



IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

CRWP-8218-2024
Date of Decision: 29.08.2024

ASHOK KUMAR
.....PETITIONER
VERSUS
STATE OF PUNJAB AND ORS
.....RESPONDENT(S)

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Nand Lal Sammi,
Advocate for the petitioner.

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

Mr. Fatehjeet Singh,
Advocate for respondent no. 4 and 5

SANDEEP MOUDGIL, J

1. The jurisdiction of this court under Article 226 of the Constitution of India has been invoked for issuance of writ in the nature of Habeas Corpus seeking directions to Respondents no.2 and 3 to get released the detenue namely Lakshay, aged about 15 years 7 months, grandson of the petitioner, from the illegal custody of private respondent no.4.
2. The brief facts of the case stated in brevity are that the petitioner is the real grandfather of the detenue, s/o Varinder Kumar who is s/o the petitioner and Varinder Kumar was married to Navita Kanda in the year 2007 wherein the detenue was born out of the wedlock in the year 2009. Initially, the detenue remained in the custody of his parents, who are presently residing in Germany.



The detainee, who was staying with the petitioner had gone to Germany in March, 2023, to meet his parents and came back from Germany on 10.07.2024 after taking his 9th class examinations in School at Germany and now he is to go back to further pursue his studies of 10th class in Germany as new academic session has already begun in August in Germany. Respondent No.4, who was wife of the petitioner, had ran with respondent no.5 and later on got married with him after breaking all nuptial ties with the petitioner. Thereafter on 22.08.2024 at 10 A.M., she came, with respondent No.5, to meet the petitioner and requested to take the detainee along with them out of love and affection for two-three days. The petitioner after taking permission from detainee's parents telephonically allowed them to take the child along with them but, they did not return the child nor have done so till today so that the child may be sent back to Germany to join his parents over there and attend his next academic session of 10th class. Now, respondents No.4 & 5 are saying that they have all the love and affection with the child and shall not return the child. Thus, the detention of the detainee by respondents No.4 & 5 is totally illegal, unconstitutional and unlawful, therefore, the present writ petition.

3. It is contended by the learned counsel for the petitioner that the respondents No.4 & 5 have detained the minor child illegally and unlawfully and are not returning the child to the petitioner or his biological parents so that the minor child may join his parents and take his studies of 10th class in Germany. The studies of the child are suffering very badly. Respondents No.4 & 5 have no right to detain the child since the first right is of the parents therefore they have their action is illegal and unconstitutional and violative of the provisions of Article 21 of the Constitution of India and as such the respondents No.2 & 3 may



be directed to get the detainee released immediately from the clutches of respondents No.4 & 5.

4. Vide order dated 28.08.2024, this Court had issued notice of motion to the State and directed the State to file reply by way of affidavit of Commissioner of Police, Jalandhar, and also directed the Commissioner to ensure that the alleged detainee is not deported outside the country till further orders. The matter was ordered to be listed on 29.08.2024.

5. Today, Mr.Fatehjeet Singh, Advocate, has put in appearance and filed his Vakalatnama on behalf of respondents No.4 & 5 and has contended that the child is staying with these respondents with his own sweet will and wishes and as such his detention is neither illegal nor unconstitutional. The child may be asked in this regard, if this Hon'ble Court deems it appropriate.

6. On the other hand, the State has produced the minor child – Lakshay Kumar, before this Court and he was asked, as to whether he has been illegally detained and kept by respondents No.4 & 5 to which he has stated that he does not want to accompany his grandfather i.e the petitioner rather he is willing to go with his grandmother Smt.Santosh Rani w/o Raj Kumar i.e respondent no.4. He has got recorded his statement to that effect and has also stated that he is making his statement without any fear, coercion or undue influence. The statement of the child – Lakshay Kumar, aged 15 years, dated 29.08.2024 is reproduced herein below:-

STATEMENT OF LAKSHAY , 15 YEARS GRANDSON OF ASHOK KUMAR R/O Village Dugri , Police Station Division No.7 , Jalandhar Post office Rahmpur , Distt Jalandhar

ON S.A



It is stated that my grandfather Ashok kumar aged 65 years S/o Durga Das R/O HOUSE NO 273, BASTI DAMISHMANDA , JAL-I DIST JALANDAR has filed the present petition under Article 226 of the Constitution of India for issuance of a writ in the nature of Habeas Corpus. It is stated that I do not wish to accompany my grandfather, Rather I am willing go with my grandmother Smt. Santosh Rani W/o Raj Kumar .

I am making the afore-said statement without any fear, coercion or undue influence.'

7. It is very unfortunate that nowadays children are tossed like balls in between the warring/fights of the family members. The result is that the child is left with such trauma, who invariably tutors the mind of the child to either take vengeance from the family members or keep himself aloof from the social fabric of family group. A child is bound to have love, guidance, care and affection, from every family member which are the birth rights of every child. However, what is happening in the society is, on one pretext or the other, the social fabric or the roots of oneness of the family is degrading while inculcating the modern-western culture and depriving the child of the normal love and affection and caring of family love.

8. For a child, a grandparent is little bit parent, a little bit teacher and a little bit best friend. In the instant case wherein the detinue has been deprived of love and affection of his grandparents is a perfect example of how disintegration of family takes a toll on mental health of a child where he has to chose between his grandparents.



9. This Court while taking into consideration the facts of the present case feels fully satisfied that the child is staying willfully and happily with respondents No.4 & 5 and has not been detained illegal, forcibly with the help of musclemen as alleged in the petition by the petitioner. Therefore, no ground is made out for the issuance of a writ of Habeas Corpus, as prayed in the present petition.

10. Consequently, the facts in the present petition are misconceived and accordingly, the present petition is hereby ordered to be dismissed on this very ground.

29.08.2024
Anuradha

(SANDEEP MOUDGIL)
JUDGE

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