

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRWP-941-2025

Date of Decision: 07.02.2025

Sanjeev Kumar

... Petitioner

VS.

State of Haryana & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Kshitiz Goel, Advocate for the petitioner

Mr. BS Virk, Sr.DAG Haryana

Mr. Rakesh Dhiman, Advocate for respondents No.4 to 8

Sandeep Moudgil, J. (Oral)

(1). This writ petition under Article 226/227 of the Constitution of India has been invoked by the petitioner seeking a writ of Habeas Corpus for release the detainee, namely, Vanshika @ Vaidehi daughter of the petitioner-Sanjeev Kumar who has been illegally detained by the private respondents.

Factual Backdrop

(2). The petitioner had married Poonam – daughter of respondents No.4 & 5 on 02.10.2016. She committed suicide soon after giving birth to a girl child, namely, the detainee, on 05.07.2017 leading to registration of FIR No.279 dated 17.07.2017 at the instance of respondents No.4 to 8, against the petitioner and his family members under Sections 304-B, 498-A and 34 IPC. Soon thereafter, the petitioner was taken into custody and during this period, the detainee was taken in the custody of respondents No.4 to 8. While respondent No.4 & 5 are the maternal grandparents, respondents No.6 to 7 are the maternal aunts (mausi) of the detainee-minor girl Vanshika @ Vaidehi.

(3). In the said criminal case, the petitioner was put to trial. However, he was acquitted vide judgment dated 04.02.2019. Immediately, after his release from jail, the petitioner pleaded the respondents No.4 to 8 to return the custody of his child (detenue) but they refused to do so.

(4). Resultantly, the petitioner lodged a complaint with the police followed by a petition under Section 25 of the Guardians & Wards Act, 1890 (in short, the 1890 Act) before the Family Court at Faridabad, on 03.08.2019, against the private respondents seeking custody of the detenue being her natural guardian – father.

(5). The petition under Section 25 of the 1890 Act filed by the petitioner was allowed and vide order dated 12.12.2024, the Family Court, Faridabad directed the private respondents to hand over the custody of the minor child (detenue) to the petitioner/father within one month from the passing of the judgment giving visitation rights to the respondents and Ms. Rajni (mausi of minor child) to meet twice a month for three hours.

Contention of the petitioner

(6). Learned counsel for the petitioner submits that on 12.01.2025, when the petitioner approached the private respondents requesting them to hand over his child in compliance to the judgment passed by the Family Court, they flatly refused to give the custody of the detenue on the ground that since the child is residing with them since years, therefore, they will not hand over the child to his father.

(7). It is vehemently urged that even after acquittal in the false case lodged at the instance of private respondents and facing trial and custody for over almost one year, the petitioner could not have custody of his child for a

period of 7 long years despite the fact that he is the natural guardian of his daughter/detenu. He further submits that the Family Court itself has observed in its judgment that the child is not being brought up in a neutral atmosphere and that she has been told that that she has no father at all thereby acknowledging the fact that the intention of respondents No.4 and 5 is to poison the minor child's mind against her father.

(8). Further, it is argued that the private respondents, in the school records of her daughter, have deliberately shown that the father of the detenu is Mahaveer Singh and mother is Sulekha and changed the name of the minor child of the petitioner from Vanshika to Vaidehi. He exhorted that the act and conduct on the part of respondents No.4 to 8 is extremely cruel inasmuch as the petitioner is being blamed for causing the death of his wife which has been disapproved on merits by the trial court vide judgment dated 04.02.2019.

(9). At the time of preliminary hearing, this Court, issued notice to the respondents, and appointed the Warrant Officer vide order dated 28.01.2025 and sought the report. On 05.02.2025, Mr. Anjum Adhmed, Advocate puts in appearance on behalf of respondent No.4 by filing the memo of appearance. After perusing the report of the Warrant Officer filed in compliance to the order dated 28.01.2025, the minor girl Vanshika @ Vaidehi daughter of the petitioner was directed to be produced in Court on 06.02.2025. On 06.02.2025, the minor girl was not produced and instead Mr. Anjum Ahmed, Advocate withdrew his memo of appearance on behalf of respondent No.4 on the ground that he has no instructions to appear on their

behalf and at this stage Mr. Rakesh Dhiman had put in appearance and had undertaken to produce the detenue namely vanshika @ vaidehi.

(10). It also came to fore that the said counsel Mr. Anjum Ahmed, who had been appearing on behalf of respondent No.4 in the present proceedings, is a counsel in the FAO No.800 of 2025 filed by the respondent No.4/appellant therein.

(11). Taking into consideration such finesse on the part of respondent No.4 and his counsel, this Court directed the State counsel to ensure the presence of detenue, namely, Vanshika @ Vaidehi on the next date of hearing i.e. today.

Contention on behalf of the repondent

(12). Learned counsel for respondents No.4 to 8 would at the very outset contend that the present petition is not maintainable as the respondents has already file FAO against the order of the family court granting petitioner custody therefore now by way of filing the present criminal writ petition he cannot ask for the same when the final judgement which has been challenged is pending adjudication. He further argues that although the petitioner was acquitted in a criminal case but that does not absolve the petitioner of the crime committed by him inasmuch as the trial court never gave him clean chit but only a benefit of doubt was given to him. As regards the custody of the minor child, it is submitted that they are unable to hand over her custody to the petitioner as the child had been living with them since her birth and due to mutual love and affection, they are not ready to give the detenue to the petitioner. Moreover, it is contended that the petitioner has no monthly or annual source of income and is financially not capable enough to take care of

the child and for this reason also, it would not appropriate to hand over the custody to him.

(13). Heard learned counsel for the parties.

(14). Today, the detenue is present in Court. In a gentle, sensitive and child-centered conversation, the Court engaged with the minor child to assess her sentiments. When asked to identify the man present, she unequivocally stated that she did not recognize him. Upon disclosure of his paternal relationship with the petitioner, she refused to acknowledge him. Furthermore, when posed with the possibility of residing with him, she expressed a clear and unwavering reluctance and stated that she do not want to go back.

Maintainability

(15). It is undeniable that the petitioner has been granted custody of his daughter by the Family Court in a petition under Section 25 of the 1890 Act by the Family Court vide judgment dated 12.12.2024. It is also an admitted position of fact that against the said judgment dated 12.12.2024 of the Family, the respondents No.4 to 8 have filed FAO No.800 2025 and the same is also listed today before the Division Bench for preliminary hearing.

(16). Before this Court, the petitioner-father has filed the writ petition under Article 226/227 of the Constitution alleging that the corpus i.e. his daughter is in illegal confinement with the respondents No.4 to 8 and as such, and he, being the father and natural guardian of the detenue and supported by the judgment of the Family Court, the custody of the detenue needs to be handed over to the petitioner.

(17). In **Tejaswini Gaud & Ors. Vs. Shekhar Jagdish Prasad Tewari & Ors. 2019(3) RCR (Civil) 104**, the Apex Court considered the legal aspect of the Writ of Habeas Corpus in the matters related to custody of the child and held that a Writ of habeas corpus is a prerogative process for securing the liberty of the subject by affording an effective means of immediate release from illegal or improper detention and that the Writ of Habeas Corpus also extends its influence to restore the custody of a minor to his guardian when wrongfully deprived of it. 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 the 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 to entertain such petition. The relevant extracts of the said judgment reads as under:-

*"11. **Maintainability of the writ of habeas corpus:-** The learned counsel for the appellants submitted that the law is well- settled that in deciding the question of custody of minor, the welfare of the minor is of paramount importance and that the custody of the minor child by the appellants cannot be said to be illegal or improper detention so as to entertain the habeas corpus which is an extraordinary remedy and the High Court erred in ordering the custody of the minor child be handed over to the first respondent-father. Placing reliance on **Dr. Veena Kapoor v. Varinder Kumar Kapoor (1981) 3 SCC 92 and Sarita Sharma Vs. Sushil Sharma 2000(2) RCR (Civil) 367: (2000) 3 SCC 14** and few other cases, the learned counsel for the appellants contended that the welfare of children requires a full and*

thorough inquiry and therefore, the High Court should instead of allowing the habeas corpus petition, should have directed the respondent to initiate appropriate proceedings in the civil court. The learned counsel further contended that though the father being a natural guardian has a preferential right to the custody of the minor child, keeping in view the welfare of the child and the facts and circumstances of the case, custody of the child by the appellants cannot be said to be illegal or improper detention so as to justify invoking extra-ordinary remedy by filing of the habeas corpus petition.

12. Countering this contention, the learned counsel for respondent No.1 submitted that in the given facts of the case, the High Court has the extraordinary power to exercise the jurisdiction under [Article 226](#) of the Constitution of India and the High Court was right in allowing the habeas corpus petition. The learned counsel has placed reliance on [Gohar Begum v. Suggi @ Nazma Begam and others](#) AIR 1960 SC 93 and [Smt. Manju Malini Sheshachalam D/o Mr. R. Sheshachalam v. Vijay Thirugnanam S/o Thivugnanam & Others](#) 2018 SCC Online Kar 621. Contention of respondent No.1 is that as per [Section 6](#) of the Hindu Minority and [Guardianship Act](#), respondent No.1, being the father, is the natural guardian and the appellants have no authority to retain the custody of the child and the refusal to hand over the custody amounts to illegal detention of the child and therefore, the writ of habeas corpus was the proper remedy available to him to seek redressal.

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.

14. In [Gohar Begum v. Suggi @ Nazma Begam and others](#) AIR 1960 SC 93 where the mother had, under the personal law, the legal right to the custody of her illegitimate minor child, the writ was issued. In *Gohar Begum*, the Supreme Court dealt with a petition for habeas corpus for recovery of an illegitimate female child. Gohar alleged that Kaniz Begum, Gohars mothers sister was allegedly detaining Gohars infant female child illegally. The Supreme Court took note of the position under the Mohammedan Law that the mother of an illegitimate female child is entitled to its custody and refusal to restore the custody of the child to the mother would result in illegal custody of the child. The Supreme Court held that Kaniz having no legal right to the custody of the child and her refusal to make over the child to the mother resulted in an illegal detention of the child within the meaning of [Section 491](#) Cr.P.C. of the old Code. The Supreme Court held that the fact that Gohar had a right under the Guardians and [Wards Act](#) is no justification for denying her right under [Section 491](#) Cr.P.C. The Supreme Court observed that Gohar Begum, being the natural guardian, is entitled to maintain the writ petition and held as under:-

" 7. On these undisputed facts the position in law is perfectly clear. Under the Mohammedan law which applies to this case, the appellant is entitled to the custody of Anjum who is her illegitimate daughter, no matter who the father of Anjum is. The respondent has no legal right

whatsoever to the custody of the child. Her refusal to make over the child to the appellant therefore resulted in an illegal detention of the child within the meaning of [Section 491](#). This position is clearly recognised in the English cases concerning writs of habeas corpus for the production of infants.

*In **Queen v. Clarke (1857) 7 EL & BL 186: 119, ER 1217** Lord Campbell, C.J., said at p. 193:*

"But with respect to a child under guardianship for nurture, the child is supposed to be unlawfully imprisoned when unlawfully detained from the custody of the guardian; and when delivered to him, the child is supposed to be set at liberty.

The courts in our country have consistently taken the same view. For this purpose the Indian cases hereinafter cited may be referred to. The terms of [Section 491](#) would clearly be applicable to the case and the appellant entitled to the order she asked.

(18). 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). Proceedings in the nature of habeas corpus are summary in nature, where the legality of the detention of the alleged detenu is examined on the basis of affidavits placed by the parties. Even so, nothing prevents the

High Court from embarking upon a detailed enquiry in cases where the welfare of a minor is in question, which is the paramount consideration for the Court while exercising its *parens patriae* jurisdiction. A High Court may, therefore, invoke its extraordinary jurisdiction to determine the validity of the detention, in cases that fall within its jurisdiction and may also issue orders as to custody of the minor depending upon how the Court views the rival claims, if any, to such custody.

(20). In *Nil Ratan Kundu v. Abhijit Kunu, 2008(3) RCR (Civil) 936: (2008) 9 SCC 413*, the Hon'ble Supreme court, after referring to number of judgments, observed that while dealing with child custody cases, the paramount consideration should be the welfare of the child and due weight should be given to child's ordinary comfort, contentment, health, education, intellectual development and favourable surroundings.

(21). As per Section 6 of The Hindu Minority and Guardianship Act, 1956, in child custody matters, the ordinary remedy lies under the Hindu Minority and Guardianship Act, 1956 and Guardianship and Wards Act, 1890, as the case may be. It is only in exceptional cases, where the rights of the parties to the custody of the minor will be determined in the exercise of extraordinary jurisdiction in a petition for Habeas Corpus. Thus, where in the circumstances of a particular case, the ordinary remedy of the Civil Courts is either not available or is ineffective, a writ of Habeas Corpus is certainly maintainable, moreso, where it is shown that the detention of the minor child by a parent or others was illegal, without any authority of law and was also to the detriment of the child.

(22). The Supreme Court in **Roxann Sharma v. Arun Sharma,** **[2015] 2 S.C.R. 572** opined that the child is not a chattel or ball that it is bounced to and fro and that the welfare of the child is the focal point. The relevant extracts of the said judgment reads as under:-

“18.....There can be no cavil that when a court is confronted by conflicting claims of custody there are no rights of the parents which have to be enforced; the child is not a chattel or a ball that is bounced to and fro the parents. It is only the child’s welfare which is the focal point for consideration. Parliament rightly thinks that the custody of a child less than five years of age should ordinarily be with the Mother and this expectation can be deviated from only for strong reasons”

(23). Another principle of law which is settled with reference to custody of the child is the wish of the child, if she is capable of. Reference can be made to **Rohith Thammanna Gowda v. State of Karnataka and others** **[2022] 4 S.C.R. 784**, wherein the Supreme Court held as under:-

“13. We have stated earlier that the question ‘what is the wish/desire of the child’ can be ascertained through interaction, but then, the question as to ‘what would be the best interest of the child’ is a matter to be decided by the court taking into account all the relevant circumstances. A careful scrutiny of the impugned judgment would, however, reveal that even after identifying the said question rightly the High Court had swayed away from the said point and entered into consideration of certain aspects not relevant for the said purpose. We will explain the raison d’etre for the said remark.”

(24). In this context, this Court vide order dated 06.02.2025 had called the child in Court and interacted with her. The child was aged about 7 years and was able to understand the conversation undertaken. Though, the

child acknowledged the petitioner to be her father but still she stated that she wants to live with her *mausi* and is happy with the family where she has been brought up. This Court also sensed as to how much ill-feeling has been misconceived in the mind of the minor child against her father due to which she, at this tender age, refused to go with her father. This fact has also been acknowledged by the Family Court in its judgment.

(25). Be that as it may, it is the settled proposition of law that the Writ of Habeas Corpus is maintainable only if the person is able to prove that the Corpus is in illegal custody or is kept in illegal confinement. In the present case, admittedly the petitioner would have precedence over the respondent Nos.4 and 8 who are the relatives from the maternal side whereas the petitioner is the biological father of the Corpus, therefore, the writ of Habeas Corpus is maintainable as well as the petitioners would have precedence for custody of the minor child qua the private respondents.

(26). Where there is a dispute in respect of the custody of the child between the natural guardian and the grandmother/grandfather of the child, the right of the natural guardian will prevail over the claim of the grandmother/grandfather, unless and until the disqualification of the natural guardian to have the custody of the child is established. In the instant case, the respondents have miserably failed to establish any kind of disqualification with the petitioner to have the custody of the child. The child also has a right to get love and affection of the father and the same cannot be denied. Moreover, when the custody of the child itself has been granted by the Family Court in favour of the father i.e. the petitioner, respondents No.4 to 8 lose their right of custody of the child and has to be termed as illegal.

Conclusion

(27). Accordingly, this writ petition is allowed and the custody of the detenue with respondents No.4 to 8 is hereby held illegal. The custody of the detenue has been handed over to the father/petitioner in Court, however, keeping intact the terms drawn by the Family Court vide judgment dated 12.12.2024.

(28). Ordered accordingly.

07.02.2025

V.Vishal

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

(Sandeep Moudgil)
Judge

Yes/No
Yes/No