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

**CRWP-5762-2025 (O&M)
Date of decision: 28.05.2025**

Parminder Kaur Sandhu

... Petitioner

Vs.

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. G.S. Virk, Advocate and
Mr. Vikas Prakash, Advocate
for the petitioner.

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 the official respondents to get released the detenues, namely Sargun Kaur Sandhu, aged about 08 years & 09 months and Guntaj Sandhu, aged about 03 years & 07 months, daughter and son of the petitioners, respectively, from the illegal detention of respondent No.5-father.

2. Learned counsel for the petitioner, *inter alia*, contends that the petitioner is citizen of Canada and she is employed in Health Care Field at

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Edmonton (Canada). Her marriage was solemnized with respondent No.5 on 14.01.2005 and out of this wedlock, two children i.e. the detenues were born and they are also Canadian citizens. In the month of December, 2023, respondent No.5, who was also residing in Canada, came to India and refused to return back, as he is facing criminal charges along with drug charges there and he has apprehension that he would be convicted and imprisoned by Canadian Court. Now arrest warrants have been issued against respondent No.5 and he has been declared as proclaimed offender. Further, the petitioner filed a report against respondent No.5 for theft under value of 5000 Canadian dollars on 08.08.2023 for selling her jewellery in order to get his car out, which was seized by the jurisdictional police in Canada. Furthermore, the petitioner obtained an order dated 01.05.2023 (Annexure P-4) from the Provincial Court of Alberta, restraining respondent No.5 from being within 100 meters of her children.

3. Learned counsel for the petitioner further contends that on 06.12.2024, the petitioner along with the detenues came to India and on 23.04.2025, respondent No.5 and his family members, by physically assaulting her, took away the detenues along with them and also snatched the documents including passports and other important IDs. Till then, the petitioner has not been allowed even to meet or talk to her children. The petitioner even requested respondent No.5 to release the detenues, but to no avail. Having left with no other option, the petitioner submitted a detailed

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representation before respondents No.3 & 4 on 23.05.2025 via email, which is available on record as Annexure P-1. Further, respondent No.5 is a drug addict and is involved in one FIR in India. The petitioner along with her children-detenuess has to go back to Canada, as the permission for stay in India is expiring in June, 2025 and the detenues have to join their school in Canada. Copies of e-visa and school registration form are available on record as Annexures P-5 & P-6 respectively. Learned counsel for the petitioner thus submits that keeping in view the aforesaid facts and circumstances and also the tender age of the detenues, who are illegally kept confined by respondent No.5, they must be in custody of the petitioner being mother.

4. Notice of motion.

5. Mr. Subhash Godara, Addl. A.G., Punjab, who is present in the Court today, accepts notice on behalf of official respondents No.1 to 4-State.

6. Having heard learned counsel for the parties and after perusing the record of the case, it transpires that the petitioner is mother of the detenues who are her daughter, namely Sargun Kaur Sandhu and son, namely Guntaj Sandhu, whose date of birth is 26.08.2016 and 19.10.2021, respectively and presently, they are in custody of their father i.e. respondent No.5.

7. 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)

8. 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*

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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)

9. As such, the parties would be at liberty to settle the matter of custody of the detenues by pursuing the appropriate remedy under the Guardians and Wards Act, 1890, HMG Act or any other relevant statute.

10. In view of the discussion above, present petition is allowed and respondents No.2 & 3 are directed to produce the detenues-minor children of the petitioner, namely Sargun Kaur Sandhu (daughter), aged about 08 years & 09 months and Guntaj Sandhu (son), aged about 03 years and 07 months, before learned Chief Judicial Magistrate, Ludhiana, who will hand over their custody to the petitioner, after passing an appropriate order.

11. The petitioner undertakes to provide a vehicle to take the detenues-minor children from Village Kaler, Faridkot, where they are



presently residing with respondent No.5 and his family members, in order to produce them before learned Chief Judicial Magistrate, Ludhiana. She will be accompanied by the police officials of Police Station Daba, District Ludhiana for this purpose.

12. Senior Superintendent of Police, Faridkot is also directed to instruct the police officials of concerned police station to assist the police officials of Police Station Daba, District Ludhiana for the purpose of production of detainees-minor children before learned Chief Judicial Magistrate, Ludhiana.

13. Report in this regard be recorded in the *rojnamcha* of the concerned police station(s).

28.05.2025
vishnu

[HARPREET SINGH BRAR]
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No