relief, indicates that the matter was referred to the mediation where the wife recorded her statement stating that she is ready to join her matrimonial home but she has apprehension that the petitioner will create nuisance at home as he is an alcoholic. Even the petitioner in his statement stated that he is ready to take back his wife Chanda @ Chandni and undertakes to take care of entire family. Furthermore, the Court had given liberty to the wife Chanda @ Chandni to approach the Senior Superintendent of Police, Rewari for redressal of her grievance in case the petitioner failed to take care of her and the children. Mother, being a parent, is a lawful guardian and the children in the company of the mother cannot be said to be in her illegal custody. The petitioner does not even know where his wife is residing nor is she made a party respondent. Moreover, being a father, he has remedy to seek custody of the children and the visiting rights as an interim measure under the Hindu Minority and Guardianship Act, 1956.

4. In view of the aforesaid facts and circumstances, the present petition is dismissed being devoid of merit.

(HARPREET SINGH BRAR)
JUDGE

January 18, 2024
Pankaj*

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No