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

CRWP-1598-2025

Date of decision: 17.03.2025

Harpreet Chawla

....Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Sumit Kalra, Advocate and
Mr. Pulkit Sethi, Advocate
for the petitioner.

Mr. Nitesh Sharma, DAG, Punjab.

Mr. Keshav Pratap Singh, Advocate
for respondent No.4.**HARPREET SINGH BRAR, J. (ORAL)**

Present criminal writ petition has been filed under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of *habeas corpus* directing respondents No.2 & 3 to produce the alleged detainee-daughter of the petitioner, namely, Ehsaas.

Learned counsel for the petitioner, *inter alia*, contends that the petitioner is mother of the alleged detainee, who is aged about 04 -05 years. He further submits that respondent No.4 told the petitioner that his mother is suffering from cancer and undergoing treatments, therefore, he wanted to keep his daughter with his mother and took the minor daughter of the petitioner with him forcefully. He further submits that in view of her minor age, the detainee must be in custody of her natural mother i.e. the petitioner. As such, she is being illegally detained by respondent No.4.



Learned counsel for respondent No.4 submits that since September, 2021, the minor child is staying with respondent No.4 i.e. the father and no date and time has been mentioned in the present petition on respondent No.4 has taken away the child and the allegations of illegal detention made by the petitioner are truly baseless. He further submits that at no point, the child was unlawfully deprived of her mother i.e. the petitioner.

Having heard learned counsel for the parties and after perusing the record, it transpires that the detinue is the daughter of the petitioner, aged about 04-05 years. Currently, she is residing with her father i.e. respondent No.4 and his family.

This Court has noticed an increasing tendency amongst disgruntled parents to move a writ petition in the nature of habeas corpus, in order to settle custody of their children. A two Judge bench of the Hon'ble Supreme Court in ***Tejaswini Gaud and others vs. Shekhar Jagdisg Prasad Tewari 2019 AIR SC 2318***, speaking through Justice R. Banumathi, has opined as follows:

“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.*”(emphasis added)

It is trite law that welfare of the minor would reign supreme while deciding upon the matter of his custody. The Hon'ble Supreme Court in ***Rosy Jacob vs. Jacob A. Chakramakkal (1973) 1 SCC 840*** and ***Mausami Moitra Ganguli vs. Jayant Ganguli 2008 (4) R.C.R. (Civil) 551*** and this Court in ***Saurabh Sharma vs. Nishi 2023(4) R.C.R.(Civil) 586*** has consistently held that the welfare and interest of the child are of paramount consideration with respect to custody of a child. Section 6 of Hindu Maintenance and Guardianship Act, 1956 (hereinafter 'HMGA') categorically states that the custody of minor child upto the age of 5 years shall ordinarily be with the mother. In doing so, the legislature has recognised the indispensable and inimitable role of a mother in the upbringing of a young child. A mother's love for her children is selfless and the lap of the mother is God's own cradle for them. Therefore, children of tender years ought not to be deprived of said love and affection. A two Judge bench of the Hon'ble Supreme Court in ***Rajeshwari Chandrasekar Ganesh vs. State of Tamil Nadu and others 2022 SCC OnLine SC 885***, speaking through Justice J.B. Pardiwala, the following was observed:

91. Thus, it is well established that in issuing the writ of Habeas Corpus in the case of minors, the jurisdiction which the Court exercises is an inherent jurisdiction as distinct from a statutory jurisdiction conferred by any particular provision in any special statute. **In other words, the employment of the writ of Habeas Corpus in child custody cases is not pursuant to, but independent of any statute.** The jurisdiction exercised by the court rests in such cases on its inherent equitable powers and exerts the force of the State, as *parens patriae*, for the protection of its minor ward, and the very nature and scope of the inquiry and the result sought to be accomplished call for the exercise of the jurisdiction of a court of equity. **The primary object of a Habeas Corpus petition, as applied to minor children, is to determine in whose custody the best interests of the child will probably be advanced.** In a Habeas Corpus proceeding brought by one parent against the other for the custody of their child, the court has before it the question of the rights of the parties as between themselves, and also has before it, if presented by the pleadings and the evidence, the question of the interest which the State, as *parens patriae*, has in promoting the best interests of the child.



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92. The general principle governing the award of custody of a minor is succinctly stated in the following words in Halsbury's Laws of England, Fourth Edition, Vol. 24, Article 511 at page 217 :

"... Where in any proceedings before any court the custody or upbringing of a minor is in question, then, in deciding that question, the court must regard the minor's welfare as the first and paramount consideration, and may not take into consideration whether from any other point of view the father's claim in respect of that custody or upbringing is superior to that of the mother, or the mother's claim is superior to that of the father." (emphasis added)

As such, the parties would be at liberty to settle the matter of custody of the detinue by availing the appropriate remedy under the Guardians and Wards Act, 1890, HMGA or any other relevant statute. In the meantime, in view of the discussion above, the jurisdictional police authorities are directed to produce the detinue-minor child before jurisdictional Court within one week and the Chief Judicial Magistrate concerned, will hand over her custody to the petitioner.

Report in this regard be recorded in the *rojnামচা* of the concerned police station.

The present criminal writ petition is disposed of accordingly.

Copy of the order be supplied to the learned State counsel for strict compliance.

(HARPREET SINGH BRAR)
JUDGE

17.03.2025

Neha

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