



CRWP-2671-2025

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

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CRWP-2671-2025 (O&M)

Date of Decision: 19.03.2025

Jashanpreet Kaur

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU**Present:** Mr. Robindeep Singh Bhullar, Advocate for the petitioner.

MAHABIR SINGH SINDHU, J.

Petition under Article 226 of the Constitution for issuance of writ in the nature of *Habeas Corpus* for release of detenu(s)-minor children of the petitioner, namely, Prabhjeet Singh and Khushmeet Singh (aged 5 years and 3 years, respectively) from the unlawful custody of their grandparents.

2. Contends that alleged detenu(s) were forcibly taken by respondent Nos.6 and 7, who happens to be their grandparents. Further contends that alleged detenu(s) are not being provided love, affection & education; rather they are being deprived of proper care as respondent Nos. 6 and 7 are not having sufficient financial resources.

3. Vehemently contends that petitioner being mother of detenu(s) is entitled for their custody, who are aged about 5 years and 3 years, respectively.

4. Lastly contended that despite specific order dated 17.02.2025 (P-2) passed by learned Family Court, Ferozepur, (for short 'Family Court') she is not being allowed to meet her children by aforesaid respondents.



5. Heard learned counsel for petitioner and perused the paper book.

6. Certain facts are not in dispute.

On 01.01.2018, petitioner was married to Sukhwinder Singh (since deceased)-son of respondent Nos.6 and 7 and out of their wedlock, two children namely, Prabhjeet Singh and Khushmeet Singh [alleged detenu(s)] were born on 03.06.2019 and 30.11.2021, respectively.

7. It is also not in dispute that husband of petitioner committed suicide on 08.06.2024 resulting into registration of FIR No. 242 dated 08.06.2024, under Section 306 of Indian Penal Code, 1860 (for short, 'IPC'), at Police Station City Ferozepur at the instance of respondent No.6 against petitioner.

8. As per allegations levelled by *de facto* complainant-Budh Singh [grandfather of alleged detenu(s)] in FIR No. 242 dated 06.08.2024 (*supra*) petitioner used to quarrel with her husband, namely, Sukhwinder Singh (since deceased) as well as his parents; on 31.05.2024, she at her own with free volition, left matrimonial house, leaving the alleged detenu(s) in the care and custody of respondent Nos.6 and 7 (grandparents). It is further alleged that due to matrimonial discord, Sukhwinder Singh-deceased committed suicide after about one week i.e., on 08.06.2024.

9. It transpires that petitioner was arrested in the aforesaid FIR on 18.06.2024 and later on released on bail pending trial by learned Sessions Judge, Ferozepur on 10.07.2024 (P-1).

10. Also transpires that after release on bail, petitioner filed petition under Section 25 of Guardians and Wards Act, 1890 (for short 'Act 1890') before learned Family Court on 26.07.2024 for seeking custody of alleged detenu(s) from respondent Nos.6 & 7.



11. It is worthwhile to mention here that during pendency of proceedings before learned Family Court, petitioner moved an application on 05.12.2024 for interim custody of minor children, which was disposed off on 17.02.2025 (P-2) and respondent Nos.6 & 7 were directed to allow the petitioner to meet minor children [alleged detenu(s)] at the time and place suitable to both parties.

12. Thus, petitioner as well as respondent Nos.6 and 7 are at loggerheads over the custody of alleged detenu(s), who is presently living in the care and custody of latter. There is no quarrel that petitioner has already availed efficacious remedy before learned Family Court for seeking custody of minor children; hence, in such a scenario, it cannot be said that alleged detenu(s) are in illegal custody of their grandparents; rather present petition appears to be totally misconceived and abuse of process of law, especially when petitioner is facing criminal prosecution for commission of an offence under Section 306 IPC and investigation is still going on. Above all, the petition for seeking custody of minor children is already pending before learned Family Court for 25.04.2025.

13. Apart that, law is well settled that in custody matters, the welfare of child should be of paramount consideration and reference in this regard can be made to ***Rohith Thammana Gowda versus State of Karnataka and others, 2022 SCC OnLine SC 937*** and relevant portion thereof is recapitulated as under:

“8. At the outset we may state that in a matter involving the question of custody of a child it has to be borne in mind that the question ‘what is the wish/desire of the child’ is different and distinct from the question ‘what would be in the best interest of the child’. Certainly, the wish/desire of the child can be ascertained through interaction but then, the question as to ‘what would be in the best interest of the child’ is a matter to be decided by the court taking into account all the relevant circumstances. When couples are at loggerheads and wanted to



part their ways as parthian shot they may level extreme allegations against each other so as to depict the other unworthy to have the custody of the child. In the circumstances, we are of the view that for considering the claim for custody of a minor child, unless very serious, proven conduct which should make one of them unworthy to claim for custody of the child concerned, the question can and shall be decided solely looking into the question as to, 'what would be the best interest of the child concerned'. In other words, welfare of the child should be the paramount consideration.

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10. In Ravi Chandran's case (supra), this Court took note of the actual role of the High Courts in the matter of examination of cases involving claim of custody of a minor based on the principle of parens patriae jurisdiction considering the fact that it is the minor who is within the jurisdiction of the court. Based on such consideration it was held that even while considering Habeas Corpus writ petition qua a minor, in a given case, the High Courts may direct for return of the child or decline to change the custody of the child taking into account the attending facts and circumstances as also the settled legal position."

A bare perusal of the above extract reveals that stability and security of the child is an essential ingredient for development of a child.

14. In the present case, this Court is fully satisfied that alleged detenu(s) are being taken care of by their grandparents which, *prima facie*, seems to be in their best interest. Perhaps, it is the petitioner, who by her own acts and deeds, has created such a situation that grandparents are now taking care of alleged detenu(s) with due love and affection.

15. Moreover, learned Family Court vide order dated 17.02.2025 (P-2), while disposing off the application filed by petitioner for handing over the custody of minor children, observed in unequivocal terms that welfare of minor children is with respondent Nos.6 and 7. For reference, the relevant observations are extracted as under:-

"Admittedly, both the minor children are, at present, in the custody of respondent. Admittedly, an FIR No. 242 dated 08.06.2024 under Section 306 IPC was registered against petitioner at Police Station City Ferozepur for forcing her husband Sukhwinder Singh to commit suicide



and she was granted regular bail in the aforesaid FIR by the Court of learned Sessions Judge, Ferozepur, vide order dated 10.07.2024 passed in bail application bearing CIS No. BA-1462-2024. Petitioner has alleged that she has falsely been implicated in the aforesaid case, but she is still facing trial and she has not been convicted or acquitted by any Court in the aforesaid case. In this situation, it is not possible for her to look after the minor children. Besides this, the petitioner has not placed any document to show her source of income to look after and maintain and to provide food and education to the minor children. In these circumstances, this Court is of the considered view that at present welfare of the minor children is with the respondents. Allegations and counter allegations levelled by both the parties and welfare of the minor children either in the custody of the petitioner or respondent and the same are in illegal custody of the respondent shall only be ascertained after appreciation of evidence which is yet to be led by both the parties.”

16. In view of the above and taking into consideration the judgment of Hon’ble the Supreme Court in *Rohith Thammana’s case (supra)*, this Court is of the opinion that present petition is complete misuse of the process of Court; thus deserves to be dismissed with costs.

17. At this stage, learned counsel for the petitioner has cited judgment dated 13.06.2022 passed by Co-ordinate Bench of this Court in ***CRWP-3251-2022 titled as Rashneet Kaur versus State of Haryana and others*** regarding custody of minor children.

18. There is no dispute about the proposition of law laid down in the cited case, but the same would not be helpful to petitioner for the simple reason that in cited case, there was no criminal prosecution, as is the situation in present case.

19. In view of the above, taking a lenient view, the petition is dismissed; but no order as to costs.

20. Although, learned counsel for petitioner vehemently contended that despite specific order dated 17.02.2025 (P-2), passed by learned Family Court, she is not being allowed to meet her children; if that be so, petitioner

21. It is made clear that observations made herein shall have no bearing on the merits of the case pending between the parties before learned Family Court.

19.03.2025

Rajeev (rvs)

Whether reportable	Yes
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