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

CRWP-7492-2025 (O&M)
Reserved on : 02.08.2025
Pronounced on : 08.08.2025

Manpreet Kaur

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Hitesh Verma, Advocate
for the petitioner.

Mr. Roshandeep Singh, AAG, Punjab.

Mr. Harpreet Singh Multani, Advocate
for respondent No. 4.

MANISHA BATRA, J.

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 the custody of her minor son namely Gurushroojot Singh, who is alleged to be in illegal custody of his father/respondent No. 4.

2. Brief facts of the case as set up by the petitioner are that the marriage of the petitioner was solemnized with respondent No. 4-Sandeep Singh on 25.12.2015. Out of the said wedlock, a male child, namely Gurushroojot Singh, was born on 17.01.2017, who is the alleged detainee. It is alleged that the relations between the petitioner and respondent No. 4 were not cordial since beginning as the latter used to beat her on the instigation of his sister and mother. The child was born at the parental house of the petitioner and after a period of six months, she along with the child was brought by respondent No. 4 to her matrimonial house. However, respondent No. 4 did not mend his behavior and

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ultimately the petitioner along with the minor child was thrown out of the matrimonial house. Since then, the child was residing with the petitioner. He was admitted in a school, namely Garden Valley School, by the petitioner and was doing his schooling. Since respondent No. 4 was maintaining the petitioner as well as the minor child, the petitioner has filed an application under Section 125 of Cr.P.C., wherein interim maintenance to the tune of Rs.2500/- per month was ordered by the Principal Judge, Family Court, Kharar to be paid by respondent No. 4. The said case was fixed for 04.06.2025 before the Family Court at Kharar. Respondent No. 4 along with his friends Raju and Happy was also present in the Court premises. It was represented to the petitioner that mother of respondent No. 4 was ill and wanted to meet the child. Respondent No. 4 also assured the petitioner that he would return the child on 09.06.2025 as the child had to visit Sri Hemkunth Sahib with the petitioner on 10.06.2025. Accordingly, a request was made before the Family Court to record the statement of respondent No. 4 in this regard but instead of doing so, the Principal Judge called the parties in his retiring room and convinced them that there was no need to record the statement. It was only thereafter that the child was sent with respondent No. 4. However, when on 09.06.2025, the petitioner called respondent No. 4, he did not attend her calls. She came to know that respondent No. 4 had taken the child to Sri Hemkunth Sahib and would return the child after seven days. But even after seven days, respondent No. 4 did not return the child to the petitioner. The petitioner had made a complaint to local police for having back the custody of the child but all in vain. She also moved an application before the Family Court concerned but the same was wrongly dismissed. It is further submitted that after

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the summer vacation, the school has reopened but the child is still illegally detained by respondent No. 4, which is in fact affecting his overall development.

3. Learned counsel for the petitioner has submitted that respondent No. 4 has fraudulently taken the custody of the minor child from the petitioner and the act of respondent No. 4 is not only illegal but also amounts to cruelty to the petitioner as well as the child as he was of tender age and needed the care and company of his mother for his upbringing. Since his birth, the child has been in custody of the petitioner and she has been the sole caregiver of the child. The petitioner had got the child admitted in a reputed school and he was pursuing his studies. However, by removing him from the lawful custody of the petitioner, respondent No. 4 has seriously posed danger to his overall development. While submitting that respondent No. 5 is mistreating the minor child and not maintaining him properly, it is urged that a writ of habeas corpus be issued for release of the alleged detainee. To fortify his argument, learned counsel for the petitioner has relied upon the authorities cited as *Shazia Aman Khan vs. the State of Orrisa and others, 2024 (7) SCC 564, Yashita Sahu vs. State of Rajasthan, 2020 (3) SCC 67, Tejaswini Gaud and others vs. Shekhar Jagdish Prasad Tewari and others, 2019 (7) SCC 42, Parminder Singh Sandhu vs. State of Punjab and others, 2025 NCPHHC 73475, Joginder Singh Sekhon and another vs. State of Punjab and others, 2025 NCPHHC 73684, Camila Carolina de Matos Vilas Boas vs. Union of India, 2025 NCPHHC 51547, Anju Sharma vs. State of Haryana, 2024 NCPHHC 106868 and Smt. Meenakshi vs. State of U. P. (Allahabad), 2020 SC Online All 1475.*

4. Learned Assistant Advocate General, Punjab has submitted that the directions issued by this Court shall be complied with.

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5. Reply, on behalf of respondent No.4, has been filed, wherein while denying the allegations as levelled by the petitioner, it is submitted that since respondent No. 4 is natural father of the child, he cannot be stated to be in illegal custody of the child and the present petition is not maintainable. It is submitted that respondent No. 4 has never mistreated the child and rather, he is properly taking care of the child, being his father and is also discharging his responsibilities properly. It is also submitted that even he had never caused any harassment to the petitioner and she had left the company of respondent out of her own free will. More so, the petitioner has now been admitted in a better school i.e. Doon International School, Sector 69, Mohali. Learned counsel for respondent No. 5 has relied upon ***Pawan Kumar Kathuroju vs. State of Telangana, 2024 SCC Online SC 31, Nirmala vs. Kulwant Singh and others, 2024 AIR Supreme Court 23445 and Rajeswari Chandrasekar Ganesh vs. State of Tamil Nadu and others, 2022 SCC Online SC 885*** to contend that the custody of the child with father cannot be held illegal or unlawful and that the writ of habeas corpus is a prerogative remedy and the same should be exercised sparingly and only in extraordinary circumstances. Hence, the dismissal of the petition is prayed for.

6. I have heard learned counsel for the parties at considerable length and have also gone through the record carefully.

7. Admittedly, the petitioner and respondent No. 4 have been residing separately. The minor child had been residing with the petitioner but on 04.06.2025, his custody was handed over to respondent No. 4 by the petitioner. The petitioner is claiming that the child was given to respondent No. 4 only for a few days as his mother was not well and she wanted to meet the child. The said

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fact is not candidly denied by respondent No. 4. Rather, he has taken a stand that it is the child himself who is not willing at all to go back in the custody of the petitioner. It is also claimed by respondent No. 4 that when he received the custody of the child, he noticed that the child was not maintaining good health. Hence, certain medical tests were got conducted and it was found that the cholesterol level of the child were dangerously high. Even his liver function tests were deranged and level of Vitamin D was found to be severely low.

8. The petitioner has claimed that the child was given to respondent No. 4 on being convinced by the learned Principal Magistrate, Family Court, Kharar for a limited period after getting an assurance from respondent No. 4 that the child was returned on 09.06.2025. However, a perusal of the record reveals that when the petitioner had moved an application in the proceedings initiated by her under Section 125 of Cr.P.C. for directing the respondent No. 4 to hand over the custody of the child to her but the same had been out rightly dismissed by the Court concerned while observing that the petitioner was never asked by the Court to hand over the custody of the child to respondent and in fact, it was suggested to the parties that since the question of custody of the child was beyond the scope of proceedings under Section 125 of Cr.P.C., it was solely for the petitioner to decide if she should hand over the child to respondent No. 4 or not. This all goes to show that the matter involves disputed question of facts.

9. 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 detenue has been confined and set him at liberty if there is no legal justification for such detention. When once the Court

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comes to the conclusion that the detention is unlawful, the confinement cannot be permitted and consequently direction has to be issued to set the detenue 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 Dist. 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 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.

10. Reference can further be made to ***Tejaswini Gaud's*** case (supra), wherein it was observed by Hon'ble Supreme Court that habeas corpus proceeding is not to justify or examine the legality of the custody. Habeas corpus proceeding 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

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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 is 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. Even in ***Manisha Gupta vs. State of Punjab and others, 2023 (3) RCR (Civil) 46***, it has been held by this Court that although the custody of a child with his father cannot be held illegal or unlawful but the same should not be in breach of any order of law.

11. Now, advertent to the present case. The alleged detinue is in the custody of respondent No. 4, who is admittedly his natural guardian, being father. The petitioner has not placed anything on record to show that the custody of child with respondent No. 4 is illegal or without any authority of law or she has any order of the Court of law bestowing her custody of the child. The child has been enrolled by respondent No. 4 in a school and is attending school. While interacting with him in the chamber of this Court, the child has expressly desired to continue under the canopy of his father. The rival claims of the parties that only one of them can look after the best interest of the minor can be ascertained by the appropriate Court if a petition seeking permanent custody of the child is filed before it as such Court would be seized of the entire material to be produced by the parties in support of the competing claims and would obviously be more equipped to determine the welfare of the child by giving complete opportunity to the contesting parties. Certain allegations and counter allegations with regard to misbehavior and conduct of the parties to *lis* have also been made

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by them. However, at this stage, there is no need to dilate upon the same and without casting any aspersion on the moral character of the petitioner or respondent No. 4 and considering the position of law as laid down in aforecited judgments, this Court is of the considered opinion that no case has been made out to issue any writ of habeas corpus directing the private respondents to hand over the custody of the minor child to the petitioner. In view thereof, finding no merit in the petition, the same is dismissed.

12. It will be open for the parties to approach appropriate forum for seeking permanent custody of the child. Till the claim of the parties for permanent custody of the child is decided by the appropriate forum, the petitioner shall have visitation rights and shall be at liberty to meet the child on every Saturday or Sunday, if she so desires, by fixing a time on that day, which is convenient to respondent No. 4 as well.

08.08.2025

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No