



114

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

**CRWP-5227-2025 (O&M)
Date of decision: 20.05.2025**

Manju Devi and another

... Petitioners

Vs.

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Bikram Chaudhary, Advocate
for the petitioners.

HARPREET SINGH BRAR, J. (ORAL)

1. Present petition has been filed under Article 226 of the Constitution of India for issuance of a writ in the nature of Habeas Corpus directing respondent No.2 to get released the detenues, namely Anvi, aged about 07 years and Reyansh, aged about 06 years, daughter and son of the petitioners, respectively, from the illegal detention of respondent No.3-grandfather.

2. Learned counsel for the petitioners, *inter alia*, contends that petitioner No.1 is mother and petitioner No.2 is father of the alleged detenues, namely, Anvi and Reyansh, who are aged about 07 years and 06 years



respectively. Further, after her marriage with petitioner No.2, petitioner No.1 was selected on the post of Nurse in District Level Cadre on 17.07.2022 and presently, she is posted at Civil Hospital, Kaithal and is residing with her husband-petitioner No.2 at Kaithal. It is further contended that respondent No.3, who is grandfather of the detenues, is working as Inspector in Haryana Police and he asked petitioner No.1 not to join the services of Nurse. However, when the petitioners did not agree, respondent No.3 illegally and without their consent, kept the detenues with him and he is extending threats to them of dire consequences, if they tried to take custody of the detenues and even he is not allowing the petitioners to meet the detenues. Furthermore, the detenues are studying in Mahatama Gandhi High School, Narwana, District Jind in Class 2nd and Class 1st, respectively and when the petitioners tried to meet the detenues even during school hours, they were not allowed to meet on the instructions of respondent No.3. For the last two years, the petitioners are trying to pacify respondent No.3 to hand over custody of the detenues to them being parents of the detenues, however, respondent No.3 did not bend to their request. Learned counsel for the petitioners submits that in view of the tender age of the detenues, who are illegally kept confined by respondent No.3, they must be in custody of the petitioners being parents/natural guardians.

3. Notice of motion.

4. Ms. Geeta Sharma, DAG, Haryana, who is present in the Court today, accepts notice on behalf of official respondents No.1 & 2-State.



5. Having heard learned counsel for the parties and after perusing the record of the case, it transpires that the detenues are daughter and son of the petitioners, aged about 07 years and 06 years, respectively and presently, they are in custody of their grandfather i.e. respondent No.3.

6. This Court has noticed an increasing tendency amongst disgruntled parents and other family members to move a writ petition in the nature of habeas corpus, in order to settle custody of the 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) RCR (Civil) 551*** and this Court in ***Saurabh Sharma Vs. Nishi, 2023(4) RCR (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 detainees by pursuing the appropriate remedy under the Guardians and Wards Act, 1890, HMG Act or any other relevant statute.



9. In view of the discussion above, present petition is allowed and respondent No.2 is directed to produce the aforesaid detenues-minor children, namely Anvi and Reyansh, before learned Chief Judicial Magistrate, Kaithal, who will hand over their custody to the petitioners being natural guardians/parents, after passing an appropriate order.

[HARPREET SINGH BRAR]
JUDGE

20.05.2025
vishnu

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No