



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

217

CRWP-9004-2024

Date of decision: 30.01.2025

Veerpal Kaur

....Petitioner

Versus

The State of Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. B.S. Sidhu, Senior Advocate
with Mr. Divij Dutt, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

HARPREET SINGH BRAR J. (Oral)

1. Prayer in this criminal writ petition filed under Articles 226/227 of the Constitution of India, is for issuance of a writ in the nature of habeas corpus, for directing respondents No.3 and 5 to produce the detinue/daughter of the petitioner namely Dishanpreet Kaur.

2. Learned State counsel at the outset submits that there is an on going matrimonial dispute between the petitioner and her husband and cross FIRs are pending against the petitioner and her husband and the alleged detinue namely Dishanpreet Kaur is residing with her father and she is 07 years of age.

3. A perusal of Section 361 of the IPC and Section 6 of the Hindu Minority and Guardianship Act, 1956 (hereinafter 'HMGA,



1956) is necessary for proper adjudication of the case. The same are reproduced as under:

Section 361. 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. 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.

4. The dispute between the petitioner and her husband is purely a matrimonial dispute and private in nature and the petitioner has equally efficacious remedy under the provisions of Guardians and Wards Act and even under Section 6(1) of the Hindu Minority and Guardianship Act, 1956, the custody of minor who has not attained the age of 05 years shall ordinarily be with the mother, however, in the present case, the age of the detinue is more than 07 years.

5. 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 her 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 her child, especially in absence of an order of the competent Court prohibiting the same.

6. In view of the above, no further directions are required to be issued in the instant criminal writ petition.



- 7. Disposed of accordingly.
- 8. However, liberty is granted to the petitioner to initiate appropriate proceedings for seeking custody of the child by filing an appropriate petition under the Guardians and Wards Act, if so advised.

(HARPREET SINGH BRAR)
JUDGE

30.01.2025
yakub

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