



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

**CRWP-4744-2025
DECIDED ON: 12.05.2025**

GURWINDER KAUR

.....PETITIONER

VERSUS

STATE OF PUNJAB AND ORS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Parvinder Singh, Advocate
for the petitioner.

Mr. Jastej Singh, Addl. A.G., Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this Court has been invoked under Article 226 of the Constitution of India for issuance of a writ in the nature of Habeas Corpus directing the respondents to produce the minor children. namely (1) Opinderpreet Kaur (daughter, born on 17.06.2012) and (2) Sahil Singh (son, born on 14.09.2016), presently in illegal custody/detention of Respondent Nos. 2 and 3 and hand over their custody to the petitioner, who is the natural guardian and mother of the minor children.

2. In pursuance to the order dated 08.05.2025, report dated 12.05.2025 of warrant officer has been received, which is taken on record. Copy thereof has been supplied to the learned counsel for the petitioner as well as to private respondents No.2 and 3, namely, Darshan Kaur (mother-in-law of the petitioner) and Gurvinder Kaur (sister-in-law of the petitioner).

3. It would be worth noticing here that the petitioner is mother of alleged detenues namely Opinderpreet Kaur (daughter) and Sahil Singh (son), who aged 13 years and 08 years respectively, who happen to be minor and has been forcefully and illegally detained by respondents No.2 and 3 against the wishes of the petitioner.

4. This petition also came to be preferred invoking the jurisdiction of this Court under Article 226 of the Constitution of India for issuance of writ of Habeas Corpus once in the family Court, the petition under Sections 7 and 25 of Guardianship and Wards Act stands withdrawn only after the death of the husband of the petitioner, who unfortunately died on 20.04.2025 at the age of 40 years.

5. The situation became worst for the petitioner when she attended the cremation and Bhog rituals of her husband, wherein her minor children were neither present nor were allowed to meet her, despite her repeated requests.

6. Since, the petitioner is not being allowed to meet the children though her bona fide is quite apparent from the fact that after the death of her husband, had the petition filed by her under Section 125 Cr.P.C. was withdrawn on the same date and now, she only seeks indulgence of this Court seeking the relief of custody of her minor children from the clutches of illegal detention of respondents No.2 and 3.

7. Considering the aforesaid facts and circumstances, this Court passed the following order on 08.05.2025:-

“This petition has been filed under Article 226 of the Constitution of India for issuance of a writ in the nature of Habeas Corpus directing the respondents to produce the minor children namely (1) Opinderpreet Kaur (daughter, born on

17.06.2012) and (2) Sahil Singh (son, born on 14.09.2016), presently in illegal custody/detention of Respondent Nos. 2 and 3, before this Court and hand over their custody to the petitioner, who is the natural guardian and mother of the minor children.

Registry is directed to appoint a Warrant Officer, who shall visit the alleged places of detention and any other place as may be pointed out by the petitioner. In case the Warrant Officer finds the alleged detainees in the illegal detention confinement of respondents No. 2 and 3, he shall proceed to set her free forthwith and record their statements. Warrant Officer may take the help from the concerned police station, if need so arises.

Report to this effect shall be prepared and submitted by the Warrant Officer on or before the next date of hearing. The remuneration of the Warrant Officer shall be borne by the petitioner.

List on 12.05.2025.”

8. In compliance to the above order, warrant officer has submitted his report, wherein respondents No.2 & 3 got recorded their statements and denied to handover the custody of minor children under the pretext that it would be against the emotional health of the children though admitted that minor children are in their custody.

9. Report of warrant officer reads as under:-

“1. I left my residence at 03:30 PM on 09.05.2025 by Cab which

was provided by the Gurwinder Kaur (Petitioner). Gurwinder Kaur (Petitioner) contacted with the undersigned from her mobile and informed that she will accompany with undersigned on the way i.e. Village Ghari Kango. Accordingly, she joined us with her brother (Gurjinder Singh) from the said village.

2] Accordingly, undersigned alongwith Petitioner and her brother reached at Police Station Rahon, District SBS Nagar at 05:20 PM where SI/ 3667/PBI-Manisha Rani (Mob:8168388708), HC/487/SBS Nagar (Mob:9463180274), Sr. Constable/ 1192/SBS Nagar-Paramjit Kumar (Mob:9478127007) and other Police Officials were present. After disclosing my identity and purpose of visit, I requested the SI-Manisha Rani to provide some Police Protection without uniform alongwith lady Police Official as the raid is to be conducted in the private house of someone. Accordingly, Sub-Inspector Manisha Rani provided Police Officials alongwith herself.

3] Further, we reached at the residence of Respondent Nos.2 and 3 (village Uddhowal) where both respondents were present with both children (detenues). Under the instructions of undersigned, Respondent No.2 and 3 with both children were taken to the Police Station, Rahon where statement of Darshan Kaur (Respondent No.2) was recorded in the presence of Sub-Inspector Manisha Rani which is reproduced hereunder the facility of this Hon'ble Court:

"I, Darshan Kaur state that my son had died on 20.04.2025. My daughter-in-law Gurwinder Kaur has been staying at her maternal home for the last three years. During the last three years, my daughter-in-law had come to reside with us for three months only once and went away leaving home herself. She went away leaving her children with my son. At that time, I had gone to see my daughter Gurvinder Kaur (Respondent No. 3) in U.S.A.

Today, Warrant Officer alongwith Police officials in civil dress came to my village Garhi Udhawal including a lady Police Official with them. They showed us the orders passed by Hon'ble High Court and took away my daughter Gurvinder Kaur, my grand-son, grand-daughter

and me at the Police Station. I want to keep my grandson and grand-daughter with myself. My daughter-in-law had gone at her own will while leaving our house.

I have heard my statement and found the same absolutely correct.

*Sd/- Darshan Kaur
Respondent No. 2
Date: 9-5-2025
Time 06:42 PM"*

Statement of Darshan Kaur (Respondent No.2) in original is annexed as Annexure W-1.

4] Further, undersigned asked Gurvinder Kaur (Respondent No.3) to submit her statement and accordingly she submitted her statement in the presence of Sub-Inspector Manisha Rani which is reproduced hereunder for the facility of this Hon'ble Court:

*"Statement of Gurvinder Kaur Rai Respondent No. 3
CRWP No. 4744 of 2025*

I, Gurvinder Kaur state that my brother Manjinder Singh has died on 20.04.2025. Whatever, statement has been got recorded by my mother, I also state the same, but this girl is giving my name in a wrong manner everywhere because I am an NRI. My nephew and niece want to reside with their grand-mother. This girl wants to keep them with herself forcibly in an arbitrary manner which is not good for the emotional health of the children. The children have been staying at the house of their paternal grand-parents at their own will. This girl appended signature on the compromise and want to keep the children with herself only to get money.

*Sd/-Gurvinder Kaur Rai
(Respondent No. 3)"*

Statement of Gurvinder Kaur (Respondent No.3) in original is annexed as Annexure W-2.

5] Further, undersigned handed over the custody of both children (detenues) to their mother (Gurwinder Kaur-Petitioner) and recorded her statement in the presence of Sub-Inspector Manisha Rani which is reproduced hereunder for the facility of this Hon'ble Court:

*Statement of Gurwinder Kaur
Petitioner in CRWP-4744-2025*

"Stated that I am resident of Village Ramgarh, Tehsil Garhshankar. I had filed a case in Hon'ble High Court for getting released my daughter (Opinderpreet Kaur) and son (Sahil Singh) from the illegal custody of my mother-in-law and sister-in-law. Today i.e. on 09.05.2025, Warrant Officer visited the village of my in-laws' at village Udhowal with me with the order of Hon'ble High Court. A lady Police official of Police Station Rahon had also accompanied us there. All were in civil dress. Warrant Officer has handed over the custody of both of my children to me in the presence of Insp. Neeraj Chaudhary and Sub-Inspector Manisha. I am happy with the entire proceeding and going to my home while taking along my children Opinderpreet Kaur and Sahil Singh with me.

*Sd/-Gurwinder Kaur
(Petitioner)"*

Statement of Gurwinder Kaur-Petitioner in original is annexed as Annexure W-3.

6] Accordingly, under the instructions of undersigned, all concerned Police officers/officials, Gurwinder Kaur-Petitioner, Respondent No.2 & 3 with both the children (detenues) came outside the Police Station for clicking photos regarding handing over the minor children (detenue) to their mother

(Petitioner). During this session Respondent No.2 & 3 had refused to give the custody of children to their Mother by saying that they will appear before Hon'ble High Court on fixed date i.e. 12.05.2025 with both children (detenue).

7] Further, on the instructions of undersigned Respondent No.2 & 3 submitted their supplementary statements in the presence of said female Sub-Inspector which are reproduced hereunder the facility of this Hon'ble Court:

Supplementary Statement of Darshan Kaur (Respondent no.2)

"I Darshan Kaur submit that I am a widow women and my daughter-in-law Gurvinder Kaur has domestic dispute with me and my son Manjinder Singh. The case is pending in the Nawanshahr and Garhshankar Court. My daughter-in-law Gurvinder Kaur left my grand-daughter and grand-son several years ago and living at her maternal home. I as well as my son, both were looking after the children. I was incurring all the expenses on them. Both children have been living with me happily at their own will. My son Manjinder Singh had died on 20/4/2025. After his death, both the children have been living with me and I have been looking after them. I am real grand-mother of both the children and its more than 3 years, the children are staying with me. I have filed a case against my daughter-in-law Gurvinder Kaur in Family Court, Nawanshahr. I have been producing its copy and my daughter-in-law Gurvinder Kaur also knows about it. Both the children have been living with me, being a grand-mother. My both children are not illegal. Both the children are in legal custody of their grand-mother and they are very happy. I will bring both children to Hon'ble High Court, Chandigarh on next date of hearing.

Sd/- Darshan Kaur

Respondent no.2

Date:09.05.2025

*Supplementary Statement of Darshan Kaur (Respondent no.2)
in original is annexed as Annexure W-4.*

*Supplementary Statement of Gurvinder Kaur
(Respondent no.3)*

"I am the citizen of USA. Darshan Kaur is the wife of Ajit Singh. Darshan Kaur is my widow mother. My niece Upinder Kaur, Sahil Singh has been living with my mother Darshan Kaur. My mother Darshan Kaur has been incurring expenses on my children and looking after them. Now I have come to India on 22-04-2025, to meet my mother. Both children don't live with me and they live with my mother Darshan Kaur. I never want to take both children to USA. I will appear in High Court on next date of hearing alongwith both children."

Sd/- Gurvinder Kaur

Respondent no.2

Date:09.05.2025

Supplementary Statement of Gurvinder Kaur (Respondent No. 3) in original is annexed as Annexure W-5.

8] After hearing the statement of both the respondents Gurwinder Kaur (Petitioner) also gave her consent that she is agree with the statement of both the respondents and accordingly, undersigned recorded her statement which is also reproduced hereunder for the facility of this Hon'ble Court:

*Supplementary Statement of Gurwinder Kaur (Petitioner)
in CRWP- 4744-2025.*

"Today at Police Station Rahon, When Warrant Officer handed over the children to me in presence of police then the grand-mother of children (my mother-in-law) and Bua (my sister-in-law) of children took back the children and said, "on 12-5-2025, we will appear in High Court

alongwith children." agree with my mother-in-law and sister-in-law. On 12-5-2025, I will also appear in Hon'ble High Court alongwith my advocate.

Attested with seal of P.S. Rahon: Sd/- Gurvinder Kaur

Sd/- Manisha Rani, Sub-Inspector (Petitioner) 7.43 PM

Mob. 8168388708

9/5/25

Mob. 7717695688

Supplementary Statement of Gurwinder Kaur (Petitioner) in original is annexed as Annexure W-6.

9] I left for my residence at about 07:50 PM.

10] DD Entry No.030 dated 09.05.2025 Police Station, Rahon, District SBS Nagar is at Annexure W-7."

10. Today, the petitioner as well as respondents No.2 & 3 along with alleged detenues i.e. two minor children namely Opinderpreet Kaur and Sahil Singh, are present in Court. It is apparent that such act on the part of respondent No.3 does tantamount to violating the directions issued by this Court dated 08.05.2025 whereby the warrant officer was appointed with a direction to visit the alleged places of detention and any other place as may be pointed out by the petitioner and in case, the minor children are found they shall be got released but the custody cannot be handed over to the petitioner but the warrant officers report has demonstrated otherwise showing high-handedness and the least respect and honour shown to the directions issued by this court who opted not to release the alleged detenues but to appear in Court.

11. Accordingly, the parties are here today, Mr. Ankur Bansal, Advocate has put in appearance on behalf of respondents No.2 & 3, who has filed Power of Attorney on their behalf. He submitted to the effect that both

the minor children do not wish to go along with their mother as it would be against their emotional health.

12. Be that as it may, the present petition invokes the writ jurisdiction of this Court under Habeas Corpus, wherein the primary issue for consideration is whether the custody in question is unlawful.

13. It is well-known to the law under Section 6 of the Hindu Minority and Guardianship Act, 1956 that father is the natural guardian for the child above 5 years and in case of minor children below the age of 5 years, mother shall ordinarily be treated as a guardian.

14. In the case in hand, the husband of the petitioner i.e. father of minor children has unfortunately died on 20.04.2025 and therefore, as per the law laid down in Hindu Minority and Guardianship Act, 1956, the title of natural guardian now vests with the present petitioner being the biological mother and by no stretch of means or by any legal provision can a biological parent be deprived of custody of their children unless there is a demonstrated legal impediment or adverse circumstance warranting such deprivation.

15. At this stage, respondents No.2 & 3 agreed to release the alleged detainees i.e. minor children namely Opinderpreet Kaur and Sahil Singh in favour of the petitioner in the Court itself, whose statements separately have been recorded which is taken on record as Documents A and B. The other articles belonging to the alleged detainees shall be handed over through Mr. Ankur Bansal, Advocate who will further handover the same to Mr. Parvinder Singh, learned counsel for the petitioner.

16. This arrangement has been put in place in order to avoid any direct conflict as the interest is apparently in conflict between the petitioner and respondents No.2 and 3.

- 17. Needful shall be done by tomorrow itself.
- 18. In case there is any violation of the Court directions, the petitioner would be at liberty to move application for revival of the petition.
- 19. The present petition is disposed of in the aforesaid terms.

12.05.2025

Poonam Negi

**(SANDEEP MOUDGIL)
JUDGE**

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>