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

CRWP-318-2025

Date of Decision: 15.01.2025

NEELESH GUPTA

... Petitioner

Versus

STATE OF HARYANA AND OTHERS

... Respondents

CORAM:- HON'BLE MR. JUSTICE SANJIV BERRY.

Present:- Mr. Gourav Jain, for the petitioner.

Mr. Praveen Bhadu, AAG, Haryana.

SANJIV BERRY, J. (ORAL)

The instant petition has been preferred by the petitioner under Article 226 of the Constitution of India for issuance of a Writ in the nature of Habeas Corpus praying for release of the detenue '*Master Gauransh*' minor son of the petitioner from the illegal detention of private respondents No. 5 to 7 and further to issue direction to respondent No.5 to 7 to produce the detenue; further to direct respondent No.4-wife to grant adequate visitation rights to the petitioner to meet his minor son; further to issue any such writ or direction, as deemed fit by this Court.

2. In *nutshell*, the brief facts of the case are that the marriage of the petitioner was solemnized with respondent No.4 Mansi Modi on 01.02.2017 and out of their wedlock one child namely Master Gauransh was born on 06.05.2018. Due to temperamental difference between parties,



Mansi Modi wife of the petitioner, without informing him took the minor son Master Gauransh with her and shifted to her parental house at Faridabad. It is averred that since May 2022, respondent No.4 Mansi Modi is residing in Pune for her work and his son is residing with his Maternal grand-parents, and despite several requests by the petitioner the private respondents did not allow him to meet his son. Hence the present petition.

3. It is, *inter alia* contended by learned counsel for the petitioner that the marriage of the petitioner with the respondent No.4 Mansi Modi was solemnized on 01.02.2017 according to Hindu rites and ceremonies and after their marriage they had cohabited at Mumbai and from their wedlock one male child Master Gauransh was born on 06.05.2018. He contends that after passage of time in the marriage respondent No.4 pressurized the petitioner to demand his share in his father's property and wanted to live in a separate accommodation. He contends that the behaviour of the respondents worsened day-by-day. Alleged that on 18.06.2019 respondent No. 4 without asking the petitioner or his parents took the minor son along with her and shifted to her parents house. He contends that respondent No.4 had filed several complaints as mentioned below against petitioner and his family members:-

- (i) Complaint under Domestic Violence Act titled as *Mansi Modi vs. Neelesh & Others*, COMA-553-2020 which is pending before learned Judicial Magistrate First Class, Faridabad for 15.01.2025.
- (ii) Petition for maintenance under Section 125 Cr.P.C titled as



Mansi Modi & another vs. Neelesh Gupta, MNT 125/213/2020 which is pending before learned Principal Judge, Family Court, Faridabad which is now pending for 17.03.2025.

(iii) One FIR No.350 dated 01.10.2022 under Section 34/354/377/406/498-A/506/509 IPC is registered at Police Station, Faridabad in which challan has been filed in learned trial Court and the same is pending for 15.01.2025.

(iv) Respondent No.4 had also filed a Suit for Permanent and Mandatory Injunction titled as Mansi Modi & another vs. Neelesh Gupta and others, CS-125/2022 which is dismissed by the Family Court and now the appeal before High Court is pending in FAO-5701/2023 for 01.04.2025.

(v) Respondent No. 4 had also filed a Divorce Petition bearing HMA No. 1787 of 2024 titled as Mansi Modi Vs. Neelesh Gupta which is pending before learned Principal Judge, Family Court, Faridabad for 20.03.2025.

4. Learned counsel for the petitioner further contends that respondent No. 4 is not residing with the minor child since May 2022, as she is doing job in Pune and the child has been left with the respondent No.5 & 6 i.e. maternal grand-parents and the petitioner is not allowed to meet his son, depriving the love, affection and care of the petitioner. In support of his contention he had referred to judgment dated 20.12.2024 passed by this Court in ***CRWP-2090-2024, titled as Jaspreet Singh vs. State of Punjab and***



Others. He contends that the petitioner has not approached the ‘Guardian Court’ for seeking custody of the minor son as it will not be an effective remedy, hence has sought the issuance of instant Writ of Habeas Corpus for production and release of the minor. Hence, he prays for issuance of writ of Habeas Corpus for production and release of detainee Master Gauransh (minor son) of the petitioner.

5. On asking of Court, Praveen Bhadu, AAG, Haryana accepts notice on behalf of official respondents and has assailed the submissions made by the learned counsel for the petitioner and argued that in the present case the custody of the minor is with the mother since 18.06.2019, although multiple litigations are going between the petitioner and respondent No.4 wife, but the petitioner had not availed remedy available under the Guardian and Wards Act and has filed the instant petition for issuance of Writ of Habeas Corpus which can only be issued in extraordinary circumstances and not as a matter of routine, especially since the petitioner has produced nothing on record to show that the minor is not residing with the mother and in such circumstances, a detailed inquiry is required for which the petitioner has to seek remedy before the Civil Court, thus, prayed for dismissal of the petition.

6. I have heard the submissions made by learned counsel for the petitioner as well as learned counsel for the State and perused the record.

7. After considering the rival contentions and perusing the record, it transpires that as per the factual position narrated by the petitioner is concerned, the marriage of petitioner with respondent No.4 was solemnized



on 01.02.2017 and out of this wedlock a male child 'Master Gaurnsh' was born on 06.05.2018. It is the contention of the petitioner that respondent No.4 left the matrimonial home on 18.06.2019 alongwith minor son and since then the minor is in custody of respondent No.4. It is further the case of the petitioner that following the matrimonial discord, various cases are pending *inter se* the petitioner and respondent No.4.

8. In the present petition, the petitioner has alleged that the minor son is not residing with the mother respondent No.4 and is in the custody and care of his maternal grand-parents respondent Nos. 5 to 7, however nothing has been brought on record in this regard by the petitioner. The learned counsel for the petitioner has relied upon the judgment of this Court in ***Jaspreet Singh's case (supra)***, however, the perusal thereof, would reveal that the facts and circumstances of the present case are distinguishable therefrom, as in the judgment under reference, the petitioner had availed all the efficacious remedies available to him and had even filed a petition under Section 25 of the Guardians and Wards Act read with Section 6 of the Hindu Minority and Guardianship Act where the respondents had been proceeded *ex-parte*. This is not so in the present case, as it is specifically mentioned in para 22 of the petition that the petitioner has not filed any petition seeking custody of the minor son by approaching the 'Guardian Court'.

9. After considering the facts and circumstances in the instant case, and in the light of the judicial pronouncements, it is not disputed that the petition for issuance of Writ of Habeas Corpus is maintainable, however, it is, required to be exercised only in extraordinary exceptional cases. In the



present case, the child was born on 06.05.2018 and as per petitioner's own contention in the petition, the child was taken on 18.06.2019 by respondent No.4 i.e. wife of the petitioner being natural mother of the minor and till date the petitioner has not preferred any petition seeking the custody of the minor or any visitation right by filing appropriate petition under the Guardian and Wards Act. It would be appropriate to mention here that the Hon'ble Supreme Court in ***Tejaswani Gaud and others Vs. Shekhar Jagdhis Prasad Tewari and others, 2019(3) RCR (Civil) 104***, after referring to catena of precedents, observed as under:-

“13. Writ of habeas corpus is a prerogative process for securing the liberty of the subject by affording an effective means of immediate release from an illegal or improper detention. The writ also extends its influence to restore the custody of a minor to his guardian when wrongfully deprived of it. The detention of a minor by a person who is not entitled to his legal custody is treated as equivalent to illegal detention for the purpose of granting writ, directing custody of the minor child. For restoration of the custody of a minor from a person who according to the personal law, is not his legal or natural guardian, in appropriate cases, the writ court has jurisdiction.”

13.5 Hon'ble Supreme Court further held as under:

“18. Habeas corpus proceedings is not to justify or examine the legality of the custody. Habeas corpus proceedings is a medium through which the custody of the child is addressed to the discretion of the court. Habeas corpus is a prerogative writ which is an extraordinary remedy and the writ is issued where in the circumstances of the particular case, ordinary remedy provided by the law is either not available or is



ineffective; otherwise a writ will not be issued. 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. In view of the pronouncement on the issue in question by the Supreme Court and the High Courts, in our view, 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.

19. 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. In cases arising out of the proceedings under the Guardians and Wards Act, the jurisdiction of the court is determined by whether the minor ordinarily resides within the area on which the court exercises such jurisdiction. There are significant differences between the enquiry under the Guardians and Wards Act and the exercise of powers by a writ court which is of summary in nature. What is important is the welfare of the child. In the writ court, rights are determined only on the basis of affidavits. 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. It is only in exceptional cases, the rights of the parties to the custody of the minor will be determined in exercise of extraordinary jurisdiction on a petition for habeas corpus.”

10. In the present case, there is nothing to suggest that the minor child is in illegal custody of respondent No.4, who happens to be his natural mother. Admittedly, the petitioner has not filed any petition before the



‘Guardian Court’ for seeking the custody or visitation right qua the minor, although a number of litigation's *inter se* the petitioner and respondent No.4 are pending in different Courts, nor is there anything on record that how custody of minor with respondent No.4 is illegal.

11. As has been observed by Hon’ble Supreme Court in ***Tejaswani Gaud’s case (supra)*** the writ of habeas corpus is maintainable where it is proved that the detention of minor child by a parent or others was illegal and without any authority of law. It has been held by Hon’ble Supreme Court that ordinarily the remedy lies only under the Hindu Minority and Guardianship Act and the Guardian and Wards Act 1890 as the case may be and there is significant difference between the inquiry conducted under the Guardian and Wards Act and in exercise of power by the a Writ Court which is summary in nature. It has further been held therein that where a Court is of the view that a detailed inquiry is required the Court may decline the extraordinary jurisdiction and direct the parties to approach the Court and only in exceptional case the right of the parties to the custody of the minor child will be determined in exercise of extraordinary jurisdiction on the basis of petition filed for habeas corpus.

12. Keeping in view the facts and circumstances , and in the light of the observations of Hon’ble Supreme Court (supra), it is observed that in the present case, as stated above the minor child has been in the custody and care of the natural mother respondent No.4 since 18.06.2019 when he was just 1 year old. There is nothing brought on record that the minor is not living with the respondent No.4 the natural mother and is living with



respondent No.5 to 7, nor is there anything brought on record which would suggest that the minor is in illegal custody of the private respondents, therefore, in these circumstances a detailed inquiry is required to be conducted in the matter which could not be done in exercise of extraordinary jurisdiction on the present petition for issuance of writ of habeas corpus, being summary in nature.

13. As a consequence, considering the above referred facts and circumstances, this Court is not inclined to issue a Writ of Habeas Corpus as sought for by the petitioner, therefore declines the writ.

14. The petition is accordingly, hereby dismissed, however, the petitioner is at liberty to approach the competent forum under the appropriate provisions of law for availing the remedies available to him where the rights could be determined on the basis of the evidence and the detailed inquiry.

(SANJIV BERRY)
JUDGE

15.01.2025

Gyan

i)	Whether speaking/reasoned?	Yes/No
ii)	Whether reportable?	Yes/No