



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

1) CRM-M-42057-2020 (O&M)
Date of decision: 17.03.2025

Jagdeep Singh and othersPetitioners

Versus

State of Punjab and another ...Respondents

2) CRM-M-61136-2024 (O&M)

Sukhpal Singh and anotherPetitioners

Versus

State of Punjab and another ...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Kunal Dawar Advocate
for the petitioners in CRM-M-42057-2020.

Mr. Ajaivir Singh, Advocate
for the petitioners in CRM-M-61136-2024.

Mr. Pankaj Bali, Advocate
for respondent No.2 in both cases.

Mr. Sandeep Kumar, DAG, Punjab.

HARPREET SINGH BRAR, J. (ORAL)

1. This order of mine shall decide both the above mentioned cases as they arise out of a similar factual matrix. However, for the sake of brevity, the facts have been taken from CRM-M-61136-2024.

2. The petitioners have approached this Court by way of filing the present petition under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 (earlier Section 482 Code of Criminal Procedure, 1973 (hereinafter 'Cr.P.C.') for quashing of the FIR bearing no.147 dated 15.09.2020 under Section 365 read with Section 120-B of Indian Penal Code, 1860 (hereinafter 'IPC') registered at Police Station Khanna City-II, District Ludhiana, Punjab



(Annexure P-1), as well as all subsequent proceedings arising therefrom.

3. Succinctly, the facts of the case, as alleged, are that petitioners No. 1 and 2 are brothers. The above-mentioned FIR has been registered by the wife of petitioner no.1 namely Ramita Rani (Respondent No.2). Petitioner No.1 and respondent No.2 got married in the year 2007 and two children namely, Arpita and Amandeep Singh Gulati, aged about 16 years and 8 years, were born from the said wedlock. In the year 2009, on account of matrimonial discord, respondent No.2 left the matrimonial home and initiated proceedings under Section 125 Cr.P.C. etc. against petitioner No.1. In the year 2015, a compromise was arrived at between them, after which, they resumed matrimonial relationship.

4. Later, in the month of June, 2020, respondent No.2 went to her parental home at Khanna again. On 11.09.2020, petitioner No.1 picked their son from the street outside respondent's parental house. Thereafter, petitioner No. 1 filed a petition bearing CRWP No. 7371 of 2020 before this Court seeking protection of his life and liberty, which was disposed of vide order dated 18.09.2020. Subsequently, respondent No. 2 got registered an FIR (supra), accusing the relatives of petitioner No.1 of conspiring to kidnap their son-Amandeep Singh Gulati and alleging that petitioner no.1 had kidnapped him.

5. Further, petitioner no.1 has filed a petition seeking divorce under Section 13 of the Hindu Marriage Act, 1955 (Annexure P-2) before the learned District Court, Ludhiana, as well as a petition under Section 25 of the Guardian and Wards Act, 1890 before the learned Family Court, Ludhiana, seeking custody of both their children.

6. Learned counsel of the petitioners *inter alia* contends that petitioner No.1 is the father of the minor child, making him his natural



guardian. As such, the ingredients of the offence of kidnapping are not made out against the petitioner No.1. Furthermore, when the main offence of kidnapping does not stand, petitioner No.2 and other relatives of petitioner No.1 cannot be held for offence of criminal conspiracy as defined under 120-B of IPC, as ingredients of the same are not made out against them. Reliance in this regard is placed on the judgments rendered by the Hon'ble Supreme Court in *Chandrakala Menon and another vs. Vipin Menon 1993 (2) SCC 6*, the Karnataka High Court in *Capt. Vipin Menon vs. State of Karnataka and another 1992 ILR(Karnataka) 2622* and *Kushagra vs. State of Karnataka and another Crl. No. 102394 of 2023 decided on 04.07.2024*, the Bombay High Court in *XXX vs. State of Maharashtra Criminal. Application No. 552 of 2023 decided on 06.10.2023* and this Court in *Geeta vs. State of Haryana and another 2024(2) R.C.R.(Criminal) 168*.

7. *Per contra* learned State counsel, assisted by learned counsel for respondent No.2, submits that, as per the statement of respondent No.2 and the witnesses, the petitioners along with other co-accused acted in connivance with each other to abduct Amandeep Singh Gulati, the son of respondent No.2, with wrongful intent to pressurize her into forcibly joining the company of petitioner No.1. It is further submitted that reliance placed on *Chandrakala Menon(supra)* is misplaced, as the said judgment pertains to a father exercising his natural guardianship rights, whereas the present case involves a premeditated conspiracy. The manner in which the child was taken away establishes that this was not a mere exercise of guardianship but a deliberate act of kidnapping.

8. Having heard the learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that petitioner No.1 had taken their minor son Amandeep Singh Gulati away from the custody



of his mother-respondent No.2. For proper adjudication of the case, a perusal of Section 361 of the IPC and Section 6 of the Hindu Minority and Guardianship Act, 1956 (hereinafter 'HMGA') is necessary, which are reproduced as under:

Section 361 of the Cr.P.C.

Kidnapping from lawful guardianship.

Whoever takes or entices any minor under [sixteen] years of age if a male, or under [eighteen] years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.

Explanation.--The words "lawful guardian" in this section include any person lawfully entrusted with the care or custody of such minor or other person.

Exception.--This section does not extend to the act of any person who in good faith believes himself to be the father of an illegitimate child, or who in good faith believes himself to be entitled to the lawful custody of such child, unless such act is committed for an immoral or unlawful purpose.

Section 6 of the HMGA

Natural guardians of a Hindu minor.

The natural guardians of a Hindu minor; in respect of the minor's person as well as in respect of the minor's property (excluding his or her undivided interest in joint family property), are--

(a) in the case of a boy or an unmarried girl--the father, and after him, the mother: provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother;

(b) in the case of an illegitimate boy or an illegitimate unmarried girl--the mother, and after her, the father;

(c) in the case of a married girl the husband:

Provided that no person shall be entitled to act as the natural guardian of a minor under the provisions of this section--

(a) if he has ceased to be a Hindu, or

(b) if he has completely and finally renounced the world by becoming a hermit (vanaprastha) or an ascetic (yati or sanyasi).

Explanation.--In this section, the expressions "father" and "mother" do not include a step-father and a step-mother.

9. A perusal of the above provisions indicates that for an offence of kidnapping to be made out, it is necessary that the minor child is taken away from the custody of a 'lawful guardian.' However, a father falls well within the



ambit of 'lawful guardian,' especially in absence of an order divesting him of the same passed by a competent Court. This Court is of the view that a parent cannot be held guilty of the offence of kidnapping as both the parents of the child are equal natural guardians. Even though the matrimonial relationship between the parents has soured, the relationship between a parent and child subsists and it is only natural for a parent to want to be in company of his child, especially in absence of an order of the competent Court prohibiting the same.

10. On the touchstone of the law discussed here-in-above, both the abovementioned petitions are allowed and FIR bearing no.147 dated 15.09.2020 under Section 365 read with Section 120-B of Indian Penal Code, 1860 registered at Police Station Khanna City-II, District Ludhiana, Punjab, along with all subsequent proceedings, are hereby quashed qua the petitioners.

11. Pending miscellaneous application(s), if any, shall also stand disposed of.

12. A copy of this order be placed on the files of other connected cases.

(HARPREET SINGH BRAR)
JUDGE

17.03.2025

Neha

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