



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH
203+147**

**CRWP-4873-2025 (O&M)
Date of decision: 26.05.2025**

Anju

....Petitioner

Versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Balraj Gujjar, Advocate
for the petitioner.

Mr. Vikas Bhardwaj, AAG, Haryana.

Mr. V.P. Sangwan, Advocate
for respondents No.4 to 6.

HARPREET SINGH BRAR J. (Oral)

1. Prayer in this criminal writ petition filed under Articles 226/227 of the Constitution of India, is for issuance of a writ in the nature of Habeas Corpus to respondents No.2 and 3 to get released the alleged detainee namely Sanvi, minor daughter of the petitioner, from the illegal detention of respondents No.4 and 5 and to hand over her custody to the petitioner.

2. On 13.05.2025, the following order was passed:-

“2. Learned counsel for the petitioner, inter alia, contends that the petitioner is mother of the alleged detainee, whose date of birth is 21.07.2019. The petitioner was harassed and maltreated by the private respondents on account of bringing less dowry and on 08.03.2022, she was thrown out of the matrimonial home along with the



detenue. Thereafter, on the assurance of respondent No.6-husband of the petitioner and other responsible members of the family and relatives, the dispute between the petitioner and her husband was sorted out and she joined her matrimonial home. However, the private respondents did not mend their ways and after some time, they again started harassing and humiliating the petitioner. When the petitioner fell seriously ill, the private respondents did not provide treatment to her. As such, on 16.03.2025, she along with the detenue came to her parental house at Village Kalinga, District Bhiwani and started taking treatment from PGIMS, Rohtak w.e.f. 19.03.2025, which is evident from Annexure P-2. On 21.04.2025, respondent No.4 suddenly came to parental house of the petitioner and on the pretext of meeting the detenue with her grandfather, he took her to his native Village Bapora, without consent of the petitioner. Thereafter, respondent No.6 left the detenue with respondents No.4 & 5 and joined his duty, as he is serving in the Army. When the petitioner tried to contact the detenue, she was not allowed by respondents No.4 & 5. As such, the detenue is illegally confined by them. On 05.05.2025, the petitioner went to her matrimonial house in Village Bapora to take back the detenue from respondents No.4 & 5, however, they flatly refused even for meeting and misbehaved and they also threatened her of dire consequences. On the same day i.e. 05.05.2025, the petitioner called the police at the spot, but no action was taken. Thereafter, she submitted a detailed complaint (Annexure P-3) to respondent No.3 to get released the detenue from the illegal custody of respondents No.4 & 5. When nothing was done on the complaint (Annexure P-3), the petitioner was compelled to approach respondent No.2



by moving a complaint dated 07.05.2025 (Annexure P-4), however, the same is still pending. Learned counsel for the petitioner submits that in view of the age of the detenue, who is illegally detained by respondents No.4 & 5, she must be in custody of her mother i.e. the petitioner.

3. *Notice of motion.*

4. *Ms. Geeta Sharma, DAG, Haryana, who is present in the Court today, accepts notice on behalf of respondents No.1 to 3-State.*

5. *Having heard learned counsel for the petitioner and after perusing the record of the case, it transpires that the detenue is daughter of the petitioner, aged about 05 years and presently, she is in custody of her grandmother and aunt i.e. respondents No.4 & 5.*

6. *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)

7. It is trite law that welfare of the minor would reign supreme, while deciding 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. Section 6 of Hindu Maintenance and Guardianship Act, 1956 (for short 'HMG Act') categorically states that the custody of minor child upto the age of 05 years shall ordinarily be with the mother. In doing so, the legislature has recognized the indispensable and inimitable role of a mother in upbringing of a young child. A mother's love for her children is selfless and the lap of the mother is God's own cradle for them. Therefore, children of tender age ought not to be deprived of said love and affection. 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)



8. *As such, the parties would be at liberty to settle the matter of custody of the detainee by pursuing the appropriate remedy under the Guardians and Wards Act, 1890, HMG Act or any other relevant statute. In the meantime, in view of the discussion above, respondent No.3 is directed to produce the detainee-minor daughter of the petitioner, namely Sanvi, before the jurisdictional Court at Bhiwani, who will hand over her custody to the petitioner, after passing an appropriate order.*

9. *Adjourned to 26.05.2025.”*

3. Learned State counsel at the very outset submits that the directions issued by this Court have been duly complied with and the present petition has been rendered infructuous as the custody of the detainee, in question, has been handed over to the petitioner.

4. Learned State counsel further submits that it is a private dispute between the parties and liberty has already been granted to the petitioner and private respondents to file appropriate application with regard to custody of the alleged detainee, in question.

5. At this stage, learned counsel for the petitioner submits that in spite of the specific directions given by this Court, the compliance was not made by the concerned SHO initially, however, when the petitioner moved the application i.e. CRM-W-753-2025, the SHO concerned called the petitioner in Police Station and started pressurizing him to effect compromise and is further threatening the petitioner to withdraw the main petition and hand over the alleged detainee back to the private respondents.



6. Learned State counsel, on the other hand, submits that he has no instructions with regard to the fact that the petitioner was called by the SHO concerned in the Police Station.

7. In view of the above, the present writ petition is disposed of and it is expected that the concerned SHO will give due regard to majesty of justice and vindication of law.

(HARPREET SINGH BRAR)
JUDGE

26.05.2025
yakub

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