



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

243

CRWP-5233-2024
Date of decision: July 2nd, 2024

Dr. Vinod Kumar
.....Petitioner

Versus

State of Haryana and others
.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Ranvijay Singh, Advocate
for the petitioner.

Ms. Deepshikha Chauhan, Assistant Advocate General,
Haryana.

MANJARI NEHRU KAUL, J. (ORAL)

The instant petition has been filed under Article 226 of the Constitution of India for the issuance of a writ in the nature of Habeas Corpus directing the official respondents to release the detenue- Yuvraj Singh son of the petitioner from the illegal custody of the private respondents.

2. Mr. Sudhir Rana, Advocate, has put in appearance on behalf of respondents No.4 and 5 and filed memorandum of appearance, which is taken on record.
3. Learned State counsel has filed status report by way of affidavit of Deputy Superintendent of Police, Traffic, Rewari, which is taken on record subject to just exceptions. Copy supplied to the counsel opposite.
4. Before proceeding further, it is important to discuss the scope and authority of this Court in issuing a writ of habeas corpus

under Article 226 of the Constitution of India. It must be understood

that in cases of discord between two parties, this Court is not the appropriate forum to thoroughly examine the legality of a child's custody. Such matters are typically addressed under personal laws governing guardianship of minor, such as The Hindu Minority and Guardianship Act, or The Guardians and Wards Act. Consequently, the scope of the writ of habeas corpus in these circumstances is limited and can only be issued when the detention of the minor by the other parent is proven to be illegal and without any legal authority. This position was recently reaffirmed by Hon'ble the Supreme Court in ***Nirmala Versus Kulwant Singh and others 2024 SCC OnLine SC 758*** in the following terms:-

“12. It can thus be seen that this Court has held that the habeas corpus is a prerogative writ which is an extraordinary remedy. It has been held that recourse to such a remedy should not be permitted unless the ordinary remedy provided by the law is either not available or is ineffective. It has been held that in child custody matters, the power of the High Court in granting the writ is qualified only in cases where the detention of a minor by a person who is not entitled to his legal custody. It has further been held that in child custody matters, the writ of habeas corpus is maintainable where it is proved that the detention of a minor child by a parent or others was illegal and without any authority of law.

13. This Court further held that in child custody matters, the ordinary remedy lies only under the Hindu Minority and Guardianship Act or the Guardians and Wards Act as the case may be. It has been held that there are significant differences between the enquiry under the Guardians and Wards Act and the exercise of powers by a writ court which is summary in nature. It has further been held that what is important is the welfare of the child. It has been further held that where the court is of

the view that a detailed enquiry is required, the court may decline to exercise the extraordinary jurisdiction and direct the parties to approach the civil court.

14. In the facts of the said case, this Court found that the child being a minor, aged 1½ years, cannot express its intelligent preferences and in the facts and circumstances of said case, the father being the natural guardian was justified in invoking the extraordinary remedy seeking custody of the child under Article 226 of the Constitution of India.”

5. Turning to the facts of this case, it is evident and has not been disputed that there is a matrimonial dispute between the petitioner and respondent No.4, the parents of the alleged detainee. The petitioner has filed a divorce petition seeking the dissolution of marriage before the Family Court, Rewari. During arguments, learned counsel for the petitioner alleged that respondent No.4, mother of the alleged detainee has been a drug addict for many years. However, apart from these unsubstantiated claims, the petitioner has not provided any evidence to support this assertion.

6. Furthermore, it is also a matter of record that on 05.12.2023, respondent No.4 moved an application with the police alleging that she had been physically assaulted by the petitioner, who had caused considerable damage in her house, while in an inebriated state. Pursuant to the application, the duty officer, upon visiting the scene, found the petitioner under the influence of alcohol. In light of these circumstances, and due to physical abuse and other forms of mistreatment, which finds detailed in the affidavit dated 27.06.2024 filed by the State in this Court, respondent No.4 left her matrimonial home with her minor child (alleged detainee), to reside at her parental

home.

7 Given these circumstances and events, and considering the paramount importance of the welfare of a child, it cannot be said that the minor child (alleged detainee) is in the illegal custody of his mother, who is the natural guardian under the law. Therefore, this Court is not inclined to entertain the present petition under Article 226 of the Constitution of India, as the petitioner has alternative legal remedies available. The petitioner can approach the appropriate forum, especially since he has already sought dissolution of his marriage with respondent No.4 in the Family Court.

8. As a sequel to above, no ground is made out for issuance of a writ in the nature of Habeas Corpus. The instant petition accordingly stands dismissed.

July 2nd, 2024
Puneet

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : No