

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRWP-828-2025 (O&M)

Reserved on 28.02.2025

Pronounced on 28.05.2025

Deepak Kumar

... Petitioner

VS.

State of Punjab & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Jasdeep Singh, Advocate for the petitioner

Mr. JS Rattu, DAG Punjab

Dr. Khushbir K Waraich, Advocate and

Mr. Prabhjot S. Waraich, Advocate for the respondents No.4 to 7

Sandeep Moudgil, J.

(1). The jurisdiction of this Court has been invoked under Article 226/227 of the Constitution of India for issuance of a writ of habeas corpus directing the official respondents to get released the detinue, namely, Siddhi daughter of the petitioner from the illegal detention of respondents No.4 to 7.

(2). At the time of preliminary hearing, this Court vide order dated 24.01.2025 appointed the Warrant Officer to visit the place and submit his report. Thereafter on 28.01.2025, the Warrant Officer vide his report placed before this Court on 28.01.2025 reported that the custody of minor child has been handed over to the petitioner-father and both were present in Court.

(3). On the other hand, Dr. Khushbir K Waraich, Advocate put in appearance on behalf of respondents No.4 to 7 and sought time to file report and to place on record certain facts as to how the custody of the minor girl child, namely, Siddhi is not safe with the petitioner.

(4). On 18.02.2025, learned counsel for respondent No.4 to 7 sought time to file additional material in support of their claim that they are legally entitled for the custody of the minor child and in fact her betterment would be in their custody and not with the petitioner. This Court adjourned the matter for 25.02.2025 and directed the petitioner to file the source of income and the means to maintain the child showing his capability and physical ability as well.

(5). Heard learned counsel for the parties.

(6). The only point involved for consideration of this Court is as to whether or not the petitioner can invoke Article 226/227 of the Constitution to seek custody of minor girl child which is presently with respondents No.4 to 7 who are in-laws of the petitioner?

(7). In brief, it can be stated that after the death of the petitioner's wife due to dengue fever on 17.10.2024, the petitioner as a natural guardian and his family were taking care of her minor daughter, her study and also taking care of her day to day expenses the natural guardian. Respondent No 4 & 7 without any intimation came to the premises of the petitioner, while the petitioner was at work and took away the minor daughter from the custody of the family members of the petitioner. The petitioner immediately contacted the respondent No.4 telephonically, who assured to bring the girl back home after 2-3 days however, he did not do so and later on bluntly refused to send her back in the custody of the father. The petitioner finding no way out filed police complaint to the Respondent No.3 and then came to know that one case has been filed by the respondent No 4 against the Deepak Sindhanian which is pending for 25.02.2025 before the Court of Barjinder Pal Singh, Principal Judge, Family Court, S.A.S Nagar, Mohali, Punjab. Thereafter the Petitioner and his family

members tried to trace the respondent No.4 to 7 to know the whereabouts of the minor daughter of Petitioner but in vain. Hence this petition.

(8). Learned counsel for respondents No.4 to 7 have filed the reply dated 10.02.2025 wherein it has been averred that the petitioner is responsible for the mysterious/suspicious death of the daughter of respondent No. 4 and 5. The custody of the minor Siddhi was given to respondent No. 4 to 7 by the petitioner himself in the presence of many witnesses, who shall be examined at the Family court in Custody case whereas the present case is filed by the petitioner to pressurize the respondents from taking any criminal action/remedy against the petitioner. It is then urged that the custody of minor Siddhi, granddaughter of respondent No. 4 to 5, be granted to respondent No. 4 to 7 as it was before the interim order of this Court the matter of custody was filed before the Family Court, Mohali as the same is pending before the Family Court.

(9). Heard learned counsel for the parties.

(10). The issue regarding maintainability of the writ petition in such like matters involving custody of minor child to the natural guardian, is no longer res integra. In this regard, the decision of this Court rendered in **CRWP-2090-2024 (Jaspreet Singh vs. State of Punjab & Ors.)** decided on 20.12.2024 would be profitable to refer. The relevant portion of the judgment reads as under:-

“17. The Habeas Corpus petition principally can be issued only in a situation where there is a detenue found to be in illegal confinement or otherwise not approved by law. It is the Hindu Minority and Guardianship Act, 1956 (hereinafter referred to in short as Act of 1956), which defines and elaborate the kinds of custody for a minor and therefore the question of alleged illegal confinement of Harmanveer Singh needs to be tested under the Act of 1956, within the four corners

of the definition of guardian and natural guardian envisaged vide Section 4(b) & (c) with further elaborating it vide Sections 6, 8, 9, 11, 12 and 13, which reads as under:-

4. Definitions.—*In this Act,—*

(a) “minor” means a person who has not completed the age of eighteen years;

(b) “guardian” means a person having the care of the person of a minor or of his property or of both his person and property, and includes—

- i. a natural guardian,*
- ii. a guardian appointed by the will of the minor’s father or mother,*
- iii. a guardian appointed or declared by a court, and*
- iv. a person empowered to act as such by or under any enactment relating to any court of wards;*

(c) “natural guardian” means any of the guardians mentioned in section 6.

6. Natural guardians of a Hindu minor.— *The natural guardian of a Hindu minor, in respect of the minor’s person as well as in respect of the minor’s property (excluding his or her undivided interest in joint family property), are—*

(a) in the case of a boy or an unmarried girl—the father, and after him, the mother: provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother;

(b) in case of an illegitimate boy or an illegitimate unmarried girl—the mother, and after her, the father;

(c) in the case of a married girl—the husband: Provided that no person shall be entitled to act as the natural guardian of a minor under the provisions of this section—

(a) if he has ceased to be a Hindu, or

(b) if he has completely and finally renounced the world by becoming a hermit (vanaprastha) or an ascetic (yati or sanyasi).

Explanation.—In this section, the expression “father” and “mother” do not include a step-father and a step-mother.

8. Powers of natural guardian.—

(1)The natural guardian of a Hindu minor has power, subject to the provisions of this section, to do all acts which are necessary or reasonable and proper for the benefit of the minor or for the realisation, protection or benefit of the minor's estate; but the guardian can in no case bind the minor by a personal covenant.

(2)The natural guardian shall not, without the previous permission of the court,—

(a)mortgage or charge, or transfer by sale, gift, exchange or otherwise, any part of the immovable property of the minor; or

(b)lease any part of such property for a term exceeding five years or for a term extending more than one year beyond the date on which the minor will attain majority.

(3)Any disposal of immovable property by a natural guardian, in contravention of sub-section (1) or sub-section (2), is voidable at the instance of the minor or by any person claiming under him.

(4)No court shall grant permission to the natural guardian to do any of the acts mentioned in sub-section (2) except in the case of necessity or for an evident advantage to the minor.

(5)The Guardians and Wards Act, 1890 (8 of 1890), shall apply to and in respect of an application for obtaining permission of the court under sub-section (2) in all respects as if it were an application for obtaining the permission of the court under section 29 of that Act, and in particular—

(a)proceedings in connection with the application shall be deemed to be proceedings under that Act within the meaning of section 4A thereof;

(b)the court shall observe the procedure and have the powers specified in sub-sections (2), (3) and (4) of section 31 of that Act; and

(c)an appeal shall lie from an order of the court refusing permission to the natural guardian to do any of the acts mentioned in sub-section (2) of this section to the court to which appeals ordinarily lie from the decisions of that court.

(6)In this section "court" means the city civil court or a district court or a court empowered under section 4A of the Guardian

and Wards Act, 1890 (8 of 1890), within the local limits of whose jurisdiction the immovable property in respect of which the application is made is situate, and where the immovable property is situate within the jurisdiction of more than one such court, means the court within the local limits of whose jurisdiction any portion of the property is situate.

9. Testamentary guardians and their powers.—

(1) A Hindu father entitled to act as the natural guardian of his minor legitimate children, may, by will, appoint a guardian for any of them in respect of the minor's person or in respect of the minor's property (other than the undivided interest referred in section 12) or in respect of both.

(2) An appointment made under sub-section (1) shall have no effect if the father predeceases the mother, but shall revive if the mother dies without appointing by will, any person as guardian.

(3) A Hindu widow entitled to act as the natural guardian of her minor legitimate children, and a Hindu mother entitled to act as the natural guardian of her minor legitimate children by reason of the fact that the father has become disentitled to act as such, may, by will, appoint a guardian for any of them in respect of the minor's person or in respect of the minor's property (other than the undivided interest referred to in section 12) or in respect of both.

(4) A Hindu mother entitled to act as the natural guardian of her minor legitimate children may, by will, appoint a guardian for any of them in respect of the minor's person or in respect of the minor's property or in respect of both.

(5) The guardian so appointed by will has the right to act as the minor's guardian after the death of the minor's father or mother, as the case may be, and to exercise all the rights of a natural guardian under this Act to such extent and subject to such restrictions, if any, as are specified in this Act and in the will.

(6) The right of the guardian so appointed by will shall, where the minor is a girl, cease on her marriage.

11. De facto guardian not to deal with minor's property.—

After the commencement of this Act, no person shall be entitled to dispose of, or deal with, the property of a Hindu minor merely on the ground of his or her being the de facto guardian of the minor.

12. Guardian not to be appointed for minor's undivided interest in joint family property.—

Where a minor has an undivided interest in joint family property and the property is under the management of an adult member of the family, no guardian shall be appointed for the minor in respect of such undivided interest:

Provided that nothing in this section shall be deemed to affect the jurisdiction of a High Court to appoint a guardian in respect of such interest.

13. Welfare of minor to be paramount consideration.—

(1) In the appointment or declaration of any person as guardian of a Hindu minor by a court, the welfare of the minor shall be the paramount consideration.

(2) No person shall be entitled to the guardianship by virtue of the provisions of this Act or of any law relating to guardianship in marriage among Hindus, if the court is of opinion that his or her guardianship will not be for the welfare of the minor.

18. The above statute would elaborate the type of guardians established under law, which includes a natural guardian. The guardian appointed by the will of minor's father or mother is a testamentary guardian whereas declared by a Court of such person empowered to act as a guardian by or under any enactment is known as legal guardian.

19. To examine the question of illegal confinement for this Court in the instant case it is to be seen whether custody of Harmanveer Singh is within any of the categories of guardian described in law vide Act of 1956 or not. The Act of 1956 in Section 6 in clear words has enumerated that in respect of a minor's or a minor's persons including minor's property would be the father a natural guardian and after him the mother. Though Section 6(a) also provide that the custody of minor, who has not completed the age of 5 years mother shall ordinarily be the

natural guardian. The expression father and mother is exclusive of the status of a step-father and a step-mother. ”

(11). After having held the present Criminal Writ Petition, a perusal of the above-mentioned case leaves no stone unturned to allow the maintainability, this Court after had due deliberation and examination of submissions on record would now refer to the next and foremost vital aspect of the present petition i.e., to test the interest of the minor girl child Siddhi being of paramount consideration. The circumstances and the material on record goes on to show that the mother of the girl child had expired on 17.10.2024 and thereafter, she remained in the custody of the respondents No.4 to 7 despite the fact that her natural guardian, namely, father is still alive and willing to take her custody and take care of her betterment.

(12). The contention of respondents No.4 to 7 as to his non-capability of taking due care of the minor girl child, the petitioner has filed CRM-W-259-2025 placing on record the proof of source of income and means to maintain the child. It has been averred that the petitioner is a fruit vendor and is earning more than 5 to 6 lakhs from his business and also is an income tax payee as is evident from the income tax return for the assessment year 2023-24 and 2024-25 (Annexures P2 & P3). That apart, the petitioner has also deposed that he is having land in his name which is situated in village Samana, Patiala as depicted in the jamabandi for the year 2021-22 (Annexure P4) besides one life insurance in the name of the petitioner as well as in the name of minor girl child Siddhi (Annexure P5).

(13). The minor child is being taken care of and brought up by respondents No.4 to 7, who happen to be her maternal grandparents and

maternal uncle. But it is not a case that the petitioner ever refused to meet out maintenance expenses, who in fact is pursuing litigation to seek custody. There is no delay on his part by any stretch of imagination. Even before this Court, he is on affidavit to say that he wants the custody of her minor girl child Siddhi and wishes to maintain and brought her up by providing of the facilities within his capacity.

(14). From the circumstances, it is abundantly clear that Siddhi – the detinue is being deprived of love and affection of her father being natural guardian after his wife. This Court cannot lose sight of the fact that it is practically difficult in that situation for respondents No.4 to 7 to maintain the minor girl child properly if compared with a father, who is being kept away not only from her company but from love and affection also, despite being a biological father.

(15). Such absence of love and affection to the minor girl child is bound to leave an impact on the mental brought up apart from physical development and overall personality, wherein none of the parent could be said to be taking care or watching interest academically or otherwise, as mother has since expired and father is not being permitted even to meet her by respondents No.4 to 7.

(16). Even under Section 6 of Act of 1956, it is the father, who is a natural guardian and this fact is universally accepted that there cannot be any better guardian than that of biological parents. One another aspect is also convincing for this Court to conclude the adjudication is that Siddhi, if sent along with the petitioner, would be under a protective and affectionate umbrella wherein there are other family members in the form of paternal grandparents to

whom it is always said as word of advise that “*interest is always more loveable and affectionate than the principal*” to elderly people in a family.

(17). Looking at the financial aspects and the property possessed by the petitioner may not be individually, which in strong probability would finally come to the petitioner in inheritance being the only son, the future of Siddhi sounds very safe in the company of the petitioner.

(18). In the light of above enunciated factual aspects, over all circumstances after testing the pleadings on the strength of depositions from both the interested parties, this Court has no hesitation to hold that the petitioner is a biological father and is much better placed than respondents No.4 to 7 who are maternal grandparents, uncle and aunt of the minor girl child, in all aspects, who deserves to have the custody with all expectations from him to brought up with a safe future for this child.

(19). Hence, the custody of Siddhi is directed to be hand-over in the Court itself today to the petitioner. The said direction stands duly complied with, as Siddhi has joined the petitioner and agreed to go along with him (father).

(20). The present petition in the aforesaid terms stands allowed.

28.05.2025

V.Vishal

1. Whether speaking/reasoned?
2. Whether reportable?

(Sandeep Moudgil)
Judge

Yes/No
Yes/No