



CRWP-4536-2025

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRWP-4536-2025

Date of decision: 29.09.2025

Kirna Devi

...Petitioner

V/s

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. S.K. Singla, Advocate for the petitioner.

Mr. Gurpartap S. Bhullar, AAG Punjab.

Mr. Shakti Mehta, Advocate for respondent Nos.4 and 5.

SUMEET GOEL, J.

1. The *petition in hand* filed, under Article 226 of the Constitution of India, is for issuance of a writ in the nature of Habeas Corpus for the custody and release of minor son of the petitioner namely Shivjot (hereinafter referred to as '*child in question*'), who, allegedly, has been in unlawful and illegal custody of respondent Nos.4 and 5 against the wishes of the petitioner, who is his mother. Furthermore, a direction has also been sought to the official respondents to secure the release of the *child in question* from the alleged illegal custody of respondent Nos.4 and 5 and to produce the *child in question* before this Court by appointing a Warrant Officer.

2. Shorn of non-essential details, the relevant factual matrix of the *lis* in hand is adumbrated, thus:

(i) The petitioner was married to Yadwinder Singh, son of respondent No.4 on 20.11.2020 according to Sikh rites. Out of this



wedlock, one son namely Master Shivjot (*child in question*) was born on 15.09.2021.

(ii) Unfortunately, the husband of the petitioner passed away on 03.10.2023 under suspicious circumstances. Thereafter, the petitioner continued to reside at her matrimonial home in village Shutrana, Tehsil Patran, District Patiala alongwith respondent No.4 for the welfare of her minor son (*child in question*)

(iii) In February 2025, the petitioner visited her parental house for few days, leaving her son (*child in question*) with respondent No.4. However, when she returned, she was denied entry into her matrimonial home by respondent Nos.4 and 5. They also illegally retained the custody of the *child in question*. Despite several panchayats and representations, including a complaint dated 25.03.2025 to the Senior Superintendent of Police, Patiala (Annexure P-1), the custody of the *child in question* has not been restored to the petitioner.

(iv) Subsequently, the respondent No.4 has filed a petition under Section 7 of the Guardians and Wards Act, seeking guardianship of the *child in question* (Annexure P-2). The petitioner has also alleged that her signatures were fraudulently obtained on blank papers in January 2025 which was misused later as an affidavit in support of the aforesaid claim by respondent No.4.

It is in the above backdrop that the instant petition has come up for hearing before this Court.

3. Learned counsel for the petitioner-mother has iterated that the petitioner is the natural mother of the *child in question* (born on 15.09.2021) and by virtue of Section 6 of the Hindu Minority and Guardianship Act,



1956, the custody of the child below 5 years of age shall ordinarily vest with the mother. Learned counsel has further iterated that the custody of the minor child has been illegally retained by respondent Nos.4 and 5. The petitioner was forcefully ousted from her matrimonial home and denied access to her child despite repeated requests, panchayats and even a complaint to the Senior Superintendent of Police, Patiala (Annexure P-1). According to learned counsel, such deprivation of custody of the minor child is nothing but illegal detention of the minor. Moreover, the private respondents being the grandmother and uncle of the minor cannot claim precedence over the custodial rights of the mother particularly when the child is of a tender age and requires maternal care and affection. The welfare of the child is of paramount consideration and no substitute can replace the role of the mother in nurturing a child of such young age. Though the private respondents have filed a petition under Section 7 of the Guardians and Wards Act before the Family Court yet the pendency of such proceedings does not bar this Court from exercising its extraordinary jurisdiction under Article 226 to restore the immediate custody of the minor child through a writ of Habeas Corpus. Learned counsel has further iterated that the petitioner-mother is hale and healthy, financially stable and fully capable of ensuring the welfare and upbringing of her minor son whereas the illegal detention of the minor child by the private respondents is not only against the law but also against the best interest of the minor child. On the strength of these submissions, grant of petition in hand, is entreated for.

4. State of Punjab is not actually a contesting party in the *lis* in hand and learned State counsel has raised submission(s) accordingly.



4.1. *Per contra*, learned counsel appearing for respondent Nos.4 and 5 has iterated that the present petition is not maintainable as the petitioner has an efficacious alternative remedy before the competent Family Court where respondent No.4 has already filed a petition under Section 7 of the Guardians and Wards Act, 1890 which is pending adjudication. Once the learned Family Court is in *seisin* of the matter, the question of custody cannot be determined in writ jurisdiction. According to learned counsel, the petitioner has voluntarily abandoned her matrimonial home on her own accord. Furthermore, the custody of the minor child with respondent Nos.4 and 5 cannot be termed as illegal detention. The respondents are the grandmother and paternal uncle of the minor who have been taking care of him ever since the untimely demise of his father. The child has been living in a safe, secure and stable environment with them in his paternal home. On the basis of aforesaid submissions, the dismissal of the instant petition is prayed for.

5. I have heard learned counsel for the rival parties and have perused the available record.

6. The seminal issue that arises for consideration in the present petition is as to whether a writ ought to be granted, vesting the custody of the *child in question*, in favour of the petitioner-mother.

7. Before delving into the merits of the *lis*, it would be apposite to refer herein to a judgment passed by this Court in ***Veerpal Kaur vs. State of Punjab and others*** = 2025:PHHC:113490, wherein, after relying upon the judgments of the Hon'ble Supreme Court titled as *Dr. Mrs. Veena Kapoor vs. Varinder Kumar Kapoor*, 1982 AIR Supreme Court 792; *Syed Saleemuddin vs. Dr. Rukhsana*, 2001(2) RCR(Criminal) 591; *Nithya Anand*



Raghavan vs. State of NCT of Delhi & Anr., 2017(3) RCR (Civil) 798; *Tejaswini Gaud and Ors. vs. Shekhar Jagdish Prasad Tewari and others*, 2017 (3) RCR (Civil) 104; *Jose Antonio Zalba Diez Del Corral alias Jose Antonio Zalba vs. The State of West Bengal & Ors.*, 2021 SCC Online SC 3434; *Rajeshwari Chandrasekar Ganesh vs. State of Tamil Nadu & Ors.*, 2023 (12) SCC 472; *Nirmala vs. Kulwant Singh & Ors.* 2024 AIR Supreme Court 2344 and *Gautam Kumar Das Vs. NCT of Delhi and others*, 2024(4) RCR (Civil) 98 and *Somprabha Rana & Ors. vs. The State of Madhya Pradesh & Ors.* 2024 (9) SCC 382, has held as under:

“16. As a sequitur to the above rumination, the following postulates emerge:

I. The High Court’s jurisdiction to issue a writ of Habeas Corpus in minor child custody matter is predicated on the basic jurisdictional fact, namely, the minor child’s custody is demonstrably illegal/unlawful. In appropriate cases, the High Court may relax this jurisdictional prerequisite, in the interest of welfare of minor child.

II. The writ of Habeas Corpus is not a substitute for the comprehensive and evidence based procedures available under applicable guardianship statutes (such as Hindu Minority and Guardianship Act, 1956; Guardians and Wards Act, 1890 etc.). As a matter of general judicial principle, the writ Court ought to ordinarily exercise restraint and defer dispute(s) to statutory forums unless accentuating circumstances necessitate such intervention by High Court

III. In all matters relating to the custody of minor child, the paramount consideration is the welfare of such child. In exercise of its parens patriae jurisdiction; the High Court may, in appropriate cases, upon a holistic examination of facts, take an inquisitorial role to ensure that the custodial arrangement serves the best interest of the child, superseding the adversarial claims of the parties.

IV. In furtherance of a minor child’s welfare, the writ Court may issue interim order(s) concerning custody and other incidental aspects as warranted by exigencies of the situation, ensuring that the minor child’s well being remains the ultimate determinant of justice and thereafter refer parties to remedy(s) before statutory forum(s) for final/further determination of the lis.



V. *The High Court, in its writ jurisdiction has unbridled, unfettered and plenary powers. No inflexible and comprehensive guidelines can conceivably be enumerated governing the exercise of these intrinsic powers. There is no gainsaying that the nature, mode and extent of such exercise of this jurisdiction by the High Court shall depend upon the judicial discretion exercised by the High Court in the facts and circumstances of a given case.*”

8. The *petition in hand* was filed in or around 30.04.2025 whereas, as per the undisputed position before this Court, respondent No.4 (herein) – grand-mother had already filed a petition under the Guardians and Wards Act for appointing her as Court - Guardian of the *child in question*. A perusal of the paragraph No.5 of the writ petition reveals that the petitioner (herein) had received summons regarding the said petition. Further, the fulcrum of the said petition preferred at the instance of respondent No.4, is an affidavit, stated to be sworn in by the petitioner (herein), relevant whereof reads thus:-

“4. *I solemnly affirm that I have no means of income through which I can properly raise my child, Shivjot, and usually, the second husband does not properly raise another man’s child as his own. Therefore, without any pressure and with full consciousness and consent of my family, I am giving my child Shivjot to my mother-in-law Harbhajan Kaur, who shall be the legal guardian and responsible for all kinds of care, education, medical treatment, and other expenses of the child, as per the law. Whatever property comes in the share of my deceased husband shall be transferred in the name of my husband Shivjot, and I shall never claim any share in that property on the basis of my son.*

5. *I solemnly affirm that from today onwards, my mother-in-law Harbhajan Kaur shall be the guardian of my child and shall have all the rights as parent and legal guardian for all types of documents related to my son Shivjot.*”

Indubitably, in custody matters pertaining to a minor child, the paramount consideration for the Court is the welfare and overall well-being



of such child. From the totality of the factual *milieu* of the *case in hand*; especially in view of the pendency of petition under the Guardians and Wards Act having been preferred by respondent No.4 (herein) before filing of the *petition in hand*; summons in the said petition having been received by the petitioner (herein) before filing of the present writ petition; the veracity/weightage required to be attached to the affidavit sworn in by the petitioner (herein) requiring evidence to be led; nothing being brought forward for the *nonce* which may reflect that the interim custody of the *child in question* ought to be varied by handing over the same to the petitioner-mother; nothing brought forth to indicate that the well-being of the *child in question* is at peril at the end of the respondent Nos.4 and 5; this Court deems it appropriate to decline the present petition and relegate the parties to avail their remedy(s) as per law in the petition pending before the concerned Court under the Guardians and Wards Act and/or such other proceedings as may be initiated/undertaken by the rival parties.

9. In view of the prevenient ratiocination, the *petition in hand* is disposed of in the following terms:

(i) The *petition in hand* is dismissed reserving liberty in favour of the rival parties to pursue their claim(s), in accordance with law, in the pending petition under the Guardians and Wards Act, and/or such other proceedings as may initiated/undertaken by the rival parties.

(ii) The concerned Court, where the petition under the Guardians and Wards Act, preferred at the instance of respondent No.4 (herein), shall make an earnest endeavour to decide the petition as also the interim application filed therein, expeditiously in accordance with law. Needless to



say that the said Court shall take a decision without being influenced by any observation made by this Court in the instant case.

(iii) Pending application(s), if any, shall also stands disposed of.

(SUMEET GOEL)
JUDGE

September 29, 2025
Ajay

Whether speaking/reasoned:	Yes
Whether reportable:	Yes