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

**CRWP-521-2025 (O&M)
Date of decision: 21.02.2025**

Veenus Rani**...Petitioner****Versus****State of Punjab and others****...Respondents****CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA**

Present:- Mr. Chandan Singh Rana, Advocate
for the petitioner.

Ms. Swati Batra, Deputy Advocate General, Punjab.

Ms. Riffi Birla Jain, Advocate
for respondents No. 4 and 5.

MANISHA BATRA, J. (Oral)

1. The present petition has been filed by the petitioner under Articles 226/227 of the Constitution of India read with Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 (*for short 'BNSS'*) seeking issuance of a writ in the nature of Habeas Corpus for the release of detenues, namely Gurleen Kaur and Ashbeer Singh, who are daughter son of the present petitioner, from the illegal custody of respondents No. 4 and 5 and to produce them before this Court.

2. Learned counsel for the petitioner has submitted that the marriage of the petitioner was solemnized with respondent No. 4-Banti Singh on 04.07.2013 and two children i.e. daughter Gurleen Kaur and son Ashbeer Singh (alleged detenues) have born out of the wedlock, who are aged about 10 years and 05 years respectively and presently, they are studying in a school at Abohar. The petitioner is working as Senior Constable in Punjab Police and

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presently, she is posted at Fazilka. It is further submitted that respondent No. 4 was indulged in wrong activities and has been involved in a case relating to offence under Section 376 of IPC. He is also involved in a case under the NDPS Act. Not only this, he is involved in a murder case also. He was also indulged in adultery as he has developed illicit relationship with a lady. The petitioner is not earning anything. When the petitioner stopped her from doing all this, he started extending beatings to her and ultimately, she was turned out of her matrimonial home. The petitioner had moved an application under Section 100 of BNSS before the SDM, Fazilka for handing over the custody of the children to her but vide order dated 02.01.2025, it was wrongly observed by him that the children were happily residing with respondent. However, a conversation, which took place between the petitioner and her children has been placed on record before this Court in the form of a Compact Disc and it would reveal that in fact respondent No. 4 use abusive language with them and also beats them.

3. Learned counsel for the petitioner has further argued that the petitioner, being mother of the children, is legally entitled to get their custody. The children have been forcefully detained by respondent No. 4, who is not taking his proper care and for the welfare and well being of the child, his custody must be handed over to the petitioner. Learned counsel for the petitioner has relied upon the authority cited as ***Mandeep Kaur vs. State of Punjab and others : 2021 (3) RCR (Civil) 451*** to submit that a habeas corpus writ petition is maintainable for seeking custody of a child, who is illegally detained by someone. While alleging that the custody of the children with respondent No. 4 is not in their welfare, it is urged that an appropriate writ

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directing the official respondents to get her children released from respondent No. 4 be issued.

4. Reply has been filed on behalf of respondents No. 4 and 5, who are husband and mother-in-law, respectively, of the petitioner. While denying the allegations as levelled by the petitioner, it is submitted therein and learned counsel for respondents No. 4 and 5 has argued that respondent No. 4 is the natural parent of the children and, hence, the custody of the children with him cannot be termed as illegal. He has also raised preliminary objection as to the maintainability of the present petition by submitting that the appropriate remedy for the petitioner would be to file a petition under the provisions of Guardians and Wards Act, 1890 to seek custody of the children and not to file a petition before this Court seeking issuance of a writ of Habeas Corpus for that purpose. In the proceedings of the aforesaid application moved by the petitioner under Section 100 of BNSS before the SDM, Fazilka, it had reflected that the petitioner herself was not ready to reconcile with respondent No. 4 and was only interested in taking custody of the children. It had also come on record that the children were very much happy with their father. So far as the criminal cases against respondent No. 4 are concerned, he was falsely implicated by the brother of the petitioner in an NDPS case. In another case under Section 376 of IPC, he was initially declared innocent but on allowing of an application under Section 319 of Cr.P.C., he has been summoned to face trial. It is further submitted that the petitioner had left her matrimonial home on her own and despite several requests made by respondents No. 4 and 5 to come back, she did not return. Respondent No. 4 is very much capable of maintaining both the children as he is in finance

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business and earns a handsome amount of money. He is maintaining the children and is bearing all their expenses to the best of his capacity and in case the custody of the children is given to the petitioner, the same will not be in the welfare of the children. Hence, it is urged that the petition is liable to be dismissed.

5. This Court has heard learned counsel for the parties at considerable length and has also gone through the record carefully.

6. This is an admitted position that the petitioner was married to respondent No. 4-Banti Singh on 04.07.2013 and they were blessed with two children i.e. daughter Gurleen Kaur and son Ashbeer Singh (alleged detenues), who are aged about 10 years and 05 years, respectively. The claim of the petitioner is that respondent No. 4 is involved in multiple serious criminal case relating to rape, murder and smuggling of narcotics and is not earning anything to maintain the children. It is also claimed by her that he is involved in an adulterous relationship. She has taken a stand that she was thrown out of her matrimonial house as she objected to the illegal and immoral activities of respondent No. 4. As per the petitioner, respondent No. 4 does not deserve the custody of the children as he uses abusive language and even extends beatings to them. Whereas all these allegations have been denied by respondent No. 4.

7. The matter was referred by this Court to Mediation and Conciliation Centre of this Court for exploring the possibility of some amicable settlement. However, the same could not be materialized but it was agreed between them that for a few days, the children will remain in the

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custody of the petitioner and will be brought back before this Court on the next date of hearing. Since then they are in the custody of the petitioner.

8. Now the question that needs consideration before this Court is as to whether this Court, in a habeas corpus petition, can issue direction to respondent No. 4, who is biological father of the children, to hand over their custody to the petitioner, being their mother? No doubt, this Court while dealing with a petition for issuance of a writ of habeas corpus with regard to custody of a minor child may direct return of the child or decline to change the custody of the child keeping in mind all the attending facts and circumstances. However, such decision must depend on the totality of the facts and circumstances of each case brought before the Court. A writ of habeas corpus in child custody matters can be invoked only in those cases where the person having the child is not entitled to his/her legal custody. In child custody matters remedy lies only under Guardianship and Wards Act and it cannot be bypassed by filing a habeas corpus petition unless the corpus of the child is in illegal or unauthorized custody. Reliance in this can be placed upon ***Pavan Kumar Kathuroju vs. State of Telangana : 2024 SCC OnLine SC 31***. Reliance can also be placed upon the authority cited as ***Nirmala vs. Kulwant Singh and others : 2024 AIR Supreme Court 23445***, wherein Hon'ble Supreme Court, while relying upon ***Yashita Sahu vs. State of Rajasthan and others : 2020 AIR (Supreme Court) 577*** has held that the habeas corpus is a prerogative writ which is an extraordinary remedy and 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

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is qualified only in cases where the detention of a minor is by a person who is not entitled to his legal custody and in child custody matters, the writ of habeas corpus is maintainable only where it is proved that the detention of a minor child by a parent or others was illegal and without any authority of law. Similar view was expressed by Hon'ble Supreme Court in ***Rajeswari Chandrasekar Ganesh vs. State of Tamil Nadu and others : 2022 SCC OnLine SC 885.***

9. In the present case, there is no dispute about the fact that the petitioner and respondent No. 4 are the biological parents of alleged detenues, who were born out of their wedlock. Hence, their custody with either of the parents cannot be stated to be illegal in any manner. The children were earlier in the custody of respondent No. 4. However, as per wishes of the parties, they were handed over to the petitioner on 23.01.2025 and thereafter, on the direction of this Court, they are continuing to be with the petitioner. This Court has been apprised that none of the parties has approached the appropriate forum by filing a petition under the provisions of the Guardians and Wards Act, 1890 seeking custody of the children. Hence, it is explicit that none of the parties has any authority of law to have exclusive custody of the children. So it can be stated that by having custody of the children, respondent No. 4 or the petitioner has not defied any order, which was operative against them. Hence, the petition is not the proper remedy to seek custody of the children. So far as the ratio of law laid down in ***Mandeep Kaur***'s case (supra) is concerned, the same is not disputed at all. However, the same is not applicable to the peculiar facts and circumstances of the present case as in ***Mandeep Kaur***'s case (supra), the age of the child was found to be below 05

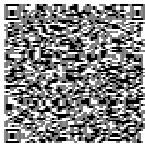
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years. Therefore, in view of Section 6 of the Hindu Minority and Guardianship Act, 1956, as per which, the custody of a minor who has not completed the age of 05 years should ordinarily be with the mother, the custody of the child was directed to be given to her mother by issuing a writ of Habeas Corpus. Certain allegations and counter allegations with regard to misbehavior and conduct of the parties to *lis* have also been made by them. However, at this stage, there is no need to dilate upon the same and without casting any aspersion on the moral character of the petitioner or respondent No. 4 and considering the position of law as laid down in aforecited judgments, this Court is of the view that the remedy available to the petitioner for obtaining custody of the children is to file an appropriate petition under the Guardianship and Wards Act, 1890 and not to seek grant of writ of habeas corpus. However, at the moment, the children of the petitioner and respondent No. 4 are staying with the petitioner. During the course of interaction with this Court in the chamber, they have stated that they want to live with their mother and not with the father. It has also been informed to this Court that the school examinations of the children are to take place till mid of March, 2025. Both the children appear to be quite comfortable with their mother.

10. Keeping in view the entire facts and circumstances of the case, this Court considers it appropriate that the custody of the children remains with the petitioner during the month of March, 2025 i.e. till their examination is over, so that they are not disturbed during that period. Ordered accordingly. The petitioner shall thereafter hand over the custody of the children to respondent No. 4 on 01.04.2025. Both the parties shall be at liberty to file an

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appropriate petition to seek permanent custody of the children. At the same time, it is expected from respondent No. 4 that he will not deny the rights of meeting her children to the petitioner after 01.04.2025. By way of interim arrangement, it is directed that till the rights of the custody of the children are decided by the competent Court, the petitioner shall have visitation right to the children, which she will exercise on every Saturday from 04:00 PM to 06:00 PM. Respondent No. 4 shall make the children available at a neutral place for the said purpose, without fail.

11. With the above observations, the present petition stands disposed of.

21.02.2025

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No