



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

**CRWP-3830-2024(O&M)
Date of decision: 15.05.2025**

NISHA

...PETITIONER

V/S

STATE OF HARYANA AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Vikas Kumar, Advocate
for the petitioner.

Mr. Ramesh Kumar Ambavta, AAG Haryana.

HARPREET SINGH BRAR, J. (ORAL)

1. This 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. 5 and 6 to produce the detenue Ishani (aged 09 years) who is the daughter of petitioner.

2. Learned counsel for the petitioner *inter alia* contends that petitioner was in a live-in relationship with respondent No. 7 and out of the said relationship, two baby girls were born. One of them namely Ishani, is the detenu in question. Subsequently, respondent No. 7 informed the petitioner that he wants to settle down with his legally wedded wife. After separation, the petitioner and respondent No. 7 mutually agreed to take care of one daughter each and to equally distribute the responsibility of parenthood. On 05.08.2022, private respondents in connivance with each other, prepared a forged adoption deed reflecting that the detenu has been adopted by respondents No. 5 and 6, the brother-in-law and sister of respondent No.7. A birth certificate of the detenu was also prepared on the basis of the forged and fabricated adoption deed. The petitioner has challenged the said adoption deed



by filing a civil suit No. CS-583-2023 before learned Civil Court, Bhiwani and has also instituted one criminal complaint, which is pending before learned Judicial Magistrate Ist Class, Bhiwani.

3. Learned State counsel on the other hand submits that present petition has been instituted in a mischievous manner and as the petitioner has already instituted a civil suit and filed criminal complaint in this regard, both of which are pending adjudication. Further the statement of detenu was recorded and she has refused to join the company of the petitioner. The allegations levelled by the petitioner were found to be false as the detenu was duly produced before the Child Welfare Committee where, during counselling, the detenu showed her inclination to reside with respondent No. 6. Accordingly, the custody of the detenu was handed over to respondents No.5 and 6, who are her real uncle and aunt.

4. Having heard learned counsel for the parties and after perusing the record with their able assistance, it transpires that the detenu is currently 10 years old. After due counselling by the Child Welfare Committee, it was concluded that the detenu wants to reside with respondents No.5 and 6, who are the brother-in-law and sister, respectively, of her father.

5. 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 Jagdish 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)

6. 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. 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.

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)

7. In view of the discussion above, the present petition is dismissed. However, the petitioner will be at liberty to seek custody of her daughter by filing appropriate application under the provisions of Guardians and Wards Act, 1890.

May 15, 2025
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

(i)	Whether speaking/reasoned	Yes/No
(ii)	Whether reportable	Yes/No