

2025:PHHC:147862



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

272

CRWP-5609-2025 (O&M)
Date of decision: 31.10.2025

Raj Kumari**...Petitioner****Versus****State of Punjab and others****...Respondents****CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA**

Present:- Mr. Anter Preet Singh, Advocate
for the petitioner.

Mr. Vivek Sharma, AAG, Punjab.

Mr. Vikas Bali, Advocate
for respondents No. 4 to 6.

MANISHA BATRA, J. (Oral)

1. The present petition has been filed by the petitioner under Article 226 of the Constitution of India seeking issuance of writ in the nature of habeas corpus for obtaining custody of her minor children, namely Yash Preet and Kalpana, who are aged about 10 years and 06 years, respectively, from respondents No. 4 to 6, who are their grandmother, uncle and aunt, respectively.

2. Brief facts of the case as set up by the petitioner are that her marriage was solemnized with Narinder Kumar on 13.04.2012. Both of them were living happily together at village Meharban separately from respondents No. 4 to 6/private respondents. Two children, namely Yash Preet and Kalpana, were born out of the wedlock on 06.08.2014 and 05.01.2019, respectively. His husband, who was serving in Employees Provident Fund Office, Ludhiana, had unfortunately died on 31.05.2022 due to some ailments. Respondents No. 4 to 6, who are mother, brother and sister-in-law of her deceased husband, respectively,

2025.PHHC.147862



had evil eye over the service dues of her husband, which was paid to the petitioner by the department concerned. Even respondent No. 4 had filed a suit for declaring that they were entitled to receive service benefits of Narinder Kumar after his death, which was eventually paid to the petitioner. Subsequently, the private respondents have forcibly taken away the minor children of the petitioner with them on 15.09.2023 without informing the petitioner. When she tried to obtain the custody of the children, she was given beatings by them on 10.07.2023 and thrown out of the house. With regard to the said incident, the petitioner had even filed a complaint before the police. Respondent No. 4 is a widow. Respondent No. 5 is the younger brother of deceased Narinder Kumar, who is already married with respondent No. 6 and they are having a minor female child out their wedlock. The petitioner tried multiple times to get the custody of her children but to no avail. Her minor children are being deprived of natural motherly love and affection and are not being taken care of properly by the private respondents.

3. Learned counsel for the petitioner has submitted that the private respondents have forcibly taken the custody of the minor children from the petitioner and their act is not only illegal but also amounts to cruelty to the petitioner as well as children as they are of tender age and needed the care and company of their mother for their upbringing. While submitting that the private respondents are mistreating the minor children and not maintaining them properly, it is urged that a writ of habeas corpus be issued for release of the alleged detenuess. To fortify his argument, learned counsel for the petitioner has relied upon the authorities cited as ***Gurmeet Kaur Batth vs. State of Punjab, 2009 (1) RCR (Criminal) 974, Jaswinder Kaur vs. State of Punjab and others,***

2025.PHHC.147862



2010 (2) RCR (Criminal) 891, Deepak Agnihotri vs. The Commissioner of Police and others, 2009(2) RCR (Criminal) 30, Sandeep Kumar @ Sandeep Chugh vs. State of Haryana and others, 2022 (1) RCR (Criminal) 95 and Gohar Begum vs. Suggi @ Nazima Begum and others, 1960 AIR (Supreme Court) 93.

4. Status report has been filed by the respondent-State. Learned State counsel has submitted that on verification made by the police officials, it has been found that the minor children are residing happily with the private respondents and are studying in a school.

5. No reply has been filed on behalf of respondents No. 4 to 6. However, learned counsel appearing for these respondents have denied the allegations made by the petitioner. He has submitted that the private respondents have never mistreated the children and rather, they are properly taking care of them, being their grandmother, uncle and aunt, respectively. It is also submitted that even they had never caused any harassment to the petitioner and she had left the company of respondents out of her own free will. The respondents have placed on record photocopies of fee receipts of the children to show that they have been enrolled in a school and they are properly taking care of their studies as well as other needs. Even otherwise, the present petition is not maintainable for seeking custody of the children. It is, thus, urged that the petition is liable to be dismissed.

6. This Court has heard the submissions made by the parties and has also gone through the material placed on record.

7. Admittedly, the petitioner was married to the son of respondent No. 4, namely Narinder Kumar, who had died on 31.05.2022 due to some

2025.PHHC.147862



ailments. It is not disputed that the petitioner is the natural guardian of the detenues, who are her son and daughter. As per allegations of the petitioner, the private respondents have forcibly taken the custody of the minor children and are not properly maintaining them. The question that arises before this Court for consideration is as to whether the custody of the minor children with the private respondents can be stated to be illegal, warranting issuance of a writ in the nature of habeas corpus directing release from their custody?

8. The petitioner has invoked jurisdiction of this Court for issuance of a writ in the nature of habeas corpus. Such writ is primarily issued calling upon a person who had detained another to produce the detained individual in order to let the Court to know on what ground a detinue has been confined and set him at liberty if there is no legal justification for such detention. When once the Court comes to the conclusion that the detention is unlawful, the confinement cannot be permitted and consequently direction has to be issued to set the detinue at liberty. Reliance in this context can be placed upon a Full Bench judgment of the High Court of Madras reported as ***Kuppammal and others vs. The District Collector and Dist. Magistrate, Thiruvallur District, Thiruvallur and Others***, decided on 13.02.2001 in ***HCP Nos.11,41,66, 76 and 103 of 2000***, wherein it was observed that the confinement of a person is either unlawful or considered to be unlawful in cases where the detention is not authorised or under the shelter of any law or the detention law under which the detention ordered is void, where the authority who had ordered detention is not the one specified or authorised in that behalf, where though the specified authority ordering detention is competent and also acts under a valid law yet if such authority had failed to follow the procedure prescribed in that behalf and in some cases even when the authority

2025.PHHC.147862



had followed the procedure prescribed if action of said authority is vitiated by one or more of the defects or infirmity recognised in this respect by principles of administrative law such as abuse of power, mala fides, perversity, non-application of mind, arbitrariness or extraneous consideration or a fortiori reason or like.

9. Reference can further be made to ***Tejaswini Gaud vs. Shekhar Jagdish Prasad Tiwari : (2019) 7 SCC 42***, wherein it was observed by Hon'ble Supreme Court that 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 is by a person who is not entitled to his legal custody. Similar view was expressed by this Court in ***Gurmeet Kaur Batth's*** case (supra). In ***Jaswinder Kaur's*** case (supra), after the death of the father, the grandparents had forcibly taken away the minor children from the custody of the mother. It was held by this Court that the custody of the children with the grandparents was unlawful and the same was restored to their mother while granting visitation rights to the grandparents. Reference can also be made to a recent pronouncement of Hon'ble Supreme Court in ***Vivek Kumar Chaturvedi and another vs. State of U. P. and others, 2025 INSC 159***, wherein the custody of the child was with the grandparents and they were alleged to be taking good care of him. However, it was observed by Hon'ble Supreme Court that the father, being natural guardian of the child, was best suited for having custody of the minor child and his custody was given to the father with some visitation rights to the grandparents.

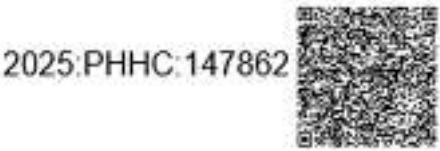
10. In the present case, the detenues, who are son and daughter of the petitioner, are minors and are residing with their grandmother, uncle and aunt, who also seem to be looking after them properly. It is not the claim of the private

2025.PHHC.147862



respondents that the petitioner is not capable of taking care of the children. They have only stated that the children are not willing to reside with her. However, at the same time, it cannot be ignored that the petitioner is the natural guardian of the children and the private respondents have no legal authority to have the custody of her children. Admittedly, the children were with their parents for about 08 years and 3.5 years before death of their father. They were separated from their mother on 15.09.2023 and since then have been living with the private respondents, who cannot have a better claim than the mother, who is the natural guardian. The petitioner is well employed and educated and there is nothing standing against her legal rights as a natural guardian and legitimate desire to have the custody of her children. In view of the same, this Court is of the considered opinion that the welfare of the children would be best served if the custody is given to the petitioner/mother. However, this Court cannot lose sight of the fact that their academic session is going on, which would complete on 30.04.2026. In the given circumstances, if their custody is handed over forthwith to the petitioner, their studies may disturb.

11. Accordingly, in view of the above discussion, it is directed that the custody of the children shall remain with the private respondents till 30.04.2026 and during that period, the petitioner shall be at liberty to take them with her on alternate weekends to reside in her house. The children shall be taken on the evening of Friday or the morning of Saturday and returned on the evening of Sunday. This arrangement shall continue upto 30.04.2026 and on 01.05.2026, the custody of the children shall be handed over to the petitioner in the presence of the SHO of the Police Station of concerned area. After handing over the custody of the children to the petitioner, the private respondents shall also have visitation



rights and they shall be permitted to take the children to their residence on every second Saturday of the month, starting from June, 2026. This arrangement shall continue for a period of one year and then, as per the desire of the children.

12. With the above observations, the petition stands allowed.
13. Let a photocopy of this order be sent to the SHO of the Police Station concerned for compliance.

31.10.2025
Waseem Ansari

(MANISHA BATRA)
JUDGE

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