



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

**CRWP-7491-2025
Decided on : 18.07.2025**

SUNENA

.....PETITIONER

VERSUS

STATE OF PUNJAB AND ORS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Parminder Singh, Advocate
 for the petitioner.

Mr. Jasjit Singh Rattu, DAG, Punjab

Mr. Ajay Pal Singh Gill, Advocate and
Mr. Ripudaman S. Brar, Advocate for
respondents No.5 to 7.

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this court has been invoked under Article 226 of the Constitution of India praying for issuance of writ in the nature of Habeas Corpus directing the Respondents No.2 to 4 to produce and hand over the custody of the detenu who is a minor born on 18.04.2025, to the petitioner , illegally and wrongly confined by the Respondents No.5 to 7.

2. Factual matrix of the case unfolds that the petitioner is living with her three children and the younger one is born on 18.04.2025, the detenu in question for whose life insurance policy, respondent no.5 convinced the petitioner and made her meet to Respondents no.6 and 7 as Life Insurance Agents. Thereafter, respondents no.5 to 7 on 30.05.2025 took along with them minor child-detenu on the pretext of routine check up for the policy, very conveniently



took away the passbook and other documents of the child on the pretext of completing the formalities of the policy and obtained the signatures of the petitioner on blank papers and misused the same wherein after some time the petitioner came to know that, respondent no.5 in collusion with respondents no.6 and 7 has taken the custody of the minor infant child for the purpose of human trafficking and for selling him to earn amount.

3. Counsel for the petitioner contends that respondents no. 5 to 7 took advantage of the fact that the petitioner is living in a miserable condition and doing the work as maid and desperately required some amount for the upbringing of her children.

4. It is further contended that petitioner even submitted a registered representation to the police official on 12.06.2025(Annexure P-1), but still no action has been initiated against respondents no. 5 to 7, therefore the Petitioner was left with no other option but to approach the Hon'ble court.

5. Vide order dated 15.07.2025, this court directed the Registry to appoint a Warrant Officer, who shall visit the alleged places of detention and in compliance to the said order, Warrant officer along with police party reached the house of respondents no.6 and 7 and prepared the report which is reproduced herein below:-

I along with petitioner her associate and police party reached house of respondent Nos 6 and 7. Respondent No. 6 and 7 were present there. I along with petitioner and his associate searched each and every corner of the house but was not found present there. Respondent No. 7 got recorded his statement (Annexure R-1) to the effect that detenue child had been adopted by on 30.05.2025 and he will keep the child very well. He further stated that he will appear in court on 18.07.2025 and produce the detenue on that date. He handed over me copy of affidavit furnished by him and his wife



*(Annexure R-2).I left for Chandigarh at 10.30 pm on 16.07.2025.DD
Entry made by the concerned police station are at Annexure R-3.*

6. Per contra, counsel for Respondents no.5 to 7 at the very outset contends that the instant petition is not maintainable as the alleged detenu is not in illegal custody of respondents no.6 and 7 as it can be culled out from the affidavit dated 04.06.2025 which is produced today in court and taken on record that the petitioner along with her husband at her own will had given her child in adoption to respondents no. 6 and 7.

7. He further contends that the affidavit dated 04.06.2025 conclusively demonstrates a voluntary transfer of custody of the detenu. This evidence negates the petitioner's allegation of the child being taken fraudulently, as no signs of coercion or deception are evident in the documented interaction. Given the clarity of parties' visible participation, the claim of unlawful custody lacks substantive merit and appears to be a fabricated assertion unsupported by factual or documentary evidence.

8. Learned State counsel contends that presented circumstances unequivocally establish that respondents no. 6 and 7 are not unlawfully detaining the child, as the evidence (affidavit dated 04.06.2025) demonstrates a consensual transfer initiated by the petitioner and her husband.

9. Heard learned counsels for the respective parties at length.

10. In a petition seeking a writ of habeas corpus for the custody of minor children, the Court's primary consideration is to determine whether the current custody of the children is unlawful or illegal. Additionally, the Court must assess whether the welfare and best interests of the children necessitate a change in custody, thereby placing them in the care of another individual. It is a well-



established legal principle that, in matters relating to child custody, the welfare and well-being of the child are of paramount importance to the Court.

11. The law governing the custody of a minor is well established. When faced with complex and sensitive questions relating to a child's custody, a court must consider the relevant statutory provisions and the rights arising therefrom. However, such matters cannot be resolved solely through rigid interpretation of legal texts. Custody issues are fundamentally human in nature and must be approached with compassion and sensitivity.

12. In such cases, the court is not strictly bound by statutory provisions, procedural laws, rules of evidence, or even judicial precedents. Instead, it must focus on identifying the most suitable guardian for the child, with the welfare and well-being of the child as the paramount consideration.

13. When exercising its *parens patriae* jurisdiction, the court is obligated to carefully assess various factors impacting the child's welfare. These include not only the child's comfort, happiness, health, education, and intellectual growth, but also the overall quality of the environment in which the child will be raised. Significantly, the court's evaluation must extend beyond the child's physical and material needs to encompass moral and ethical considerations, recognizing that these aspects are just as vital-if not more so-to the child's holistic development.

14. The present petition centres on the petitioner's claim that her child, alleged detenu was fraudulently taken from her by respondent no. 5 and sold the child to respondents no. 6 and 7 for human trafficking. A review of the available records, specifically the affidavit dated 04.06.2025, does not clearly show that the petitioner along with her husband voluntarily handed over the child to



respondents 6 and 7. Furthermore, the petitioner's counsel has forcefully argued that her signatures were obtained on blank papers by respondents no. 5 to 7.

15. The present matter involves a habeas corpus petition, which is a summary remedy. In such proceedings, this Court cannot enter into a detailed examination of the validity of the affidavit primarily stating to have given the detenu child in question, as this issue falls within the domain of the trial court and is the subject matter of separate adjudication. The summary nature of habeas corpus proceedings precludes a full-fledged inquiry into the genuineness or legality of such a document.

16. Once the factual position is clarified before this Court, it is evident that the alleged detainee is in the illegal custody of Respondents No. 5 to 7, as the petitioner merely on the basis of an affidavit cannot be said to have herself voluntarily handed over the child to these respondents.

Now the question that remains to be adjudicated is that *whether this court can direct the release of the alleged detainee from the custody of Respondents no. 6 & 7 ?*

17. This court at this juncture would place reliance upon a judicial enunciation rendered by the Division Bench of this court in ***“LPA No. 64 2022, Decided on 14.03.2022”*** wherein the court has dealt with the scope of Habeas Corpus and held as under:-

9.In a case bearing CRWP No. 1423 of 2019 titled as 'Mandeep Kaur vs. State of Punjab', decided on 03.11.2020, this Court while exercising the powers in extra-ordinary writ jurisdiction, to issue a writ in the nature of habeas corpus, in cases related to custody of children has held that it is not solely dependent on and does not necessarily follow merely determination of illegality of detention and has to be based on the paramount consideration of welfare of the



minor child irrespective of the legal rights of the parents. Para No.15 of the above judgment needs reference, which is reproduced herein below:-

15. In Howarth Vs. Northcott: 152 Conn 460: 208 A 2nd 540: 17 ALR 3rd 758 it was observed that in habeas corpus proceedings to determine child custody, 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 infant 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. It was further observed that the employment of the forms of habeas corpus in a child custody case is not for the purpose of testing the legality of a confinement or restraint as contemplated by the ancient common law writ, or by statute, but the primary purpose is to furnish a means by which the court, in the exercise of its judicial discretion, may determine what is best for the welfare of the child, and the decision is reached by a consideration of the equities involved in the welfare of the child, against which the legal rights of no one, including the parents, are allowed to militate. It was also indicated that ordinarily, the basis for issuance of a writ of habeas corpus is an illegal detention; but in the case of such a writ sued out for the detention of a child, the law is concerned not so much with the illegality of the detention as with the welfare of the child.

18. Indubitably, the petitioner is the biological mother of the detinue and this court is sanguine of the fact that it has to take into consideration the 'paramount welfare' of the minor child without adverting to the evidence produced on record by respondents no.6 and 7 wherein they have failed to provide any adoption deed or any such document in support of their averment and this court while exercising its writ jurisdiction is not meant to decide the case as a trial court.



19. After considering the arguments presented by both parties and the relevant legal framework, this court holds that the determination of the disputed facts and the validity of the adoption is a matter for the civil court to decide. This writ court, operating under limited jurisdiction, cannot adjudicate upon such complex and contested issues, which require a detailed examination of evidence and an extensive trial.

20. At this stage, it appears that respondents no. 5 to 7, had taken advantage of plight of petitioner and got her signatures done on a blank paper.

21. Further, there is nothing on record to show that the custody of the detainee with respondent Nos. 6 and 7 is legal. The petitioner i.e. the mother of the detainee who is today present in the court made an oral submission that she was allured by respondent No. 5 who introduced her as a life insurance agent to get an insurance policy done for the betterment of future of her son and except that she had no such intention to give her child in adoption. Also no plausible reason has come forth to believe that the petitioner and her husband who are biological parents would give their child in adoption.

22. The scope of writ jurisdiction is confined to assessing whether the present custody of the child with Respondents No. 6 and 7 is prima facie illegal, which, in this case, it is.

23. Therefore, today in court the alleged detainee minor child has been handed over to the petitioner-mother by the respondent no.5, who on the pretext of getting life insurance policy took the child from the petitioner and sold the infant to respondents no.6 and 7 for human trafficking. However, respondents No. 6 and 7 are at liberty to approach the Court of competent jurisdiction to challenge the validity of adoption of the detainee-minor.

24. In the light of above, this petition does not warrant any further interference hence the instant petition is disposed of.

25. Ordered accordingly.

(SANDEEP MOUDGIL)
JUDGE

18.07.2025
anuradha (v)

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