

2024-PHHC:172299



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRWP-2090-2024 (O&M)
RESERVED ON:12.09.2024
PRONOUNCED ON: 20.12.2024

JASPREET SINGH

.....PETITIONER

VERSUS

STATE OF PUNJAB AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Raman Mohinder Sharma, Advocate
for the petitioner.

Mr. J.S. Rattu, DAG, Punjab.

Mr. Prateek Pandit, Advocate
for respondents No.6 & 7.

SANDEEP MOUDGIL, J (ORAL)

Prayer:-

1. The jurisdiction of this Court has been invoked under Article 226 of the Constitution of India for issuance of a writ in the nature of Habeas Corpus alleging that his minor son namely Harmanveer Singh aged about 9 years be got released, being an illegal confinement of his father-in-law and mother-in-law/respondents No.6 & 7 respectively.
2. A prayer for appointment of Warrant Officer was made to search the premises of respondents no.6 & 7 and at any other place as pointed out by the petitioner to ensure the production of alleged minor detainee in the Court.

Brief factual aspects:-

3. The facts which can be culled out would read that the petitioner got married with Jasleen Kaur on 16.11.2012 and the couple was blessed with a baby boy on 11.04.2014, who has been named as Harmanveer Singh-allegedly the minor detinue in the instant petition.

4. The couple developed differences among themselves and the petitioner went to Canada on to file a petition for divorce on the ground of cruelty against his wife namely Jasleen Kaur, which is pending before the Family Court at Sangrur.

5. During the pendency of said petition, Jasleen Kaur went to Canada on education visa for masters in nursing and is now settled there, since 2021. She is a graduate having done B.Sc. (nursing) and Bachelors in Education (B.Ed). The said course of Master's (nursing) stands completed in 2024, which was for 2 years duration, but Jasleen Kaur has not returned to India and the child is living with respondents No.6 & 7-maternal grandparents (Nana-Nani).

6. It is under these circumstances, the present petition has been preferred for issuance of a writ in the nature of Habeas Corpus to get release the alleged minor child-Harmanveer Singh aged approximately 9 years.

7. The petitioner is father of alleged detinue i.e., male child seeking release of his minor son alleging his custody to be illegal.

8. The marriage between the petitioner and Jasleen Kaur could not proceed for a longer time who, therefore, filed a divorce petition, which is pending before the Family Court at Sangrur. In the month of March 2020, Jasleen Kaur is stated to have taken away the minor child Harmanveer Singh alongwith her against the wishes of petitioner to her parental house. It is also stated on behalf of

the petitioner that various efforts were made by him even after involving close relatives and other respectables apart from family members of both the sides, but Jasleen Kaur refused to give the custody of Harmanveer Singh to the petitioner and even did not allow the child to meet the petitioner/father.

SUBMISSIONS:-

Preliminary objections:-

9. On behalf of respondents No.6 & 7, Mr. Prateek Pandit, learned Advocate has raised a preliminary objection on maintainability of the present petition on three accounts.

- 1. The present petition would not be maintainable seeking writ of Habeas Corpus since the custody of minor child with the maternal grandparents cannot be called as illegal confinement of minor child namely Harmanveer Singh,*
- 2. The present petition is also not maintainable since alternative efficacious remedy under Section 25 of the Wards and Guardian Act as well as Section 6 of Hindu Minority and Guardian Act are available with the petitioner and in fact such petitions are pending.*
- 3. The issue of adjudicating custody of minor child involves disputed question of fact.*

10. On merits, it has been argued on behalf of respondents No.6 & 7, who are parents of Jasleen Kaur (in-laws of petitioner) that the petitioner is a drug addict and alcoholic, who was admitted in de-addiction center as well. The petitioner is also stated to be of cruel and abusive nature, who used to give beatings to their daughter namely Jasleen Kaur. Mr. Pandit, would also stress upon the fact that even the parents of petitioner due to his drug addiction disowned him and published a notice in the newspaper (Annexure R-6/1 dated nil).

11. It is also further submitted that the petitioner was in the habit of forcing the daughter of answering respondents to bring money for helping him out in buying Narcotic Substances for his consumption and on her failure to do so, she was turned out of matrimonial home.

12. In addition to the above, it is argued that now for the last more than five years, the respondents No.6 & 7 are taking care of minor son namely Harmanveer Singh at their own, whereas the petitioner has never bothered to pay even a single penny towards his maintenance or educational expenses etc.

Maintainability:-

13. Before advertng to the merits based on factual aspects, I consider it necessary to test the question of maintainability of present Criminal Writ Petition as raised by respondents No.6 & 7 to whether writ of *Habeas Corpus* can be issued in the circumstances of instant petition.

14. Admittedly the minor child aged approximately 9 years namely Harmanveer Singh is in the custody of maternal grandparents-respondents No.6 & 7 (Nana-Nani) and his mother is settled at Canada since 2021, who is stated to be working at an outlet of eating joint namely 'Sub-way'. It is also on record that mother of minor child had primarily gone to Canada for pursuing two years Master course in Nursing and got the decree in the said course in January 2024. The father is also contesting for custody of the said minor child vide petition under Section 12 of the Guardians and Wards Act, 1890 (hereinafter referred to as 'Act of 1890') since 13.10.2021, which could be gathered from a copy of such petition placed before this Court at Annexure P-1.

15. It is also on record among the parties that the mother of minor child namely Jasleen Kaur has never came to India to visit her son since her departure to

Canada in the year 2021, who is equipped with degree in BSc (nursing) alongwith Bachelor of Education Degree.

16. In the light of above-stated admitted facts it is crystal clear that Harmanveer Singh aged about 9 years is being deprived of love and affection of his both parents since the year 2021.

17. The Habeas Corpus petition principally can be issued only in a situation where there is a detenue found to be in illegal confinement or otherwise not approved by law. It is the Hindu Minority and Guardianship Act, 1956 (hereinafter referred to in short as Act of 1956), which defines and elaborate the kinds of custody for a minor and therefore the question of alleged illegal confinement of Harmanveer Singh needs to be tested under the Act of 1956, within the four corners of the definition of guardian and natural guardian envisaged vide Section 4(b) & (c) with further elaborating it vide Sections 6, 8, 9, 11, 12 and 13, which reads as under:-

4. Definitions.—In this Act,—

(a) “minor” means a person who has not completed the age of eighteen years;

(b) “guardian” means a person having the care of the person of a minor or of his property or of both his person and property, and includes—

(i) a natural guardian,

(ii) a guardian appointed by the will of the minor’s father or mother,

(iii) a guardian appointed or declared by a court, and

(iv) a person empowered to act as such by or under any enactment relating to any court of wards;

(c) “natural guardian” means any of the guardians mentioned in section 6.

6. Natural guardians of a Hindu minor.— *The natural guardian of a Hindu minor, in respect of the minor’s person as well as in respect of the minor’s property (excluding his or her undivided interest in joint family property), are—*

(a) in the case of a boy or an unmarried girl—the father, and after him, the mother: provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother;

(b) in case of an illegitimate boy or an illegitimate unmarried girl—the mother, and after her, the father;

(c) in the case of a married girl—the husband: Provided that no person shall be entitled to act as the natural guardian of a minor under the provisions of this section—

(a) if he has ceased to be a Hindu, or

(b) if he has completely and finally renounced the world by becoming a hermit (vanaprastha) or an ascetic (yati or sanyasi).

Explanation.—In this section, the expression “father” and “mother” do not include a step-father and a step-mother.

8. Powers of natural guardian.—

(1) The natural guardian of a Hindu minor has power, subject to the provisions of this section, to do all acts which are necessary or reasonable and proper for the benefit of the minor or for the realisation, protection or benefit of the minor’s estate; but the guardian can in no case bind the minor by a personal covenant.

(2) The natural guardian shall not, without the previous permission of the court,—

(a) mortgage or charge, or transfer by sale, gift, exchange or otherwise, any part of the immovable property of the minor; or

(b)lease any part of such property for a term exceeding five years or for a term extending more than one year beyond the date on which the minor will attain majority.

(3)Any disposal of immovable property by a natural guardian, in contravention of sub-section (1) or sub-section (2), is voidable at the instance of the minor or by any person claiming under him.

(4)No court shall grant permission to the natural guardian to do any of the acts mentioned in sub-section (2) except in the case of necessity or for an evident advantage to the minor.

(5)The Guardians and Wards Act, 1890 (8 of 1890), shall apply to and in respect of an application for obtaining permission of the court under sub-section (2) in all respects as if it were an application for obtaining the permission of the court under section 29 of that Act, and in particular—

(a)proceedings in connection with the application shall be deemed to be proceedings under that Act within the meaning of section 4A thereof;

(b)the court shall observe the procedure and have the powers specified in sub-sections (2), (3) and (4) of section 31 of that Act; and

(c)an appeal shall lie from an order of the court refusing permission to the natural guardian to do any of the acts mentioned in sub-section (2) of this section to the court to which appeals ordinarily lie from the decisions of that court.

(6)In this section “court” means the city civil court or a district court or a court empowered under section 4A of the Guardian and Wards Act, 1890 (8 of 1890), within the local limits of whose jurisdiction the immovable property in respect of which the application is made is situate, and where the immovable property is situate within the jurisdiction of more

than one such court, means the court within the local limits of whose jurisdiction any portion of the property is situate.

9. Testamentary guardians and their powers.—

(1) A Hindu father entitled to act as the natural guardian of his minor legitimate children, may, by will, appoint a guardian for any of them in respect of the minor's person or in respect of the minor's property (other than the undivided interest referred in section 12) or in respect of both.

(2) An appointment made under sub-section (1) shall have no effect if the father predeceases the mother, but shall revive if the mother dies without appointing by will, any person as guardian.

(3) A Hindu widow entitled to act as the natural guardian of her minor legitimate children, and a Hindu mother entitled to act as the natural guardian of her minor legitimate children by reason of the fact that the father has become disentitled to act as such, may, by will, appoint a guardian for any of them in respect of the minor's person or in respect of the minor's property (other than the undivided interest referred to in section 12) or in respect of both.

(4) A Hindu mother entitled to act as the natural guardian of her minor legitimate children may, by will, appoint a guardian for any of them in respect of the minor's person or in respect of the minor's property or in respect of both.

(5) The guardian so appointed by will has the right to act as the minor's guardian after the death of the minor's father or mother, as the case may be, and to exercise all the rights of a natural guardian under this Act to such extent and subject to such restrictions, if any, as are specified in this Act and in the will.

(6)The right of the guardian so appointed by will shall, where the minor is a girl, cease on her marriage.

11. De facto guardian not to deal with minor's property.—

After the commencement of this Act, no person shall be entitled to dispose of, or deal with, the property of a Hindu minor merely on the ground of his or her being the de facto guardian of the minor.

12. Guardian not to be appointed for minor's undivided interest in joint family property.—

Where a minor has an undivided interest in joint family property and the property is under the management of an adult member of the family, no guardian shall be appointed for the minor in respect of such undivided interest:

Provided that nothing in this section shall be deemed to affect the jurisdiction of a High Court to appoint a guardian in respect of such interest.

13. Welfare of minor to be paramount consideration.—

(1)In the appointment or declaration of any person as guardian of a Hindu minor by a court, the welfare of the minor shall be the paramount consideration.

(2)No person shall be entitled to the guardianship by virtue of the provisions of this Act or of any law relating to guardianship in marriage among Hindus, if the court is of opinion that his or her guardianship will not be for the welfare of the minor.

18. The above statute would elaborate the type of guardians established under law, which includes a natural guardian. The guardian appointed by the will of minor's father or mother is a testamentary guardian whereas declared by a Court of such person empowered to act as a guardian by or under any enactment is known as legal guardian.

19. To examine the question of illegal confinement for this Court in the instant case it is to be seen whether custody of Harmanveer Singh is within any of the categories of guardian described in law vide Act of 1956 or not. The Act of 1956 in Section 6 in clear words has enumerated that in respect of a minor's or a minor's persons including minor's property would be the father a natural guardian and after him the mother. Though Section 6(a) also provide that the custody of minor, who has not completed the age of 5 years mother shall ordinarily be the natural guardian. The expression father and mother is exclusive of the status of a step-father and a step-mother.

20. The age of Harmanveer Singh is undisputedly about 9 years by now and as such it is the father-present petitioner, who as per law though Section 6 of Act of 1956 is the natural guardian.

21. However, the peculiar circumstances making the parties to approach this Court have devilled from a situation where the petitioner and his wife are on logger heads and entangled in multiple litigations living separate from each other since 2019 and immediately thereafter mother Jasleen Kaur left India, who is settled at Canada. At that time leaving the company of petitioner, though Jasleen Kaur-mother took along the minor son Harmanveer in the year 2019 when he was around 4 years of age, but in 2020-21 when herself went abroad, she left the minor Harmanveer Singh into the custody of her own parents, who are respondents No.6 & 7 being maternal grand-father and maternal grand-mother respectively.

22. One thing is crystal clear to the mind of this Court that minor Harmanveer Singh is being deprived of love and affection of both parents as the mother has never returned back to India since the day she went abroad in the year 2020-21, whereas father is contesting the custody alongwith visiting rights before

the Competent Courts since the year 2021 itself, as has come on record in the form of petition under Section 12 of the Act of 1956 dated 13.10.2021 (Annexure P-1), meaning thereby Harmanveer Singh is not in the company or to say technically custody of either of natural guardian and in fact it is the father as per law his natural guardian over and above mother.

23. Section 8 of the Act of 1956 has further described the powers of a natural guardian that somehow shows the purpose and object of defining a natural guardian and other class of guardians, who have been empowered to do all acts, which are necessary or reasonable as well as proper and suitable for the benefit of minor including protection or benefit of minor's estate.

24. A detailed reading of Section 8 would further depict a rider over the powers of a natural guardian, who cannot mortgage or charge or transfer by sale, gift, exchange or otherwise, any part of the immovable property of the minor; or lease any part of the such property for a term exceeding five years or for a term extending more than 1 year beyond the date on which the minor will attain majority. Apart from that even a Court shall not grant permission to the natural guardian to do any of the acts mentioned in Section 8(2) except in the case of necessity or for an evident advantage to the minor.

25. There are other categories of guardians as well like testamentary guardian alongwith the powers or a guardian appointed or declared by a Court. Neither the father nor the mother of minor child Harmanveer Singh has bestowed the status of a guardian on any person so far including the maternal grandparents/respondents No.6 & 7 and, therefore, no body is acting as a testamentary guardian, whereas even by the Court of law, there is no such deputation of a guardian qua Harmanveer Singh in the instant case. Hence,

respondents No.6 & 7 do not fall in any of the categories of guardian i.e., natural guardian, testamentary guardian and legal guardian.

26. In the light of above discussions and circumstances, I do hold that it is the petitioner, who is natural guardian, but is being deprived of custody, which fact cannot be disputed by any stretch of logic or reasons whatsoever, and, therefore, the respondents No.6 & 7 are in illegal custody of minor child Harmanveer Singh. Hence, the present Criminal Writ Petition is maintainable seeking a writ of *Habeas Corpus* since Harmanveer Singh is not in custody of the category of guardians as established by law under the Act of 1956, which principally enunciate law on this issue.

ON MERITS:-

Submission on behalf of the petitioner

27. It is argued on behalf of the petitioner seeking release of alleged detainee namely Harmanveer Singh aged about 9 years and production of him despite being a biological father is deprived of even meeting with his son by respondents No.6 & 7. He would assert that after solemnization of marriage with Jasleen Kaur on 16.11.2012 one male child that is the present detainee borne out of from the said wedlock on 11.04.2014 and on account of temperamental the marriage between the two could not continue and petitioner seeking divorce approached the Courts as has been stated before this Court with the serious allegations of involvement of Jasleen Kaur in extra-marital affairs.

28. Mr. Sharma, learned Advocate for the petitioner would further contend that divorce petition is pending in the Family Court at Sangrur, but Jasleen Kaur has opted not to appear and contest the same as she went abroad

living behind the minor son namely Harmanveer Singh in the company of respondents no.6 & 7. The mother Jasleen Kaur i.e., mother of alleged detainee never came to India to meet Harmanveer Singh and at the same time, respondents No.6 & 7 are not allowing the petitioner to have the company of his son and even the visitation rights are not being accepted to by them.

29. It is under these allegations, the petitioner has approached the Court showing means of livelihood and the sources claiming them to be sufficient enough for maintaining his son and seeking release of Harmanveer Singh from the alleged illegal custody of respondents No.6 & 7.

30. It is also put on record on behalf of the petitioner that he also filed a petition under Section 25 of Guardians and Wards Act read with Section 6 of Hindu Minority and Guardianship Act on 13.10.2021 (Annexure P-1), which is pending for adjudication before the Competent Court having jurisdiction over the matter. The respondents No.6 & 7 have been blamed for not appearing in that petition as well causing harassment and mental agony not only to the petitioner, but creating bad atmosphere for the minor child namely Harmanveer Singh, which is not conducive for his physical and mental growth. It is in this backdrop of such arguments, a writ of *Habeas Corpus* has been sought to get release of Harmanveer Singh, aged about 9 years being his father.

On behalf of the respondents

31. Mr. Prateek Pandit, learned Advocate appearing on behalf of respondents No.6 & 7 reiterated the arguments made while addressing this Court on raising objections for maintainability of the petition. No additional point has been raised by Mr. Pandit, who stated that his arguments be considered the submissions on merits as well.

Discussions:-

32. After holding the present Criminal Writ Petition to be maintainable for the purpose of testing as to whether the petitioner is entitled for a writ of Habeas Corpus, now the Court has much more bigger responsibility while considering the question to whom the custody of minor Harmanveer Singh should go, as has been argued by respondents No.6 & 7, he was taken along by Mother Jasleen Kaur in the year 2019 when she left the company of present petitioner and the petitioner does not have any connection till date with the minor son. The most considerate part for this petition unfolded is that after a short span i.e., to say few months, mother Jasleen Kaur left India with a dream of pursuing further studies i.e., Masters Degree in Nursing, which completed in January 2024. She never came to India even till date to meet her son and to know about his well being including to inquire about the academic growth of Harmanveer Singh. She has not attended a single Parent Teacher Meeting in the school where Harmanveer Singh is studying except sending some amount in the account of her own mother to meet expenses through her parents-respondents No.6 & 7. Even after completion of the degree course, since January 2024 Jasleen Kaur has not bothered to meet her son. She is actually now working on hourly basis at an eating joint namely 'Sub Way', as is evident from a letter dated 20.02.2024 (Annexure R-6/2) .

33. During the course of hearing, it was also informed to the Court that other brothers and sisters of Jasleen Kaur are also settled at Canada and she is living alongwith them, though she herself is enjoying the company of her own family, but is depriving her son the love and affection of a mother, since the age of 4 years till date.

34. It has also though come on record that Harmanveer Singh alongwith matrimonial grandparents/respondents No.6 & 7 made a short visit to Canada to meet her mother, which was for ten months in total at Canada. Jasleen Kaur never made any effort for her son's visa etc., to take him along to Canada.

35. On the other hand, petitioner immediately instituted a petition under Section 12 of the Act of 1956 on 13.10.2021 (Annexure P-1), which is still pending and is not reaching to stage of even consideration for the glaring facts, which are also on record as Jasleen Kaur is not coming to India to pursue that litigation. It shows that Jasleen Kaur has not much concern in her son's custody. Equally respondents No.6 & 7, who are also respondents in that litigation are avoiding appearance and have not filed even a written statement for quite a long time and the trial Court is paralysed on that reason to proceed in the matter, which is hanging for more than 3 years by now.

36. As an abundant caution, this Court called for an affidavit of petitioner vide order dated 14.08.2024 to answer all the aspersion/allegations against him levelled by respondents No.6 & 7/maternal grandparents including qua the ownership of total land possessed by the petitioner details of de-addiction center where he remained admitted, means of maintaining minor child and also on the allegations of his having been disowned by his parents. The said affidavit was taken on record as Annexure P-3.

37. The petitioner has given a detail of immovable property possessed by him individually as well as by his parents, which reads as under:

(i) 21 Bighas 5 Biswas was in the name of Jaspreet Singh, then transferred in the name of mother Harpal Kaur by Jaspreet Singh on 29.10.2021 in village Bahadurpur, Tehsil and District Sangrur.

(ii) 18 Bighas 19 Biswas is in the name of Hakam Singh s/ Harnek Singh i.e. father of Jaspreet Singh.

(iii) 83 Bighas 19 Biswas is in the name of Hakam Singh s/o Harnek Singh i.e. father of Jaspreet Singh being Gair Marusi.

(iv) 81 Bighas 8 Biswas is in the name of Hakam Singh and Jaspreet Singh (petitioner) having possession as Gair Marusi in the village Bahadurpur, Tehsil and District Sangrur.

38. As far as the objection of respondents No.6 & 7 qua petitioner's being an addict is concerned, though to substantiate that argument pleaded his admission in the de-addiction center, the petitioner has deposed in the affidavit that he remained in de-addiction center almost for five months declaring that he is completely recovered and only thereafter was discharged from that center in the year 2016 itself. It is 3 years thereafter Jasleen Kaur left the matrimonial home in 2019 and went to Canada in May 2021.

39. About means to maintain the minor child, the pedigree table has been produced in the affidavit dated 20.08.2024, which reflect that the petitioner is the only son of his parents with two married daughters to set up a case that he owns 21 bighas 5 biswas of agricultural land apart from 81 bighas 8 biswas land jointly owned by him and his father namely Hakam Singh as *Gair Marusi* apart from 18 bighas, 19 biswas owned by his father Hakam Singh having exclusive possession has *Gair Marusi*, measuring 83 bighas 90 biswas in joint possession with his father Hakam Singh. The sufficient amounts has been shown deposited in the bank accounts as Fixed Deposit in the saving bank account apart from HDFC life policy, as detailed in para 3 of the affidavit, which reads as under:-

“(i) A/c No. 15162191006536 in the name of petitioner in Punjab National Bank, Bahadurpur, Tehsil and District Sangrur, Rs. 3 lacs.

(ii) HDFC Life Policy No. 21380832 in the name of Jaspreet Singh of Rs. 5 lacs.

(iii) FDR dated 14.08.2024 of Rs. 8 lacs in the name of Hakam Singh, Punjab National Bank.

(iv) FDR dated 05.02.2024 of Rs. 7 lacs in the name of Hakam Singh, Punjab National Bank.

(v) FDR dated 20.03.2023 of Rs.

(vi) INDIA 6,97, 000/- in the name of Harpal Kaur (mother of petitioner), Punjab National Bank. FDR dated of Rs. 5,51,570/- in the name of Hakam National Bank.”

40. The family of petitioner is consisting of his father and mother and the petitioner, which is earning 70,000/- per killa per annum, as has been detailed in paras 4 & 5 of the affidavit:-

“4. That as per J-Form, the detail of sale of crop of year 2022, 2023 and 2024 is being below: -

(i) 24. 04.2024 Rs. 5,11,875/-

(ii) 12.11.2023 Rs. 6,14,593/-

(iii) 18.04.2023 Rs. 4,30, 312/-

(iv) 23.11.2023 Rs. 2,06, 531/-

(v) 09.11.2022 Rs. 1,31,325/-

(vi) 27.10.2022 Rs. 6,44,265/-

(vii) 08.11.2021 Rs. 4,96,860/-

Besides the sale of crops, the amount in lacs of rupees is lying with the Ahrati/ Commission Agent of the petitioner

5. That presently Out of total land, 30 killas have been given on theka/rent by the petitioner and his father and the rate of theka of one killa land for one year is more than Rs. 70, 000/- per Killa.”

41. On behalf of respondents No.6 & 7, a written statement as well as a counter affidavit was put on record dated 14.08.2024 and 05.09.2024 by and large on identical lines. Major part of such reply is focused on the dispute between the petitioner and his wife namely Jasleen Kaur/mother of the minor son. She was having B.S.c (Nursing) and degree in B.Ed as well at the time, she left for Canada, which is evident from the assertion made in the affidavit citing reason that in order to improve her education and for better future of minor child she has gone to Canada on study visa meaning thereby she did not have sufficient means.

42. However, respondents No.6 & 7 vehemently contended that in the last 5 years, the petitioner has not paid a single penny towards maintenance and education of minor child Harmanveer Singh and therefore, has lost his right to have custody on that account itself. They have also put on record a copy of employment letter in favour of Jasleen Kaur issued by Sub-Way Restaurant # 6133, 1613644 Alberta Ltd. 206 Stafford Dr. S, Lethbridge, AB, T1J 2K9, to show her means as \$16 per hour, who is working as full time "Food Service Supervisor" with approximately 35-40 hours working per week. Certain bank transaction has also been put on record reflecting that Jasleen Kaur is sending money to her mother Navdeep Kaur at periodical intervals alleging the same to be towards maintenance of Harmanveer Singh. On the question of having not taken along Harmanveer Singh with her, respondents No.6 & 7 has made an attempt to define with the argument that his passport expired and therefore, was sent back from Canada in just 10 months.

43. It is immediately after the petitioner came to know that Jasleen Kaur, mother of alleged detainee has left the country and settled permanently at Canada leaving the minor child Harmanveer Singh with respondents No.6 & 7, who are

maternal grandparents, he preferred a petition under Section 25 of Act of 1890 alongwith Section 6 of Act of 1956 claiming custody of minor child (alleged detenue) in the present petition and that is also pending before the Court of law.

44. In addition to the above, an application under Section 12 of Act of 1890 seeking visitation rights has also been filed by the petitioner, but in all the litigations, none of these respondents are appearing despite service and on two occasions, they were ordered to be proceeded *ex-parte*. Once the matter was proceeded by the Courts below as *ex-parte*, application to recall that order is moved and such *modus-operandi* is apparently being adopted by respondents No.6 & 7 only to linger on the adjudication of both these petitions.

45. Even in the petition for divorce filed by the petitioner, it is also submitted that Jasleen Kaur is not appearing and on that account, same is pending for adjudication despite completion of educational qualification since January 2024 under the garb of which she went abroad.

46. It is under these circumstances, the present Criminal Writ Petition has been filed asking for a writ in the nature of Habeas Corpus to get release alleged detenue i.e., Harmanveer Singh (minor child) aged approximately 9 years alleging him to in illegal confinement of respondents No.6 & 7.

47. This Court vide its order dated 14.03.2024, appointed Warrant Officer, who submitted his report dated 05.03.2024. The said report reads as under:-

“In compliance with the orders dated 04.03.2024, passed by Hon'ble Mr. Justice Sandeep Moudgil, the undersigned was appointed as Warrant Officer in the above said case on 04.03.2024. The undersigned alongwith petitioner Sh. Jaspreet Singh reached at Police Station City-2, Khanna, District Ludhiana on 04.03.2024 at around 06:55 PM with regard to release of Sh. Harmanveer Singh

detenue s/o petitioner. Sh. Sewak Singh, ASI (Munshi) was present in the Police Station and he was apprised about the purpose of visit. Entry was made vide DDR No.22 dated 04.03.2024 in the Police Station on computer (Annexure R-1). Thereafter undersigned alongwith petitioner and police party reached at the residence of respondent No.6 & 7 i.e. Sh. Satwinder Singh and Smt. Navdeep Kaur r/o Kothi No.45, City Homes Colony, Khanna, District Ludhiana. At that time, respondent No.7 i.e. Smt. Navdeep Kaur and detenue Sh. Harmanveer Singh were present in the house. Smt. Navdeep Kaur intimated that mother of Harmanveer Singh namely Smt. Jasleen Kaur is living abroad. After some time, Sh. Kulwinder Singh sio Sh. Joginder Singh (real brother of respondent No.6) also reached there. The matter was discussed with them. Sh. Harmanveer Singh was asked about the identity of the petitioner Sh. Jaspreet Singh and he identified him as his father. Thereafter Sh. Harmanveer Singh was again asked separately and also in the presence of the police party as to whether he wanted to go with his father, to which he replied that he does not want to go with his father. Harmanveer Singh further stated that he wanted to meet his grandparents and his father twice or thrice in a month if he is accompanied by the family members of his mother (Nanka family). But at present he does not want to go with his father. Statement of Sh. Harmanveer Singh detenue may kindly be perused at Annexure R-2. Statement of Sh. Jaspreet Singh petitioner may kindly be perused at Annexure R-3. Entry was made vide DDR No.26 dated 04.03.2024 in the Police Station (Annexure R-4). ”

48. The above report would suggest that the alleged detenue was identifying his father and is not averse to meet him, but only if he is accompanied by his maternal family and at that very stage, he was not inclined to go with his father.

49. Despite service, respondents No.6 & 7 were not appearing before this Court and to ensure their presence, which was deemed necessary to reach to a

logical for transparent conclusion and adjudication, this Court ordered the personal appearance of respondents No.6 & 7 alongwith the alleged detainee and requested the State to facilitate their presence on the next date of hearing.

50. Still on the next two dates i.e., 18.07.202, the respondents No.6 & 7 did not come but finally appeared on 13.08.2024 alongwith Mr. Prateek Pandit, learned Advocate, who filed his Power of Attorney.

51. Subsequently on 14.08.2024, a written statement was filed by respondents No.6 & 7 alongwith Annexures R-6/1 to R-6/8, whereas State of Punjab filed a short affidavit of Karnail Singh PPS, Deputy Superintendent of Police, PBI/NDPS-cum-Narcotics and Court Coordination Sangrur additional Charge-sub division Sunam on behalf of respondents No.1 to 5.

52. The State of Punjab after inquiring into the matter from Village Bahaderpur i.e., place of residence of the petitioner, recorded statements of Numberdar Jatinder Singh and Balwinder Singh, Panch apart from the petitioner, put it on record at Annexure R-1/T to R-3/T.

53. In the statement by Jaspreet Singh (Annexure R-1/T) he is on record to say that he want to brought up the son at his own. It is further evident that his father has total 204 bighas of land out of which 21 bighas is in the name of the petitioner and 18 bighas with the father of the petitioner, whereas 160 bighas land belong to Revenue Department, which is being cultivated by him and his father jointly for the last 60 years and as such has tried to show the means for maintaining his son.

54. On similar lines there are statements by one Balwinder Singh, Panch and Jatinder Singh, Numerdard, which has been attested by Sandeep Kumar, HC

Police Post Badrukha, Police Station Longowal, duly verifying and corroborating the stand of petitioner.

55. Lastly on the concern raised by respondents No.6 & 7 qua the petitioner having been disowned by his parents, the petitioner on affidavit depose that he is living with his parents in the same house, once he was back from the de-addiction center and owns immovable and movable properties individually as well as jointly with either of his parents. He further candidly has accepted the fact of disowning him, but that was only out of fear of claiming share in property by disgruntle wife (Jasleen Kaur), which was purely on temporary basis.

Conclusion:-

56. After having held the present Criminal Writ Petition maintainable, had due deliberation and examination of submissions on record as well as gone through the next and foremost vital aspect of the present petition i.e., to test the interest of the minor Harmanveer Singh being of paramount consideration. The circumstances and the material on record goes on to show that the mother Jasleen Kaur is living abroad, since 2021 and has not returned to India ever for a single day to share love and affection as a mother with Harmanveer Singh.

57. The minor son is being taken care and brought up by respondents No.6 & 7, who happen to be his maternal grandparents. But it is not a case that the petitioner ever refused to meet out maintenance expenses, who in fact is pursuing litigation for divorce with the wife as well as to seek custody and visiting rights for his son Harmanveer Singh vide petition dated 13.10.2021 (Annexure P-1). There is no delay on his part by any stretch of imagination. Even before this Court, he is on affidavit to say that he wants the custody of his son Harmanveer Singh

and wishes to maintain and brought up him having quite sufficient means being financially sound as is discussed in the earlier part of this order by this Court.

58. It is also successfully explained by the petitioner that he was though dis-owned at one point of time, but merely on papers under the fear of claiming likely to be staggged by his wife with whom he is facing litigation of divorce, who is not even coming forward either to defend the divorce petition or to contest the petition under Section 25 of Act of 1890 read with Section 6 of Act of 1956, which is being delayed purposely with deliberate intent at the behest of either respondents No.6 & 7 or by mother of minor Harmanveer Singh.

59. From the circumstances, it is abundantly clear that Harmanveer Singh is being deprived of love and affection of both the parents, wherein one of the parent i.e., Jasleen Kaur despite being mother has almost left him from the age of 4 years with maternal grandparents, who do not have sufficient means and themselves are also old aged, though are forcing to retain the custody, but this Court cannot lose sight of the fact that it is practically difficult in that situation for respondents No.6 & 7 to maintain Harmanveer Singh properly if compared with a father, who is being kept away not from his company but from love and affection also, despite being a biological father. Mother herself is not accompanying him at any point of time, since the day she left for Canada in May 2021.

60. Such absence of love and affection for him from both the parents is bound to leave an impact on the mental brought up apart from physical development and overall personality, wherein none of the parent could be said to be taking care or watching interest academically or otherwise, as mother is living abroad, who neither attended a Single Parent Teacher Meeting so far nor ever

visited his School inquiring about the studies and his academic abilities, whereas father is not being permitted even to meet him by respondents No.6 & 7.

61. Even under Section 6 of Act of 1956, it is the father, who is a natural guardian and this fact is universally accepted that there cannot be any better guardian than that of biological parents. One another aspect is also convincing for this Court to conclude the adjudication is that Harmanveer Singh, if sent along with the petitioner, there are other family members in the form of paternal grandparents to whom it is always said as word of advise that *“interest is always more loveable and affectionate than the principal”* to elderly people in a family.

62. Looking at the financial aspects and the property possessed by the petitioner may be individually or even jointly, which in strong probability would finally come to the petitioner in inheritance being the only son, the future of Harmanveer Singh sounds very safe in the company of the petitioner. At the same time, mother is managing her own means by working at an eating joint in Canada and enjoying the company of her own brothers and sisters there has not at all ever bothered to share time with Harmanveer Singh minor son or to take him along to Canada. She is also shown her least interest by not joining in the ongoing litigation, though is having full knowledge about it.

DECISION:-

63. In the light of above enunciated factual aspects, over all circumstances after testing the pleadings on the strength of affidavits from both the interested parties, this Court has no hesitation to hold that the petitioner is a biological father and is much better placed than Jasleen Kaur (mother of minor son Harmanveer Singh) in all aspects, who deserves to have the custody with all expectations from him to brought up with a safe future for this child.

64. Hence, the custody of Harmanveer Singh is directed to be hand-over in the Court itself today to the petitioner, who has come present alongwith his maternal grandparents/respondents No.6 & 7.
65. The said direction stands duly complied with, as Harmanveer Singh has joined the petitioner and agreed to go alongwith him (father).
66. However, the respondents No.6 & 7 would be at liberty to visit Harmanveer Singh after every fortnight for two hours at the place of petitioner with prior intimation through mobile phone.
67. The present petition in the aforesaid terms stands allowed.

20.12.2024

Meenu

(SANDEEP MOUDGIL)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>