



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRWP-9705-2024
Date of decision : 28.11.2024

Paramjeet KaurPetitioners

versus

State of Punjab and othersRespondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Petitioner in person with
Mr. Amandeep S. Mann, Advocate
for the petitioner.

Mr. J.S. Arora, D.A.G., Punjab.

Respondent No.5 in person with
Mr. Bikramjit Singh Randhawa, Advocate
for respondents No.5 to 7.

RAJESH BHARDWAJ, J. (Oral)

1. Present petition has been filed for the issuance of a writ in the nature of Habeas Corpus for appointing warrant officer and directing the official respondents no. 2 to 4 to search 'Gurfateh Singh' (Son of petitioner) aged about 03 years, and 'Varseerat Kaur' (Daughter of petitioner) aged about 1 year at the premises of the private respondents No.5 to 7 or at any other place and appropriate directions must be issued to official respondents no. 2 to 4 to produce the detenues from the illegal custody/confinement of the private respondents no.5 to 7 before this Hon'ble Court.

2. Notice was issued in the present case on 04.10.2024. Both the parties are present in person before the Court. On the last date of hearing, the Court had interacted with both the sides and granted an



opportunity to make efforts for some amicable settlement. However, on interacting today, it is apparent that the same could not materialized.

3. It has been submitted by respondent No.5, who is the father of the children, that the petitioner had committed cruelty with the children and thus, the children are not safe in her custody.

4. The petitioner, on asking by the Court has admitted the fact of hitting the younger child. However, she has submitted that though she had hit the younger child but the minor incident has been exaggerated by respondent No.5.

5. Learned counsel for the petitioner has submitted that the children are of the young age and thus, the custody of the children be given to the petitioner. He has relied upon the judgment passed in ***‘CRWP-7646-2024 (Neelu Talotra Vs. State of Punjab and others)’***.

6. Learned counsel for respondent Nos.5 to 7 has opposed the submissions made by learned counsel for the petitioner.

7. Heard. This Court finds no ground to interfere in the matter as the detenues are not in illegal custody of anyone rather they are in custody of the father. The Hon’ble Supreme Court in catena of judgments has highlighted the necessity of considering child’s welfare in custody disputes rather than relying solely on legal rights and welfare of the child should be the paramount consideration.

8. Similar view has been taken by the Hon’ble Supreme Court in ***“Somprabha Rana and others Vs. The State of Madhya Pradesh and others, 2024 CriLR(SC)1034”***, which reads as under:-

“We believe that considering the peculiar facts of the case and the child’s tender age, this is not a case where custody of the child can be disturbed in a petition under Article 226 of



the Constitution of India. Only in substantive proceedings under the GW Act can the appropriate Court decide the issue of the child custody and guardianship. Regular Civil/Family Court dealing with child custody cases is in an advantageous position. The Court can frequently interact with the child. Practically, all Family Courts have a child centre/play area. A child can be brought to the play centre, where the judicial officer can interact with the child. Access can be given to the parties to meet the child at the same place. Moreover, the Court dealing with custody matters can record evidence. The Court can appoint experts to make the psychological assessment of the child. If an access is required to be given to one of the parties to meet the child, the Civil Court or Family Court is in a better position to monitor the same”.

9 Hon’ble the Supreme Court in **‘Seema and another Vs. The State of Haryana and others’** passed in SLP (Crl.) No.4689 of 2023 has held as under:-

“It is settled law that in case of a dispute between the husband and wife with regard to the custody of their child, ordinarily a habeas corpus petition would not be tenable”.

10. However, the parties if so advised, would be at liberty to pursue their alternative remedies for taking custody of the children by approaching the appropriate Court. In case any such petition is filed, same would be decided expeditiously by the concerned Court in accordance with law.

11. Disposed of.

(**RAJESH BHARDWAJ**)
JUDGE

28.11.2024
ps-I

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