

CRWP-9613-2023

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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CRWP-9613-2023
Date of Decision :- 05.03.2024

Amandeep Kaur

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON’BLE MR. JUSTICE ALOK JAIN

Present: Mr. Vivek K. Thakur, Advocate for the petitioner.

Mr. Hakam Singh, AAG, Punjab.

Ms. Supriya Garg, Advocate for respondent No. 4.

ALOK JAIN, J.

1. The present petition has been filed under Article 226/227 of the Constitution of India, praying for issuance of a writ in nature of Habeas Corpus and directing respondents No. 1 o 3 to produce the minor child of the petitioner namely ‘Hartej Singh’ from the illegal detention of respondents No. 4 to 6.
2. That the brief facts leading to the filling of the present writ petition are that the marriage of the petitioner was solemnized with

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Davinder Singh son of Sohan Singh on 03.03.2014 and out of the said wedlock, one son namely Hartej Singh (detenue) was born on 20.03.2015.

3. That the petitioner along with her family is residing in her matrimonial home, however, in the year 2018, her husband Davinder Singh had gone abroad and the petitioner along with her son and father-in-law namely Sohan Singh (respondent No.4) were residing in her matrimonial home at village Saiflabad.

4. That the petitioner/mother had claimed that when the husband of the petitioner is living abroad, her father-in-law (respondent No.4) started misbehaving and doing wrong acts with her and when the husband of the petitioner returned back on 26.01.2023, she disclosed the said fact to him but he ignored the allegations.

5. That on 10.05.2023, he left the petitioner at her parental home and when she came back to her matrimonial home, the respondent No.4 - Sohan Singh forcibly took away her minor son Hartej Singh (alleged detenue) from her and kept him at the house of respondent No.5 - Kulwinder Kaur and the petitioner immediately reported the matter to the police on 25.08.2023, which was numbered as Local-192 dated 25.08.2023. A copy of the said application dated 25.08.2023, is annexed herewith as ANNEXURE P-1.

6. That on 08.09.2023, the respondent No.5 i.e. sister-in-law of the petitioner namely Kulwinder Kaur, came with her servant namely Lakho and two unknown persons and she grabbed the petitioner with her hairs and threw her on the ground and out of the said persons, a thin person held the arms of the petitioner and another person tied a cloth around her

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head and hit her and the servant of respondent No.5 namely Lakho pressed her neck. Even, the respondent No.5 forcibly put 4 intoxicated tablets into the mouth of the petitioner and thereafter, an unknown person took off my clothes and outraged my modesty and, in this regard, the petitioner got registered an FIR No.68 dated 19.09.2023. For a ready reference, the copy of FIR No.68 dated 19.09.2023 registered under Sections 323, 324, 342, 34 IPC at Police Station Fattu Dyinga, District Kapurthala, is annexed herewith as ANNEXURE P-2.

7. That during the aforesaid incident, the petitioner was given merciless beatings and she even sustained injuries in the alleged occurrence and as per the MLR, she sustained total 07 injuries, out of which, injury No.1, 2 and 6 are blunt in nature and injury No.3 and 4 are shown to be caused by sharp edged weapon. A copy of the said MLR dated 08.09.2023, is annexed herewith as ANNEXURE P-3.

8. Per contra, learned counsel for respondent No.4 (Father-in-law) filed his written statement and argue that in absence of husband (Davinder Singh), the petitioner became an unchaste women as she started developing illicit relationship with other men and she terminated her pregnancy on 23.12.2020 that is, two year after her husband had left the country. The counsel further submits that the adulterous relationship of petitioner being mother disentitled her to custody of children.

9. This Court at the outset was informed that an effort can be made to amicably resolve the matter. Hence, this Court vide order dated 18.10.2023 relegated the parties to the Mediation and Conciliation Centre of this Court. However, since none of the parties were appearing before the

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Mediator after 02.11.2023, hence, the Mediation was directed to take place near their residence at the Mediation and Conciliation Centre, District Court, Kapurthala.

10. In pursuance of the same, a report dated 09.01.2024 was received from the Mediation and Conciliation Centre, District Court, Kapurthala that in spite of many individual and joint efforts, the case could not be settled, therefore, the case was proceeded with on merits.

11. Learned counsel for the petitioner relies upon a judgment passed by a Coordinate Bench of this Court in case titled as ***“Rashneet Kaur Vs. State of Haryana and others”*** in ***CRWP-3251-2022***, to substantiate his arguments that the custody of a minor child must remain with her biological mother as maternal care and affection is indispensable for the healthy growth of the child.

12. *Per contra*, learned counsel respondent No. 4 relies upon the judgments passed by this Court in the cases of ***“Maninder Singh Sekhon Vs. State of Punjab and another”*** in ***CRWP-9905-2022***, ***“Dr. (Mrs.) Veena Kapoor Vs. Sh. Varinder Kumar Kapoor”***, (1981) 3 SCC 92 and ***“Sakina Vs. State of Punjab and others”*** in ***CRWP-2403-2010*** and submits that the writ of habeas corpus is not maintainable as the child is living with his paternal grandparents and is not an illegal custody. It is further submitted that the interest and welfare of the child is paramount and not the claim of any parent while deciding the question as to with whom the custody of the child shall remain.

13. Heard learned counsel for the parties.

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14. Merely, because there are certain allegations on the character of the petitioner, the same shall not vitiate her right as a mother over the child as it is impossible to get the character certificate of the father who is being living away from his wife and the child for the last more than 05 years. More so, the application under Guardianship and Wards Act is pending to decide the issue of custody. Since, the corpus has been produced, the prayer made in the present petition for habeas corpus does not survive, but the parties have prayed for apt directions till the application under the Guardianship and Wards Act is decided.

15. In light of the above, the ends of justice would be met, if the present petition is **disposed of** by giving both the parents right of shared parenting which shall be followed by considering following directions:

1. The respondent No. 4 shall hand over the custody of the child to the petitioner-mother on every Friday at 05:00 P.M, who will be responsible to send the child back to respondent No. 4 on Sunday before 05:00 P.M.
2. The time mentioned in this direction shall be adjustable by one hour (on either side) for which the petitioner and respondent No. 4 shall appropriately communicate with each other.
3. Whenever there are school holidays of four days and more including summer break, winter break, Dussehra, Diwali and any other vacation, same shall be shared equally by both the parents i.e. 1st half shall be with father and 2nd half shall be with mother, subject to mutual adjustment.
 - (i) On special occasion of the birthday or intervening occasion, the mother shall have a right to meet child during day for a minimum three hours subject to the time to be decided mutually.
 - (ii) The mother is entitled to talk to the child daily on phone call/video call to know the well being of the child.

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4. Both the parties shall maintain peace and harmony in the presence of child and shall not tutor the child against each other.
5. The petitioner shall put in appearance before the Court where an application under the Guardianship and Wards Act has been filed by the grandfather of the detenue and it shall be open to the petitioner to raise her counter claim, as admittedly the child was in her custody right upto August 2023.
6. The Court of competent jurisdiction before whom the application under Section 7 of Guardianship and Wards Act is pending shall decide the same expeditiously but not later than 01 year from today and shall not grant any unnecessary adjournments.
7. During the pendency of the application under Guardianship and Wards Act, the respondent No. 4 shall give a sum of Rs. 2,000/- on every weekend to the petitioner-mother for taking care of the child, however, this amount is only tentative and may be increased as per any mutual agreement between the parties and the petitioner is also at liberty to avail her appropriate remedy under law to seek maintenance from petitioner No. 4.
8. It is also made clear that, in case, respondent No. 4 leaves the country and the child (detenue), the detenue shall automatically be handed over in the custody of the petitioner-mother, as in the absence of the father, the natural guardian of the child is the biological mother.
9. However, keeping in mind the fact that an application for Guardianship and Wards Act has been filed by the grandfather, only considering the love and affection of the grandparents towards the detenue, the responsibility of ensuring that the detenue meets his grandparents once in every 15 days i.e. on every alternate Friday shall be shifted upon the petitioner-mother and the petitioner-mother will also be duty bound to ensure that she makes the detenue communicate with his father

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on every alternate day during the time when the child is in her custody subject to the timings to be fixed between both of them.

10. This petition or the order passed herein shall not curtail the petitioner’s right available to her in accordance with law.

In addition to above shared parenting plan, it is directed to both the parties that the focus of both parents and grandparents should be for the welfare of child and to provide conducive atmosphere for all around growth and development and all the parties refrain themselves from talking ill about each other and make any attempt to tutor the child against the other parent.

16. In light of the directions passed above, which shall meet the ends of justice, the present petition stands disposed of.

(ALOK JAIN)
JUDGE

05.03.2024
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Whether speaking/reasoned:-	Yes/No
Whether Reportable:-	Yes/No