

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

234

CRWP-3351-2024
Date of Decision : May 03, 2024

MANDEEP KAUR -PETITIONER

V/S

STATE OF PUNJAB AND OTHERS -RESPONDENTS

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Chandan Singh Rana, Advocate
for the petitioner.

Mr. Raghav Garg, A.A.G, Punjab.

Ms. Gurvir Kaur Gill, Advocate
for the respondents No.6 and 7.

KULDEEP TIWARI, J. (ORAL)

1. Through the instant writ of habeas corpus, the petitioner seeks release of her minor children/alleged detenues from the illegal custody of respondents No.6 and 7.
2. The averments made in the instant petition, are that, the petitioner was married to one Navdeep Singh son of the respondents No.6 and 7. Out of their wedlock, two twins/alleged detenues, namely, Harneet Kaur (daughter) and Gurkirat Singh (son) were born on 07.08.2019. Unfortunately, the demise of the petitioner's husband occurred on 16.09.2023, whereupon, owing to some differences, the petitioner along with her children/alleged detenues went to her parental house. However, on 20.03.2024, in the absence of petitioner's parental family members, the respondents No.6 and 7 forcibly took away the petitioner's minor children/alleged detenues. Consequently, apprehending harassment to her

minor children/alleged detenues, as also apprehending danger to their upbringing and future, the petitioner has sought release of her minor children/alleged detenues from the illegal detention of respondents No.6 and 7.

3. On 16.04.2024, a Co-ordinate Bench of this Court had issued notice upon the instant petition, which has resulted in the respondents No.6 and 7, along with their minor grandchildren/alleged detenues, causing appearance before this Court through their validly engaged counsel.

4. The learned counsel for the respondents No.6 and 7 submits that, at this stage, although the respondents concerned do not have any objection to hand over the custody of their minor grandchildren/alleged detenues to the petitioner, however, they cannot be said to be illegally detaining them, inasmuch as, after demise of their only son, they have been looking after them in the best way possible.

5. The learned counsel for the respondents No.6 and 7 further submits that, although they are handing over custody of their grandchildren, however, since their welfare lies with them, therefore, for retaining/claiming their custody, they are in the process of instituting an appropriate motion before the learned Family Court concerned.

6. Be that as it may, this Court has heard the learned counsels for the parties and is of the considered opinion that, taking into account the age of the minor children/alleged detenues, the prime right of custody vests in the petitioner, her being their natural mother. Moreover, when the petitioner is a hale and hearty woman, besides when she has not

performed second marriage after demise of her husband, this Court believes that she is well capable to take care of her children.

7. Insofar as argument of the learned counsel for the respondents No.6 and 7 *qua* them approaching the learned Family Court is concerned, this Court is not making any comments upon their right to maintain any such motion. However, since both the parties are, at this stage, *ad idem* that the custody of the minor children be handed over to the petitioner, but rights being reserved to the respondents No.6 and 7 to claim their custody before the learned Family Court, this Court deems it appropriate to, instead of transferring the custody of the minor children in the Court today, direct the respondents No.6 and 7 to, this evening, visit the parental house of the petitioner and hand over custody of the minor children to the petitioner there. Since the minor children have been residing with the respondents No.6 and 7 for the past 2½ months, therefore, in the interest of all, the petitioner shall, as she has no objection, allow the respondents No.6 and 7 to stay in her parental house until tomorrow evening, whereupon, they will leave after leaving the minor children there.

8. At this stage, the learned counsel for the respondents No.6 and 7 has requested that, until the respondents concerned approach the learned Family Court for custody of their minor grandchildren, they may kindly be granted their visiting rights for the next one month. Therefore, the petitioner is directed to allow the respondents No.6 and 7 to, on every Sunday, for the next one month, to meet their grandchildren at her parental house.

9. This Court also deems it appropriate to direct the learned Family Court concerned, where the respondents concerned may file an appropriate motion for claiming custody of the minor children, to expeditiously decide such motion, if any moved.

10. It is clarified that anything observed hereinabove is only for the purpose of deciding the instant habeas corpus petition and it shall not have any bearing on the motion, if any instituted by the respondents No.6 and 7, for custody of the minor children.

11. Disposed of accordingly.

12. A copy of this order be supplied to the learned counsel for the petitioner, and, to the learned counsel for the respondents No.6 and 7, under signatures of Special Secretary of this Court, for compliance.

May 03, 2024
devinder

(KULDEEP TIWARI)
JUDGE

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