

**CRWP-2766-2025****-1-****IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****313****CRWP-2766-2025****Date of Decision: 30.04.2025****RAHUL****... PETITIONER****VERSUS****STATE OF HARYANA AND OTHERS****... RESPONDENTS****CORAM : HON'BLE MR. JUSTICE H.S.GREWAL**

Present:- Mr. Saroj Malakar, Advocate for the petitioner.
Mr. Parveen Kumar Aggarwal, DAG, Haryana.
Mr. Uday Chauhan, Advocate for respondents No. 5 to 9.

H.S. Grewal, J.(Oral)

1. This petition has been filed under Articles 226/227 of the Constitution of India read with Section 528 of BNSS for issuance of writ, order or direction in the nature of habeas corpus directing the official respondents to produce the minor child namely Divyansh Sonkar (4 years 5 months old) before this Court and provide the custody of minor child to petitioner-father from the illegal custody of private respondents No. 5 to 9 and further praying for permission to visit/meet the minor child during the pendency of the present petition.

2. Learned counsel for the petitioner submits that the petitioner's wife has expired due to natural causes. They had two sons, the elder son is living with the father and the younger son is retained by his maternal grandparents i.e. family of the deceased mother of the alleged detainee. He



CRWP-2766-2025

-2-

further submits that the custody of the younger son of the petitioner may be handed over to him being father of the son. He has placed reliance upon the judgment passed by Hon'ble Supreme Court of India in ***Tejaswini Gaud and Ors Vs. Shekhar Jagdish Prasad Tewari and others: 2019(7) SCC 42.***

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.

34. The welfare of the child has to be determined owing to the facts and circumstances of each case and the court cannot take a pedantic approach. In the present case, the first respondent has neither abandoned the child nor has deprived the child of a right to his love and affection. The circumstances were such that due to illness of the parents, the appellants had to take care of the child for some time. Merely because, the appellants being the relatives took care of the child for some time, they cannot retain the custody of the child. It is not the case of the appellants that the first respondent is unfit to take care of the child except contending that he has no female support to take care of the child. The first respondent is fully recovered from his illness and is now healthy and having the support of his mother and is able to take care of the child.



CRWP-2766-2025

-3-

3. Since the child is a minor of the age of less than four and a half years, so it seems necessary to consult the child counsellor to interact with the child.

4. On 28.04.2025, a child Counsellor was called to interact with the child. After interaction with the child on 28.04.2025 and 29.04.2025, the child counsellor has come present in the court today with her report and the same is taken on record. As per the report of the Child counsellor, the child is in good health. The conclusion of the report is as follows:

“The counselling sessions have provided meaningful insights into Divyansh's emotional state and his connections with both sides of the family. Despite the emotional challenges of losing his mother. Divyansh shows signs of healthy adjustment in his current caregiving environment. He has formed secure attachments with his maternal aunt and uncle, and demonstrates comfort and trust in their care. His interactions with his elder brother and father reveal a natural bond that, while limited in recent months, has the potential for positive growth with consistent engagement. It is imperative that all future decisions center on preserving Divyansh's emotional security, sense of continuity, and connections with key family members who contribute positively to his well-being.”

5. I have considered the contentions of the parties and perused the report.

6. Law cited by the learned counsel for the petitioner is contrary to his submissions. Relevant extract of case in ***Tejaswini Gaud's case (Supra)*** is as under:-

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.

25. Welfare of the minor child is the paramount consideration:- The court while deciding the child custody cases is not bound by the mere legal right of the parent or guardian. Though the provisions of the special statutes govern the rights of the parents or guardians, but the welfare of the minor is the supreme consideration in cases



CRWP-2766-2025

-5-

concerning custody of the minor child. The paramount consideration for the court ought to be child interest and welfare of the child.

7. In view of the conclusion drawn from the report submitted by the Child counsellor, it would not be in the interest of justice and welfare of the child to disrupt the *status quo* of the child since it could traumatize him, which would not be in his best interest. Moreover, the maternal grandparents of the child are looking after the fundamental needs of the child and he is content in their company. Therefore, this Court is of the view that it cannot not be stated that the child is in illegal custody of his maternal grandparents although the father claims to be his natural guardian.

8. Hence, at this stage, the present petition is hereby disposed of.

9. The petitioner is at liberty to avail appropriate remedy available to him with regard to the custody of the child in accordance with law.

30.04.2025
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(H.S.GREWAL)
JUDGE

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