



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

CRWP-2578-2025

Date of Decision:17.03.2025

Manoj Kumar

...Petitioner

vs.

State of Punjab and others

...Respondents

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present: Ms. Dolli Sharma, Advocate with
Mr. Sahil Gupta, Advocate
for the petitioner.

Mr. M.S. Bajwa, DAG, Punjab.

N.S.Shekhawat J. (Oral)

1. The petitioner has filed the present petition under Article 226 of the Constitution of India for issuance of a Writ in the nature of Habeas Corpus to direct the respondent No.3 to produce the alleged *detenue* namely Dhruv Kashyap, aged about 05 years, son of the petitioner, who is stated to be in the illegal custody of respondents No.4 to 9.

2. Learned counsel for the petitioner vehemently argued that the marriage of the petitioner was solemnized with respondent No.4 namely Gangotri on 08.05.2019 at Amritsar. Out of the said wedlock, a son namely Dhruv Kashyap was born on 31.01.2020. There were temperamental differences between both the parties and the respondent No.4 had left the company of the petitioner on 21.09.2021; however, while leaving the company of the petitioner, the respondent No.4 had taken away Dhruv Kashyap, alleged *detenue* along with her. She further contends that thereafter, respondent No.4 had filed various

cases against the petitioner by levelling false and baseless allegations and the details of all the cases pending between the parties is as follows:-

Sr. No.	Case Details	Cast Title	Case Status
1.	COMA/1121/2023 (Complaint under Section 12 of Domestic Violence Act, 2005)	Gangotri Versus Manoj Kumar and Ors.	Decided on 09.12.2023, Withdrawn by complainant, namely Gangotri
2.	HMA/1413/2023 (Petition under Section 13 of Hindu Marriage Act, 1955)	Gangotri Versus Manoj Kumar	Decided on 09.12.2023, Withdrawn by petitioner, namely Gangotri.
3.	MNT/36/2022 (Petition under Section 125 of Cr.P.C.)	Gangotri Versus Manoj Kumar	Decided on 09.12.2023, Withdrawn by petitioner, namely Gangotri.
4.	CS/2363/2023 (Petition for permanent injunction)	Manoj Kumar Versus Gangotri and Ors.	Decided on 11.05.2024, Withdrawn by petitioner
5.	GW/127/2022 (Petition under Guardians and Wards Act, 1890)	Manoj Kumar Versus Gangotri	Decided on 22.07.2023 Held that petitioner is entitled for the visitation rights of the minor child, namely Dhruv. and respondent, was directed to hand over the custody of the minor child on the last Friday of every month at 5PM to the petitioner at the nearby. park situated near the

			house of the respondent.
6.	CS/2333/2022 (Petition for permanent injunction)	Manoj Kumar Versus Gangotri and Ors.	Pending for 20.03.2024
7.	HMA/3204/2024 (Petition under Section 9 of Hindu Marriage Act, 1955)	Manoj Kumar Versus Gangotri	Pending for 20.02.2024
8.	CM/511/2024 (Contempt petition against order dated 22.07.2024 GW/127/2022 in GW/127/	Manoj Kumar Versus Gangotri	Pending for 20.02.2024

3. Learned counsel for the petitioner further contends that at various stages of litigation pending between the parties, respondent No.4 wrongly stated that she was ready to join the company of the petitioner, however, she never return to the matrimonial home. Even she is not providing the basic education to the alleged *detenue* and is not taking proper care of him. She further contends that the petitioner had filed a case bearing No. GW/127/2023 on 06.11.2023 for taking custody of the alleged *detenue* and respondent No.4 was arrayed as a respondent in the said petition. Ultimately, vide order dated 22.07.2024, the petition was decided by the Family Court against the present petitioner(petitioner before Family Court also) by making the following observations:-

9. So, in the light of above discussed law, I am of the considered opinion that petitioner cannot be held entitled to the custody of the minor son Dharuv Kashyap when he is of just four and half years old. If at all petitioner feels that respondent does not have good financial capacity to up bring the child, nothing prevents him from shouldering the financial responsibility of the child and he is at liberty to financially support the child Dhanuv Kashyap. Even though, petitioner is held not entitled to the custody of minor child

but still, petitioner cannot be deprived of the right to shower his love and affection on the child. Respondent is directed to hand over the custody of the minor child on the last Friday of every month at 5:00 P.M to petitioner at the nearby park situated near the house of respondent and petitioner shall then hand over back the custody of the child at the same park in the evening of last Sunday of the month at 5.00 PM. Petitioner shall also be entitled to have the custody of the child on the morning of Diwali Festival from 9.00 AM to 3 PM and on the eve of Lohri Festival from 4pm to 8 PM.

10. In the light of above said discussion, petition of petitioner for the grant of relief of custody fails and is dismissed for the said relief though petitioner is held entitled to the visitation rights of the child Dharuv Kashyap. Respondent is directed to hand over the custody of the minor child on the last Friday of every month at 5 PM to petitioner at the nearby park situated near the house of respondent and petitioner shall then hand over back the custody of the child at the same park in the evening of last Sunday of the month at 5.00 PM. Petitioner shall also be entitled to have the custody of the child on the morning of Diwali Festival from 9.00 AM to 3 PM and on the eve of Lohri Festival from 4pm to 8 PM. Decree be prepared.”

4. Learned counsel for the petitioner further argued that inspite of complying with the orders passed by the Family Court and handing over the custody of the *detenue* to the petitioner, respondent No.4 had stopped coming to the Court for any further proceedings. Moreover, the petitioner also filed a contempt petition bearing No.CM/511/2024 on 01.08.2024 to initiate contempt proceedings against respondent No.4. The Family Court has already issued warrants against the respondent No.4, but despite warrants, respondent No.4 is evading the proceedings as she did not want to hand over the custody of the

detenue to the petitioner. Further, the petitioner has already submitted various representations to Commissioner of Police, Amritsar (Annexures P-4 and P-5) but no action has been taken by the Commissioner of Police, Amritsar in the present case.

5. I have heard learned counsel for the petitioner at length and perused the record carefully.

6. From the record, it is apparent that the petitioner had already filed a petition under Section 25 of the Guardians and Wards Act before the Family Court, Amritsar for taking custody of the Dhruv Kashyap, alleged *detenue* from respondent No.4. After considering the evidence led by the present petitioner, the Family Court Amritsar held that the present petitioner (petitioner in Trial Court also), cannot be held entitled the custody of Dhruv Kashyap. Still further, the Court held that the respondent No.4 would hand over the custody of the minor child on the last Friday of every month at 05:00 PM to the present petitioner at the nearby park, situated near the house of respondent No.4 and the petitioner shall hand over the custody of the child/alleged *detenue* at the same park in the evening of last Sunday of the month at 05:00 P.M. Apart from that, it was further directed that the petitioner would be entitled to have the custody of the child on the morning of Diwali festival from 09:00 AM to 03:PM and on the eve of Lohri festival from 04:00 PM to 08 P.M. Thus, it is apparent from the judgment (Annexure P-2) passed by the Family Court, it is evident that the issue of custody has already been finally settled between the parties by way of a judgment, which has attained finality and admittedly, no appeal has been filed by the petitioner against the said judgment. Still further, after due consideration of the material, the Competent Court has already held that the custody of minor

Dhruv Kashyap/alleged *detenue* cannot be given to present petitioner as the child is minor and he cannot be deprived of the right to love and affection of the mother. Apart from that, the Family Court has also made arrangements for visitation rights and the petitioner is entitled to knock the doors of the same Court for implementation of the judgment (Annexure P-2). Further, the Family Court has already issued warrants against the respondent No.4 and the petitioner has wrongly moved representations to Commissioner of Police, Amritsar. In fact, the Commissioner of Police, Amritsar is not empowered to initiate any action with regard to the proceedings, which are admittedly pending before the Family Court.

7. In view of the above discussion, this Court has no hesitation to hold that the present petition is totally mis-conceived and is liable to be dismissed.

8. Ordered accordingly.

17.03.2025
hitesh

(N.S.SHEKHAWAT)
JUDGE

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