

147

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

**CRWP-8136-2025 (O&M)
Date of decision: 28.07.2025**

Ashwarya Verma

... Petitioner

Vs.

State of Punjab and others

... Respondents

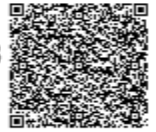
CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Ashok Kumar Khunger, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

1. Present petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of Habeas Corpus for appointment of a Warrant Officer to search the premises of respondents No.5 to 7 and to hand over custody of the detainee, namely Krishiv, aged about 1½ years, minor son of the petitioner, who is illegally detained by them.

2. Learned counsel for the petitioner, *inter alia*, contends that the petitioner is mother of the alleged detainee. Her marriage was solemnized with respondent No.5 on 05.09.2022 according to Hindu rites and rituals. Soon thereafter, the petitioner was tortured and maltreated by her husband i.e.



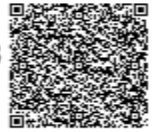
respondent No.5 and other family members for bringing less dowry and she was turned out of her matrimonial home. However, with the intervention of the Panchayat and respectables of the society, the petitioner was rehabilitated in her matrimonial home. Out of the said wedlock, on 28.12.2023, the detenue was born and parents of the petitioner gave sufficient cash and gift items to her in-laws. Further, on 10.07.2025, respondents No.5 to 7, after giving severe beatings to the petitioner, turned her out of the matrimonial home and the detenue/minor son of the petitioner was snatched by them. In this regard, the petitioner made a complaint on 10.07.2025 (Annexure P-1) to respondent No.4 against respondents No.5 to 7. Learned counsel for the petitioner submits that keeping in view the tender age of the detenue, who is illegally kept confined by respondents No.5 to 7, he must be in custody of the petitioner being mother.

3. Notice of motion.

4. Mr. Nitesh Sharma, DAG, Punjab, who is present in the Court today, accepts notice on behalf of official respondents No.1 to 4-State.

5. Having heard learned counsel for the parties and after perusing the record of the case, it transpires that the detenue is minor son of the petitioner and presently, he is in custody of his father and grandparents i.e. respondents No.5 to 7.

6. This Court has noticed an increasing tendency amongst disgruntled parents and other family members to move a writ petition in the

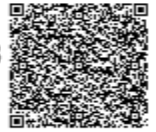


nature of habeas corpus, in order to settle custody of the children. A two Judge Bench of the Hon'ble Supreme Court in *Tejaswini Gaud and others Vs. Shekhar Jagdish Prasad Tewari*, 2019 AIR SC 2318, speaking through Justice R. Banumathi, has opined as follows:

“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)

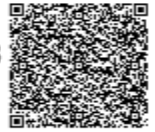
7. It is trite law that welfare of the minor would reign supreme,



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*

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*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 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.*

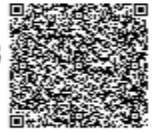
92. The general principle governing the award of custody of a minor is succinctly stated in the following words in Halsbury's Laws of England, Fourth Edition, Vol. 24, Article 511 at page 217 :

"... 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)

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

9. In view of the discussion above, respondents No.2 & 3 are directed to produce the detainee-minor son, namely Krishiv, before learned Chief Judicial Magistrate, Fazilka, who will hand over his custody to the petitioner.

10. The petitioner undertakes to provide a vehicle to take the detainee-her minor son from Ludhiana, where he is presently residing with



respondents No.5 to 7, in order to produce him before learned Chief Judicial Magistrate, Fazilka. She will be accompanied by the police officials of Police Station City Fazilka for this purpose.

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

12. With the aforesaid observations made and directions issued, present petition is disposed of.

28.07.2025
vishnu

[HARPREET SINGH BRAR]
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No